

# Republic of Cameroon.

Official seal of the Republic of Cameroon.

Communication presented by Mister Ebenezer Derek Mbongo Akawanga to the  
United Nation Human Rights Committee.

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**Thesis in the Defense of the State of Cameroon**

- 1- On the 20 June 2008, Mr Ebenezer Derek MBONGO AKWANGA submitted to the Human Rights Committee, a communication against the State of Cameroon. This communication was registered by the Office of the High Commissioner for Human Rights on 03 July 2008. It was submitted by virtue of the first Option Protocol (hereafter Protocol) relating to the International Covenant on Civil and Political Rights, and based on the breach of articles 7, 9, 10 and 14 of the Covenant, relating respectively to the ban on torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security, the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person and the right to a fair trial.
- 2- After a summary of the procedures relating to the above mentioned (I), the State of Cameroon will set out its observations on the admissibility of this communication (II), before examining the Merits (III).

## **I- SUMMARY OF THE PROCEDURES RELATING TO EBENEZER DEREK MBONGO AKWANGA.**

- 3- Mr. Ebenezer Derek MBONGO AKWANGA, was found guilty in a joint trial held before the Yaoundé military tribunal, in a case opened against the members of the *Southern Cameroon's National Council*<sup>1</sup> (SCNC) in 1997 for common law crimes. He was convicted by virtue of judgment n° 230/99 of 05 October 1999, of illegal detention of weapons and war ammunition and aggravated theft and received a mandatory sentenced of 20 years imprisonment and 100 000 francs fine, with confirmation of the sentence delivered by the *Juge d'Instruction*. The Director of Public Prosecutions, the accused and some plaintiffs appealed this decision.
- 4- On 09 July 2003, while the case was pending before Yaoundé Central court of appeal, the detainee called AKWANGA Ebenezer took advantage of a transfer to the Yaoundé Central Hospital to escape detention and seek refuge in Nigeria.
- 5- He was awarded refugee status by the High Commissariat for refugees, and was granted asylum by Nigeria. His lawyer, Maitre TITANJI DUGA Ernest submitted a joint complaint to the African Commission on Human and people's rights (hereafter the commission) on his behalf and that of 17 others (in detention) against the State of Cameroon.
- 6- Notified of this complaint on the 17 June 2004 the State of Cameroon responded, and the case is still pending before the Commission.
- 7- As by decree n° 02/ML of 15 December 2005 the Court of Appeal emptied its case load, and ruling by default against the accused AKWANGA Ebenezer, who escaped from prison, upheld the previous ruling and issued an arrest warrant against him.
- 8- On 20 June 2008, AKWANGA Ebenezer, represented by Mr LAUE Kevin August Robert Lawyer in Maryland (USA), country where the plaintiff is currently residing as a political refugee, submitted a communication against the State of Cameroon to the United Nations Human Rights Committee.

## **II. ADMISSIBILITY OF THE COMMUNICATION.**

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<sup>1</sup> In English in the original text.

9- Based on article 5 of the Protocol, the State of Cameroon, raises to exceptions to admissibility based on *pendent liti* and non exhaustion of all available domestic remedies.

10- Paragraph 2 of this article reads “*The Committee shall not consider any communication from an individual unless it has ascertained that:*

*(a) The same matter is not being examined under another procedure of international investigation or settlement;*

*(b) The individual has exhausted all available domestic remedies.”*

*Pendente liti*

11- From the complaint submitted to the Commission and from the counsel’s speech conducted by Mr TITANJI during the closed session of 25 November 2006, during the 40<sup>th</sup> session of the Commission, it becomes apparent that, the case is concerned with torture and other cruel, inhuman or degrading treatment that the plaintiffs were subjected to during their arrest or detention in March and April 1997 as well as violations of the right to a fair trial during the proceeding conducted against them and the trial before the Yaoundé military tribunal.

12- The present communication alleges torture and other ill treatment inflicted on the plaintiff at the police stations and the prisons where the plaintiff was detained and failure to respect the right to a fair trial with special attention to the failure to provide an interpreter during the trial before the Yaoundé Military Tribunal.

13- The arguments developed by his counsel to support his allegations are identical to those contained in the communication to the Commission.

14- The identity of the parties and the facts lead to the conclusion that the case is currently being considered by another procedure of international investigation or settlement, and this is sufficient cause for the Committee to decline jurisdiction in favor of the African Commission on Human and People’s Rights, still considering the same case.

15- The African Charter of Human and People’s Rights is an international convention ratified by African countries under the aegis of the Organization of African Unity (which has since become the African Union) the 27<sup>th</sup> June 1981 and ratified by Cameroon on 20 June 1989.

16- The second section of the Charter (articles 30 and following) creates an African Commission of Human and People’s Rights. This is an international institution of investigation and settlement mandated to promote human rights and ensure their protection in Africa.

17- The Committee has in fact previously declared communications as inadmissible based on *pendent liti* before other international institutions of investigation or settlement see case n°1396/2005 (Rivera v. Spain) and n°993 and 995/2001 (Crippa et consorts v. France)<sup>2</sup>

18- Communication n° 989/2001, submitted by Walter KOLLAR v. Austria was declared inadmissible by the Committee on 30 July 2003 for the same reasons<sup>3</sup>.

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<sup>2</sup> See United Nations Report to the Human Rights Committee, Volume I, General Assembly, Official Documents, supplement n°40(A/61/40)p.87

non exhaustion of all available domestic remedies.

19- It is noted that the plaintiff did not engage any domestic procedures prior to approaching the international institutions.

20- However he did have the possibility to file either a appeal before the competent criminal court for the repression of torture, as set out in article 132bis of the Criminal Code (law n° 97/009 10 January 1997), or an appeal to have his conviction quashed for breaches of some of the rights to a fair trial before the competent court, in accordance with articles 332 and following of the Code of Criminal Procedure then applicable.

21- In regards to torture the above mentioned Criminal Code sets out torture as:

“ a)Any act by which server 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 confession, punishing him for an act he or a third person has 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,

b)The word “torture” does not include pain or suffering arising only from inherent in or incidental to lawful sanction.

c) No exceptional circumstance whatever it may be, including a state of war, a threat of war, political instability or any other exceptional circumstance can be invoked to justify torture.

d) An order from a superior or a public “authority” cannot be invoked to justify torture.”<sup>4</sup>

22- In applying this law which internalized the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment, ratified by Cameroon, several people in change of the application of the law are regularly punished with sentences severe enough to serve as a deterrent.

23- As to the violation of the right to a fair trial, article 332 of the Code of Criminal Procedure (CCP) applicable at the time sets out that: “Where a witness does not speak one of the official languages which the registrar and Juge D’instruction understand; the latter shall call on the services of an interpreter, or risk that the charges be null and void. The interpreter shall not be less than twenty-one (21) years of age. The interpreter shall take oath to give a true interpretation of the statement of any person who speaks in different language or dialect. The defendant or the Director of Public Prosecutor may recues the interpreter by justifying such a step. The President will rule. The registrar, witnesses and the parties shall not perform the functions of an interpreter.”

24- These provisions of article 332 here above are applicable to all jurisdictions including the preliminary inquiry.

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<sup>3</sup> See Selected Decisions of the Human Rights Committee under Optional Protocol, Volume 8 p. 21 and following.

<sup>4</sup> The English translation of the 1997 Code of Criminal Procedure not being available online the translation is based as far as possible on the current code of Criminal Procedure Law N°2005 of 27 July 2005 which is available in English.

- 25- Subsection three chapter one of the CCP covers cases where the investigation and judgment are null and void.
- 26- Article 407 set out that: *“The decrees and judgments handed out in last resort, in criminal, correctional or police matters, as well as the inquiry and procedures that proceeded can be null and void in the following cases, and in the appeals following the distinctions that are to be established.”*
- 27- In criminal matters, article 408 stated that: *“Where the accused has received a guilty sentence and where, either in the ruling of the appeal case which ordered its forwarding to the Crown Court, or in the ruling itself there is a violation or omission of one or more of the formalities set out by the present code under the penalty of voidance, this omission or violation will lead to, on the initiative of the accused or the Director of Public Prosecutions, to the annulations of the sentence and that which proceeded it as from the first void act. It will be the same for all cases of incompetence where it has been omitted or refused to pronounce, either on one or more requests by the accused or the Director of Public Prosecutions trying to use one of the tools or rights allowed provided for by law to which the penalty of voidance is not textually attached to and the application of which has been asked or requested.”*
- 28- In correctional or police matters, article 413 set out that *“The means of voidance set out in article 408 are, in correctional and police matters, respectively open to the party accused of an offence, to the Director of Public Prosecutions, and to the plaintiff, where there is one, against all decrees and judgments in last resort without distinction to those who ordered the remand or the sentence. “*
- 29- The principal that these provisions sets out is that procedures are void each time and essential measure to the defense of the accused is violated or omitted, be it textual (violations that are prescribed as voidable) or substantial. Furthermore it is up to the victim of the omission or violation to engage the motion to void.
- 30- To justify the absence of this procedure, the accused argues that at the time of facts, he was not allowed to receive visits, not even from his lawyer, and that because of his escape he is unable to return to Cameroon to engage the procedure.
- 31- These allegations are invalid in two ways:
- Firstly, no instructions in this regard were issued to the prison guards by the authorities, within the understanding that all visits to places of detention must be approved by the public Prosecutor or the *Juge d’Instruction*.
- Secondly the plaintiff was outside of the prison on at least two occasions, when he was detained at the Mfou district Hospital for one month, at the willingness and cost of the penitentiary authorities and during his stay at the Yaoundé Central Hospital.
- 32- Rather than putting these moments of supervised freedom to use and have his injuries recorded and engage the applicable procedures, the plaintiff escaped from the Hospital to Nigeria.
- 33- Furthermore, the plaintiff is aware that as a wanted convict, following an arrest warrant that is to be executed if he returns to Cameroon, without omitting that his extradition could be requested to ensure that he purges his penalty, in his case, the decree of the court of appeal is final.

34- The Committee has declared several communications inadmissible for non exhaustion of domestic remedies. The following cases can be taken as examples: n° 1070/2001 (Aouf v. Belgium), 1103/2002 (Castro v. Colombia), 1218/2003 (Platonov v. Russian Federation), 1304/2004 (Khan v. Canada) and n° 1374/2005 5Kurbojai v. Spain)<sup>5</sup>.

### **III- MERITS**

35- Where it is necessary the State of Cameroon will show that the allegations are not substantiated. However before doing so it will present the facts of the case, that the plaintiff continues to deny despite being found guilty by the competent authorities, who found several of his co-accused not guilty and will set out the procedure followed.

#### **A. The factual context of the Communication and the status of the procedure against Ebenezer Derek MBONGO AKWANGA and others.**

36- The Communication submitted to the Committee follows the arrest and detention of 67 people, among which the plaintiff, during the months of March and April 2007 in the North-West province of Cameroon.

37- During the night of the 23 to 24<sup>th</sup> march 1997, after having neutralized the guard called AMEDOU SIKA, individuals armed with spears, bows and arrows, shotguns, treaty rifles using caliber bullets, 12 mm guns and automatic guns stole explosives (five boxes of dynamite, four boxes of detonators of a total length of eight thousand meters and twenty kilograms of nitrate) from the powder magazine of the RAZEL society based in YER (Kumbo).

38- The explosives stolen were then left in Jakiri at the residence of BAMBUI Samuel (escaped). The guard managed to escape the vigilance of his guard Kenneth (escaped), and went to the Jakiri police station whom he informed of the facts. The trap set up by the police allowed for the arrest of two of the people involved in the theft of the explosives and who were called AKWANGA Ebenezer and NGU NDI Julius.

39- Two days later during the night of 27<sup>th</sup> to 28<sup>th</sup> March 1997, while the police were still trying to elucidate the theft of the explosives, individuals, armed with spears bows and arrows, shotguns attacked administrative offices and the police office, burning and pillaging goods. They assassinated, injured and kept hostage people in the localities of Jakiri, Oku, Kumbo, Bamenda and Bafut.

40- The residences of the two *sous-prefets* of this district were attacked, pillaged and burnt. One of the *sous-prefets* died, the other (from Kumbu) lost his child, who died as a result of third degree burns. Seven other members of his family sustained serious burns and three policemen were killed.

41- The intervention of the police forces and the following investigations lead to the arrest and identification of 67 people.

42- During his hearing on 5<sup>th</sup> April 1997, AKWANGA Ebenezer declared that as the President of the Youth wing of "*Southern Cameroon's National Council*" (SCNC) he was chosen to lead

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<sup>5</sup> See : United Nation Report to the Human Rights Committee, Volume I, General Assembly, Official Documents, supplement n° 40 (A/G1/40), p 89

and expedition into the town of Kumbo, in order to steal explosives from the RAZEL society, for use in an armed attack in certain localities in Cameroon for which he had the attack details. He said that it was when they were unable to obtain weapons from outside the country that the SCNC leaders decided to take these steps, in order to free "Southern Cameroon" by force, the declaration of independence being planned for the 28<sup>th</sup> March 1997. He specified that after the success of the operation on the 24<sup>th</sup> March in Jakiri, the stolen explosives were hidden at the residence of a member of the Movement in Jakiri and it was while they were trying to retrieve them that he and NGU NDI Julius were arrested by members of the Jakiri police force.

43- Following the police investigation, a judicial inquiry was launched against 67 people. They were produced before the Yaoundé military tribunal by the *Juge d' Instruction* to respond to charges of: illegal detention of war weaponry and munitions, illegal arrest and sequestration, grievous bodily harm, theft, pillaging in a group, arson, murder and illegal immigration, all crimes set out and punished by the Criminal Code then applicable.

44- On 5<sup>th</sup> October 1999, this tribunal handed down judgment n° 230/99 and held that: "*The tribunal in a public ruling, by default judgment against NKEMIKAH Denis, AMADOU NDIFON, NGWEI Mathias, Sylvestre CIYEMIN, MBANIKO Charles, MBANG Henry KIYANG;*

*In regards to NJONG Emmanuel, TANWANI Juhn TAH FON Peter ASANJI and in regards to the other accused in criminal matters, in first instance and unanimously;*

- *rules in absentia against NKEMIKAH Demis, ADAMOU NDIFON, NGWEL Mathias, Sylvestre CIYEMIN, MBANIKO Charles, MBANG Henry Kiyang;*
- *Rejects the exceptions raised in limine litis by the defense and thereby retains its jurisdiction;*

*Declares the case against Patick YIMBU discontinued for reason of death;*

- *Declares itself incompatible ratione materiae in the case of Sylvestre CITEMIN, charged only with illegal immigration, and recommends that Director of Public prosecutions refills the case before the competent courts.*
- *Finds WIRNKAR SHEY Frederick, WIDZEREM WIRNKAR Wilfrend, NGONG Patrick LATAR, WANYU Frederick, AMEDOU SULKA, TOMLA Léo and FONYUY Eric not guilty of attempting to destroy the bridge, as facts were not established (they voluntarily abandoned their criminal plans) and orders their discharge;*
- *Finds TANKO SALIFOU, GEK Fier, NDITON Joseph, TANGRE, Fidelis, NGREM Barnabas SHEY and TANFOU Samuel FOLINJO not guilty of co-author murder, arson, aggravated theft, pillaging, illegal detention of weapons and ammunition, attempted murder, vandalism and grievous bodily harm, for reason of non establishment of the facts, are orders acquittal;*
- *Finds ANO Robinson, KIZE Thomas, Lukong Vitalis Mawo, not guilty of co-authoring arson, and vandalism, illegal detention of weapons and munitions, and murder, for failure to prove the facts, and acquits them;*

- *Finds ELAH EBWA Samuel and FLIASSI NGON Georges not guilty of complicity in attempted murder, vandalism, arson, pillage and illegal detention of weapons and munitions and acquits them;*
- *Rules that there is doubt on the merits of the case against TANYI WIRDZERO Gilbert and FONYUY Donald, and quits them on the basis of reasonable doubt;*
- *Finds Idrissou BIAKA, Frederick KIVEN MAHAMADOU NSOZEKA not guilty of participating in arson, vandalism, illegal detention of weapons and munitions, and acquits them;*
- *Rules that there are doubts on the complicity to attempted murder, vandalism, arson , pillage, and illegal detention of weapons alleged against Joseph YANG SEKEGRE, and quits him on the basis of reasonable doubt;*
- *Declares itself “incompatible ratione materiae in the case of illegal immigration against him and recommends that Director of Public prosecutions refills the case before the competent courts.*
- *Finds FONYAM NIAKL Peter not guilty of complicity in murder, aggravated theft, pillage, attempted murder, illegal detention of weapons and munitions, grievous bodily harm, vandalism on the basis of failure to prove the merits of the case and acquits him;*
- *Finds AKUNU Chaw Paul not guilty for failure to prove the merits and acquits him;*
- *Finds NGEH ANYE John not guilty of co-authoring arson, vandalism and murder and acquits him of these charges for merits not established;*
- *However finds him guilty of illegal detention of weapons and munitions, and sentences him to one year fix term of prison, and confirms the committal issued by the examining Magistrate;*
- *Finds BAH ATAH John, FON Elias TAMBE, BANGE Jeremiah, BON Peter ASANJI, TAH ABWE Michael, NSEKE Stanley, TAWANI John TAH, NYONG Emmanuel FONJE guilty (article 99), with mitigating circumstances and sentences them each to 1 year of firm imprisonment and 100 000 franc fine, and rules that the prison term here delivered is covered by the temporary detention;*
- *requalifies the case against DJOBARA Hyacinth as non intervention, declares her guilty and condemns her to a mandatory 2 years term in prison, and confirms the committal issued by the examining Magistrate*
- *finds TIBI Paul Tokah guilty, with mitigating circumstances, and sentences him to a mandatory 2 years term in prison; and confirms the committal issued by the examining Magistrate*
- *finds CHEONUMU Martin guilty, with mitigating circumstances and sentences him to a mandatory 8 years term in prison; and confirms the committal issued by the examining Magistrate;*

- *finds NEBE Che Wilson guilty, with mitigating circumstances, sentences him to a mandatory 8 years term in prison; and confirms the committal issued by the examining Magistrate*
- *finds NYAMSAH Promise guilty, with mitigating circumstances and condemns him to a mandatory 10 years term in prison and 100 000 franc fine, and confirms the committal issued by the examining Magistrate;*
- *finds MBANIKO Charles guilty, sentences him to a mandatory 10 years term in prison and 100 000 francs fine, arrest warrant issued at the hearing;*
- *finds FONKWA Thomas guilty, with mitigating circumstances sentences him to a mandatory 10 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds NGEK Adalbert guilty with mitigating circumstances, and sentences her to a mandatory 10 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds NJONKAM Charles guilty, with mitigating circumstances, sentences him to a mandatory 10 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds JUPE Bolover guilty with mitigating circumstances, sentences him to a mandatory 10 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds NTANEM Daniel NDIFON guilty with mitigating circumstances, sentences him to 10 years fixed term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *redesignates the case against TETE Philippe to complicity to grievous bodily harm, murder (articles 97 and 99) vandalism, arson, aggravated theft, finds him guilty with mitigating circumstances sentences him to a mandatory 10 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds NTANBUM NGEK SAMA guilty with mitigating circumstances, sentences him to a mandatory 15 years term in prison, and confirms the committal issued by the examining Magistrate*
- *finds KAHAN Zacharie guilty with mitigating circumstances, sentences him to a mandatory 15 years term in prison, and confirms the committal issued by the examining Magistrate;*
- *finds TATA Roland MVIDZE guilty, sentences him to a mandatory 20 years term in prison and 100 000 francs fine; and confirms the committal issued by the examining Magistrate*
- *finds NKEMEKAH Denis guilty, sentences him to a mandatory 20 years term in prison and 100 000 francs fine, arrest warrant issued at the hearing;*
- *finds ADAMOU NDIFON guilty sentences him to a mandatory 20 years term in prison and 100 000 francs fine, arrest warrant issued at the hearing;*

- *finds NGUEI Mathias guilty, sentences him to a mandatory 20 years term in prison and 100 000 francs fine, arrest warrant issued at the hearing;*
- ***finds AKWANGA Ebenezer guilty, sentences him to a mandatory 20 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;***
- *finds NGU NDI Julius guilty, sentences him to a mandatory 20 years term in prison and 100 000 francs fine, and confirms the committal issued by the examining Magistrate;*
- *finds EDWIN Juven guilty, sentences him to life in prison, and confirms the committal issued by the examining Magistrate;*
- *finds LIKONG ASSAM Juban guilty, sentences him to life in prison, and confirms the committal issued by the examining Magistrate;*
- *receives widow KAMDEM as plaintiff, rules that her claim is partially founded, sentences NGEK Simon and others found guilty to jointly pay her 5 000 000 francs CFA in damages (moral and material)*
- *receives widow NGREM Anna as plaintiff, rules that her claim is founded, sentences NGEK Simon and others found guilty to jointly pay her 7 000 000 francs CFA as damages and interest;*
- *receives Assistant NJIKAM as plaintiff, rules that his claim is partially founded, sentences NGEK Simon and others found guilty to jointly pay him 1 500 000 francs as damages and interest;*
- *receives widow NDJO SAMAKI as plaintiff, rules that her claim is partially founded, sentences NGEK Simon and others found guilty to jointly pay him 2 000 000 francs CFA for moral prejudice, the rest of the claim being ruled unfounded;*
- *receives the State of Cameroon as plaintiff, rules its claim partially founded, sentences NGEK Simon and others found guilty to pay 50 000 000 francs CFA for material damages (destruction of offices, equipment and theft of material);*
- *gives reason to wives MVONDO in that they claim a symbolic 1 franc as damages;*
- *reserves the damages in regards to the murder of policeman Major MAKOK;*
- *sentences NGEK Simon and others to be jointly responsible for the expenses*
- *05 or 10 days to oppose or appeal.”*

45- The Director of Public Prosecutions, the accused and some of the plaintiffs appealed this decision the 7<sup>th</sup> and 8<sup>th</sup> October 1999.

46- By decree n° 08/MIL/ADD of 15 September 2005 the Court of appeal rejected the *limine litis* arguments raised by the accused lawyers on *ratione materiae* and *ratione loci* jurisdiction of the Yaoundé Military tribunal, and found the Appeals receivable.

47- On the Merits, the Court of Appeal, by decree n° 02/MIL of 15 December 2005 found that:  
“The court *in a public ruling, by default judgment against*

1. *NGEK SIMON*
2. *LIKONG ASSAM Juban*
3. *EDWIN JUVEN*
4. *TATA Roland MINDZE*
5. *NTAMBU GEH SAMA*
6. *NKHAN Zacharia*
7. *FONKWA Thomas*
8. *JUPE Bolower*
9. *NJAKOY Charles*
10. *TETE Philippe*
11. *NGEH Adalbert*
12. *NYANSAH Promise*

*By default the other accused and plaintiffs;*

*On admissibility:*

*Notes that by decree n° 08/MIL/ADD of 15 September 2006 the criminal court of appeal of céans found the appeals receivable;*

*On merits:*

- *Finds the case against NGU NDI Julius discontinued for reason of death;*
- *Annuls the ruling in regards to NGEH Adalbert and NYANSAH Promise;*
- *Ruling again on their case, finds them not guilty of the case against them and acquits them of these charges for failure to prove the case;*
- *Confirms the ruling of guilty with mitigating circumstances for :*
  1. *NGEK Simon*
  2. *LUKONG ASSAM Juban*
  3. *Edwin Juven*
  4. *Ntambu GEH SAMA*
  5. *Khan Zacharia*
- *However annuls the sentences delivered and ruling again on these, sentences:*

*NGEK Simon,*

*LUKONG ASSAM Juban*

*EDWIN Juven to 25 years in prison and 100 00 francs fine and NTAMBU GEH SAMA – KHAN Zacharia to 10 years in prison and 100 000 francs fine each;*

- *Confirms the ruling for the remainder*
- *Issues an arrest warrant against the accused BANIKO Charles and AKWANGA Ebenezer;*
- *Sentences the accused to be jointly responsible for the expenses.”*

48- Counsel for the accused has filed for annulment of this decree. The case is pending before the Supreme Court.

### **B. The allegations of Mr Ebenezer Derek MBONGO AKAWANGA**

49- The plaintiff bases his communication on breaches by the State of Cameroon in regards to the ban on the use of torture, or cruel, inhuman or degrading treatment or punishment. The right to liberty on security, the right of all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person, and the right to a free and fair trial as guaranteed by the Covenant.

#### **1. Torture, or cruel, inhuman or degrading treatment or punishment**

50- The plaintiff alleges that he was subjected to physical and moral violence in the police offices of Jakiri, Kumbo, Bamenda and Yaoundé where he was in custody.

51- The State clarifies that the investigation into this serious case which lead to deaths, grievous bodily harm, and important material damages was carried out in observance with the rules in place at the time on criminal procedure. It was in no way arbitrary in regards to the legislative procedure that was in place to fight against the use of torture by police officers or the jurisprudence.

52- In case n° 1070/2002 (Kuodos v. Greece), the United Nations Human, Rights Committee stated that it was up to the national authorities in charge of the investigation to decide the manner of carrying out an investigation, as long as the it is not arbitrary<sup>6</sup>.

53- Torture and other inhuman treatment are penal matters and the burden of the allegation lies with the plaintiff.

54- The defender notes that the plaintiff does not bring proof of torture and other cruel treatment that he claims to have suffered.

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<sup>6</sup> Report of the Human Rights Committee Vol. I doc. Off General Assembly session 61 supplement n° 40.

55- The medical certificate initially provided by the plaintiff was established after his escape on the 5 September 2003 by a Nigerian doctor, who says he diagnosed a stomach ulcer and diabetes.

56- The link between this diagnosis and the alleged violence's has not been established, nor has their existence.

## **2. The violation of the right to liberty and security**

57- The plaintiff alleges that as a politician and president of the youth wing of "Southern Cameroon's National Counsel" (SCNC), he was peacefully campaigning for the rights of Southern Cameroon's people when he was arrested on 24 March 1997 in Jakiri and that he was never notified of the reasons for this arrest.

58- We attract the attention of the committee to the fact that the SCNC is a secessionist movement for whom all demonstrations are illegal. The plaintiff cannot therefore claim that he was running a peaceful campaign.

59- Furthermore, his claim to not know the reason of his arrest shows bad faith, as his collaboration permitted the identification of the rest of the group. Indeed he facilitated the identification of the explosives reseller as BAMBUH Samuel (escaped)<sup>7</sup>.

60- In light of the above, on the facts and the judicial procedures that followed, the defender states that AKWANGA Ebenezer was arrested and deprived of his liberty, for reasons and procedures in conformity with the law and that not only were the reasons of his arrest explained to him, he had to explain himself.

## **3- The violation of the right of all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.**

61- In support of this allegation the plaintiff submits that when placed in detention at the Kondengui Prison in Yaoundé on the 2 June 1997 he was placed in an insalubrious cell infested with insects, with 55 other people when it was designed for 15. He was obliged to sleep on the floor. The bad quality and small portions of the food lead to him developing dysentery two weeks later.

62- On the 29<sup>th</sup> August 1997 he was transferred to the Mfou Prison. Upon learning the reasons for his incarceration, the other prisoners inflicted atrocious tortures on him. Having become grievously ill as a result of this he was transferred the Mfou Distric Hospital for a month. On the 4<sup>th</sup> February 1999 he was returned to the Yaoundé prison in preparation for his apparition before the Military Tribunal.

63- As to the detention conditions at the Yaoundé prison the defendant states that the bad conditions pre-existed the plaintiffs' detention and were not designed to inflict suffering on him.

64- The defending State has been aware for several years of the bad conditions in detention. These are the result of the decrepit and constricted cells, which mainly date back to the Colonial

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<sup>7</sup> See paragraphe 42 of the thesis.

period. The increase in criminality and the lack of financial means to construct new facilities have worsened the situation.

- 65- In June 2002, with the support of technical and financial partners, most notably the European Union, the government of Cameroon started a project to improve the conditions in detention, and respect for human rights (PACDET<sup>8</sup>). The first phase of the project PACDET I was concerned with the Central prisons of Douala and Yaoundé where the conditions were the most worrying. This phase came to an end in August 2005, and the positive results have led to the implementation of PACDET II, for which the convention was signed on 19 December 2006 and which will cover all ten central prisons.
- 66- Furthermore, the inmates at the Kondengui prison receive a daily food ration that can be supplemented by visitors. This prison also has an infirmary run by a doctor. In the case of illness that cannot be properly cared for in the facility, the inmates are transferred to public hospitals in town. It is during one such transfer that the plaintiff escaped from the Yaoundé Central Hospital.
- 67- As to the torture inflicted on the plaintiff at Mfou prison, the prison admits that the mental and physical violence was perpetrated by fellow inmates.
- 68- In the absence of proof that these inmates acted on the orders or instructions of the detention facilities, the State of Cameroon does not accept liability for acts committed by non state actors that the victim had the possibility to report at the time.
- 69- Furthermore, the State, worried about the health of the detainees took care of the medical costs of the care provided to the plaintiff as a result of this violence and which required his hospitalization for a month.

#### **4- The breach of the right to a fair trial.**

- 70- The plaintiff alleges that his position as an English speaker was not taken into account at the time of the trial, and the charges were written solely in French and that he was condemned to 20 years in prison without any proof.
- 71- The defending State recalls that the case against AKWANGA Ebenezer and his accomplices and the resulting ruling were held in conformity with the laws in place in regards to criminal procedure.
- 72- In regards to the specific alleged violation of the right of all persons, accused of a crime, to be helped by a free interpreter if that person does not understand the language spoken at the hearing (article 14.3.f of the ICCPR), it appears in the transcripts of the trial before the Yaoundé military tribunal and the appeals court that, as French was the language spoken at the hearings, the participants who did not speak French were provided with bilingual interpreters, speaking in English and French, to translate their conversations with the court<sup>9</sup>.

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<sup>8</sup> Programme d'Amélioration des Conditions de Détention et de Respect des droits de l'Homme

<sup>9</sup> See 24th call of ruling n° 203/99 of 5 September 1999, 1st, 2<sup>nd</sup> and 3rd calls of the ruling n° 02/MIL of 15th December 2005.

- 73- It is necessary to specify that in accordance with the constitution of Cameroon (Law n° 6, 18 January 1996) “*The official languages of the, Republic of Cameroon shall be English and French, both languages having the same status*”. Beyond this constitutional right and obligation, which requires that every Cameroon citizen make the effort to understand and master both official languages, national legislation and practice before the courts, in the aim to provide a fair trial, provides each person who cannot express himself in one of these languages the right to an interpreter.
- 74- In conclusion, the communication is an attempt by the plaintiff AKWANGA Ebenezer to escape the implementation of the sentence that was pronounced against him, and to use his position as a political refugee in the USA to continue his activities aimed to destabilize Cameroon under the banner of the SCNC, an illegal organization.
- 75- The State of Cameroon, fully committed to the protection of human rights, wishes in regards of the above that the Committee declares this communication inadmissible in regards to *pendente liti* and non exhaustion of domestic remedies. If not it requests that the communication by Mr. Ebenezer Derek MBONGO AKWANGA be at least recognized as non substantiated, and revealing no violations by the State party to the Convention.
- 76- Cameroon remains available to respond to any further queries the Human Rights Committee may have.