

MISSION PERMANENTE  
DE LA RÉPUBLIQUE DU CAMEROUN  
AUPRÈS DES NATIONS-UNIES,  
DE L'ORGANISATION MONDIALE DU COMMERCE  
ET DES AUTRES  
ORGANISATIONS INTERNATIONALES  
GENÈVE



PERMANENT MISSION  
OF THE REPUBLIC OF CAMEROON  
TO THE UNITED NATIONS OFFICE, THE  
WORLD TRADE ORGANIZATION  
AND TO OTHER  
INTERNATIONAL ORGANIZATIONS  
GENEVA

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Genève le 08 MAI 2017

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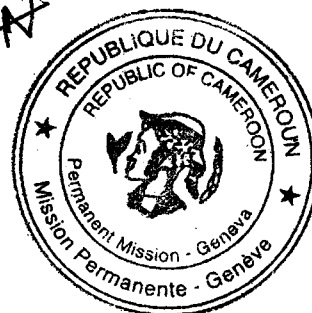
La Mission Permanente de la République du Cameroun présente ses meilleurs compliments au Haut-Commissariat des Nations Unies aux droits de l'Homme à Genève et,

a l'honneur de lui soumettre sous ce pli, pour transmission aux procédures ci-après : Le Groupe de Travail des Nations Unies sur la Détention Arbitraire ; Le Groupe de Travail sur les questions des Droits de l'Homme et les Sociétés Transnationales et autres Entreprises ; Le Rapporteur Spécial chargé d'examiner la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable ; Le Rapporteur Spécial sur le droit de réunion pacifique et la liberté d'association ; le Rapporteur Spécial sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible et, le Rapporteur spécial sur la situation des défenseurs des droits de l'homme, les éléments de réponse de l'Etat du Cameroun à leur appel conjoint relatif aux allégations d'arrestation, de détention et d'acharnement judiciaire contre les membres d'ESU YOUTH DEVELOPMENT ASSOCIATION.

La Mission Permanente de la République du Cameroun saisit cette occasion pour renouveler au Haut-Commissariat des Nations Unies aux Droits de l'Homme, les assurances de sa parfaite considération. *[Signature]*

PJ : Deux versions. En français et en anglais.

Haut-Commissariat des Nations Unies  
aux Droits de l'Homme.  
Palais Wilson  
Rue des paquis 52  
1211 - GENEVE 10



OHCHR REGISTRY

- 8 MAI 2017

Recipients : ...WG.A.O...  
...SRD...  
Enclosure .....

**RÉPUBLIQUE DU CAMEROUN**

*Paix – Travail – Patrie*

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**REPUBLIC OF CAMEROON**

*Peace – Work – Fatherland*

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**ELEMENTS DE REPONSE DE L'ETAT DU CAMEROUN A L'APPEL  
CONJOINT DES PROCEDURES SPECIALES RELATIVEMENT AUX  
ALLEGATIONS D'ARRESTATION, DE DETENTION ET D'ACHARNEMENT  
JUDICIAIRE CONTRE LES MEMBRES D'ESU YOUTH DEVELOPMENT  
ASSOCIATION**

**OHCHR REGISTRY**

**- 8 MAI 2017**

**Recipients : ...W.G.A.D.....**

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**Enclosure** .....

1. Par Note Verbale du 1<sup>er</sup> mars 2017, le Haut Commissariat des Nations Unies aux Droits de l'Homme a transmis au Gouvernement de la République du Cameroun une Communication conjointe envoyée par le Groupe de Travail sur la Détention arbitraire, le Groupe de Travail sur la question des Droits de l'Homme et des sociétés transnationales et autres entreprises, le Rapporteur Spécial chargé d'examiner la question des obligations relatives aux Droits de l'Homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable, le Rapporteur-Spécial sur le droit de réunion pacifique et la liberté d'association, le Rapporteur spécial sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible et le Rapporteur spécial sur la situation des défenseurs des Droits de l'Homme.

2. Cette Communication se fonde sur des allégations d'arrestation, de détention arbitraire et d'acharnement judiciaire à l'encontre des défenseurs des Droits de l'Homme, membres de l'Association de Développement de la Jeunesse d'Esu (*Esu youth Development Association EYDA*) et leur Avocat.

3. En outre, il est allégué dans la Communication que l'état de santé des personnes arrêtées s'est détériorée, sans qu'aucune assistance médicale adéquate ne leur soit fournie. L'état psychologique précaire de l'une des personnes détenues, en l'occurrence **M. Philip KPWE** est aussi déploré en raison du décès du fils de celui-ci pendant sa détention sans qu'il n'ait pu prendre part aux obsèques.

4. Par ailleurs, il est allégué que les personnes mises en cause sont détenues en raison de leurs activités pacifiques et légitimes de défenseurs du droit à la terre et à l'environnement ainsi que contre l'accaparement de leurs terres. Il est également fait grief de l'utilisation de produits dangereux pour cet environnement à l'occasion de bains parasitocides des vaches provenant de l'*Elba Ranch*.

5. En réaction à ces allégations, L'Etat du Cameroun souhaite apporter des clarifications tant sur les faits que sur les procédures suivies contre les personnes poursuivies et détenues, ainsi que sur la protection de leurs différents droits.

#### **I- SUR LES FAITS DE LA PROCEDURE**

6. Le 14 novembre 2015, des hommes, des femmes et de jeunes du village Esu, estimés à un million, se sont introduits dans la ferme agropastorale dénommée *Elba Ranch* située dans le Département de la Menchum, dans la Région du Nord-Ouest, appartenant au nommé [REDACTED] et se sont attribués des portions de terres. Sur ces terres, ils se sont mis à ériger des constructions en matériaux provisoires, tout en causant des destructions sur des biens appartenant au susnommé. En dépit de toutes les tentatives de

l'Autorité administrative pour concilier les populations du village Esu qui estimaient avoir été spoliées de leurs terres par l'exploitant de ce domaine agropastoral, les membres d'EYDA n'ont pas obtempéré aux instructions de cette Autorité.

7. C'est ainsi que dans la nuit du 16 avril 2016, des membres de cette association sous l'impulsion de **KPWE Philip ABUE**, son Président et de **Redemption Godlove**, ont fait irruption à *Elba Ranch* et ont incendié des maisons dont celles occupées par M [REDACTED] [REDACTED] berger travaillant dans le Ranch.

8. A la suite de ces actes assortis de pillage, une enquête a été ouverte par la Brigade de Gendarmerie de Zhoa, dans le Département de la Menchum, mais aucun suspect n'a été interpellé en raison de la fuite de toutes les personnes impliquées dans cette affaire.

9. Cette Unité de Gendarmerie locale a transmis l'amorce d'enquête à la Légion de Gendarmerie du Nord-Ouest qui a la compétence sur l'ensemble de la Région. C'est ainsi que les investigations menées par celle-ci ont conduit à l'interpellation du nommé **Redemption Godlove** à Wum, dans le Département de Menchum par les éléments de la Légion de Gendarmerie du Nord-Ouest et à son déferrement devant le Procureur de la République près les Tribunaux de Première et de Grande Instance de Bamenda.

10. En représailles à l'interpellation de **Redemption Godlove**, les membres d'EYDA se sont une fois de plus introduits à *Elba Ranch* dans la nuit du 03 mai 2016 et ont détruit une maison nouvellement construite dans ce ranch.

11. Le 25 mai 2016, M. **KPWE Philip ABUE**, **FUH Bernard**, **ZONG Cyprian** et **BIAME Divine** ont été interpellés à Bamenda dans le Département de la Mezam par la Légion de Gendarmerie du Nord-Ouest, et conduits au Parquet près les Tribunaux de Première et de Grande Instance de Bamenda pour les faits ci-dessus (**ANNEXE 1**).

12. La victime de ces faits a également déposé une plainte à la Légion de Gendarmerie de Bamenda par le truchement de son Avocat **ZAKARI & CO LAW CHAMBERS** le 04 mai 2016 contre les nommés **KPWE Philip ABUE**, **Divine BIAME**, **Cypriang AZONG**, **Bernard FUH**, **Ephraim KAGHA MBONG**, **Emmanuel WUNG**, **Ivo MEH** et **William MEH** et autres.

## **II- SUR LA LEGALITE DE LA DETENTION DES REQUERANTS**

13. Il est allégué que les requérants ont été interpellés en raison de leurs activités pacifiques et légitimes de défenseurs du droit à la terre et à l'environnement en s'opposant à l'accaparement de leurs terres.

14. Pour apprécier la légalité de la détention des requérants en application de l'article 9 du Pacte International relatif aux Droits civils et politiques, il convient de démontrer que les requérants ont été interpellés pour des motifs autres que ceux avancés et que les procédures légales ont été respectées.

15. S'agissant des faits tels que décrits plus haut, ils ont été qualifiés de pillage en bande prévus et réprimés par l'article 236 du Code Pénal, qui dispose : « (1) *Est puni d'un emprisonnement de dix à vingt ans celui qui en réunion ou bande et à force ouverte, pille ou détériore les biens mobiliers ou immobiliers.*

(2) *La peine est l'emprisonnement à vie si le crime est commis pendant l'état d'urgence ou d'exception.*

(3) *La peine est la mort si le crime est commis en temps de guerre ».*

De ce qui précède, il découle que les requérants ont été interpellés pour des actes commis et punissables par les textes légaux sus énoncés.

16. En outre, l'interpellation des requérants et les procédures subséquentes ont été menées suivant les standards admis en la matière.

17. Après l'interpellation de **Redemption Godlove** le 22 avril 2016 par les éléments de la Légion de Gendarmerie du Nord-Ouest, celui-ci a été conduit devant le Procureur de la République près le Tribunal de Grande Instance de la Mezam qui a requis le 03 mai 2016 l'ouverture d'une Information judiciaire contre lui pour les faits de pillage en bande prévus et punis par les articles 74 et 236 du Code pénal. Après l'inculpation de **Redemption Godlove** le 03 mai 2016 par le Juge d'Instruction du Tribunal de Grande Instance de la Mezam, il a été placé sous Mandat de Détention Provisoire le même jour.

18. Le 31 mai 2016 et en réponse à une exception d'incompétence (*Preliminary Objection on the ground of competence*) soulevée par le Conseil de M. **Redemption Godlove**, le Juge d'Instruction a rendu une Ordonnance déclarant sa juridiction incompétente et a ordonné la libération de celui-ci (**ANNEXE 2**). En effet, le Juge d'Instruction a expliqué dans son Ordonnance qu'en raison de la commission des faits et de l'arrestation de M. **Redemption Godlove** hors de son ressort de compétence, il ne pouvait statuer dans cette affaire sans violer les dispositions de l'article 140 du CPP (**ANNEXE 3**).

19. Le 26 mai 2016 et à la suite du Réquisitoire supplétif du Procureur de la République près les Tribunaux de Première et de Grande Instance de Bamenda, une information judiciaire a été ouverte contre **KPWE Philip ABUE**, **FUH Bernard**, **ZONG Cyprian** et **BIAME Divine**, pour les faits de pillage en bande (Articles 74 et 236 du Code pénal) et ils ont été placés sous mandat de détention provisoire le même jour par le Juge d'Instruction du Tribunal de Grande Instance de la Mezam. Par conséquent, c'est bien un Magistrat et non la Légion de Gendarmerie qui a ordonné la détention des sus nommés.

20. En juin 2016, le Conseil des inculpés **KPWE Philip ABUE, FUH Bernard, ZONG Cyprian et BIAME Divine** a une fois de plus soulevé l'exception d'incompétence devant le Juge d'instruction du Tribunal de Grande Instance de la Mezam pour violation de l'article 140 du CPP, en relevant les mêmes motifs que ceux avancés dans le cas de M. **Redemption Godlove**. Par Ordonnance N°HCBM/PI.231/2016 du 26 août 2016, le Juge d'Instruction a rejeté cette exception et s'est déclaré compétent à instruire cette affaire. Au soutien de sa Décision, il observe que sa compétence se fonde sur le lieu d'arrestation des inculpés, et qu'à la différence du cas de **Redemption Godlove**, les inculpés ont été arrêtés dans le ressort du Tribunal de Grande Instance de la Mezam. Il n'y a donc pas eu un traitement discriminatoire envers Philip KPWE, FUH Bernard, ZONG Cyprian et BIAME Divine, les situations n'étant pas du tout identiques.

21. Le 02 septembre 2016, le Conseil des inculpés a relevé appel devant la Chambre de Contrôle de l'Instruction (***Inquiry Control Chamber***) de la Cour d'Appel du Nord-ouest, contre l'Ordonnance du Juge d'Instruction par laquelle il s'est déclaré compétent. Il a en outre sollicité la mise en liberté des inculpés, puis s'est ravisé plus tard pour présenter devant cette même juridiction une demande de mise en liberté séparée.

22. Par ordonnance du 20 décembre 2016, la Chambre de Contrôle de l'Instruction de la Cour d'Appel du Nord-Ouest a ordonné la mise en liberté.

23. Le 22 décembre 2016, le Procureur Général près la Cour d'Appel du Nord-Ouest a formé un pourvoi (**ANNEXE 4**) contre cette Ordonnance de la Chambre de Contrôle de l'Instruction de la Cour d'Appel du Nord-Ouest.

24. A l'appui de son pourvoi, le Procureur Général a exposé que pour n'avoir pas fait l'objet d'un examen par le Juge d'Instruction, la demande de mise en liberté ne pouvait, dans le cadre d'une voie de recours contre le jugement interlocutoire du Juge d'Instruction sur la compétence, être présentée pour la première fois en appel. Au demeurant, la Chambre de Contrôle de l'instruction, saisie, non du fond de l'affaire, mais du jugement interlocutoire, ne pouvait se prononcer sur cette demande qui n'avait pas été présentée devant le Juge d'Instruction.

25. A cet effet, il ne saurait y avoir de deuxième degré de juridiction, lorsqu'une demande n'a pas été portée devant l'instance inférieure pour permettre à celle-ci de se prononcer.

26. De plus, la décision objet de l'appel était une décision interlocutoire sur la compétence du Juge d'instruction qui, aux termes des dispositions de l'article 269 du CPP, ne peut faire l'objet d'appel par l'inculpé. Le texte dispose en substance : « *L'inculpé ne peut relever appel que des ordonnances relatives à la détention provisoire, à la mesure de surveillance judiciaire, à la demande d'expertise ou de contre-expertise et à la restitution des objets saisis* ».

27. La limitation des recours contre certains actes du Juge d'instruction ne s'applique pas seulement à l'inculpé. Elle s'applique également à la partie civile qui voit également le champ matériel de l'exercice de son recours circonscrit. L'article 270 du même Code dispose que : *« La partie civile ne peut relever appel que des ordonnances de refus d'informer, d'irrecevabilité de la constitution de partie civile, de rejet d'une demande d'expertise ou de contre-expertise, de restitution des objets saisis ou de non-lieu »*.

28. De manière constante, la Cour Suprême sanctionne le non respect des deux articles précités qui limitent les actes du Juge d'instruction contre lesquels les parties peuvent relever appel. Elle déclare systématiquement ces appels irrecevables<sup>1</sup>.

29. En somme, c'est en respect des procédures légales que les requérants ont été interpellés, inculpés et placés sous mandat de détention provisoire. Leur détention ne saurait par conséquent être qualifiée d'arbitraire.

### **III- LES RECOURS VISANT LA MISE EN LIBERTE**

30. La législation prévoit des mécanismes permettant de solliciter une mise en liberté. Ainsi, les articles 222 à 235 du CPP traitent de la mise en liberté qui peut être accordée avec ou sans caution.

31. L'article 224 alinéa (1) du Code dispose ainsi que : *"Toute personne légalement détenue à titre provisoire peut bénéficier de la mise en liberté moyennant une des garanties visées à l'article 246 (g) et destinées à assurer notamment sa représentation devant un officier de police judiciaire ou une autorité judiciaire compétente"*.

32. Ces garanties de représentation (Cautionnement, caution) sont compatibles avec l'alinéa 3 de l'article 9 du Pacte qui prévoit que la mise en liberté puisse être subordonnée à des garanties assurant la comparution de l'intéressé à l'audience, à tous les autres actes de la procédure, et, le cas échéant, pour l'exécution du jugement.

33. En l'espèce, le Conseil des accusés n'a pas saisi le Juge d'Instruction d'une demande de mise en liberté au profit des requérants comme le prévoit le CPP. Il a plutôt porté sa demande de mise en liberté pour la première fois devant la Chambre de Contrôle de l'Instruction, qui est une instance de recours contre les décisions rendues en premier ressort par le Juge d'Instruction.

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<sup>1</sup> Voir dans ce sens, C S, arrêt n° 227/P du 18 septembre 1997, Arrêt n°57/P du 12 juin 2008 rendu dans l'affaire MP et Me Alice Nkom c.Nyemb Jacques

34. Or, il convient de relever que les matières qui peuvent faire l'objet d'appel devant la Chambre de Contrôle de l'Instruction ont été limitativement énumérées à l'article 269 du CPP d'après lesquelles l'inculpé ne peut relever appel que des Ordonnances relatives à la détention provisoire, à la mesure de surveillance judiciaire, à la demande d'expertise ou de contre-expertise et à la restitution des objets saisis.

35. Par conséquent, la demande de mise en liberté doit d'abord être portée devant le Juge d'Instruction conformément aux dispositions de l'article 222 alinéa 2 du CPP suivant lesquelles *«lorsqu'elle n'est pas de droit, la mise en liberté peut, sur la demande de l'inculpé et après les réquisitions du Procureur de la République, être ordonnée par le Juge d'Instruction, si l'inculpé souscrit l'engagement de déférer aux convocations de celui-ci et de le tenir informé de ses déplacements»*.

36. Au lieu de former les recours prévus par les dispositions des articles 222 et 224 du CPP, le Conseil des requérants a fait fausse route en sollicitant directement la mise en liberté des inculpés devant la Chambre de Contrôle de l'Instruction, alors qu'il s'agit bien d'une juridiction d'appel contre les décisions du Juge d'Instruction qui statue en premier ressort.

37. Par conséquent, la Loi a bien prévu des recours pour obtenir sa mise en liberté. *Nul ne pouvant se prévaloir de sa propre turpitude*, le Conseil des requérants ne s'est pas conformé aux recours légaux.

#### IV- DU RESPECT DU DROIT DES REQUERANTS A UN PROCES EQUITABLE

38. Le droit à un procès équitable des requérants a été respecté en ce qu'ils ont été traités avec égard aux dispositions de l'article 14 du Pacte.

39. En effet, s'agissant de l'indépendance et de la compétence du Procureur de la République du Tribunal de Grande Instance de la Mezam, l'article 140 du CPP donne compétence au Procureur de la République soit du lieu de commission de l'infraction, soit du lieu du domicile du suspect, soit du lieu de son arrestation. En cas de saisine concurrentielle, la priorité revient au Procureur de la République du lieu de commission de l'infraction..

40. En l'espèce et en dehors de **Redemption Godlove**, tous les autres requérants ont été arrêtés dans le ressort du Tribunal de Grande Instance de la Mezam et ont été conduits devant le Procureur de la République, puis devant le Juge d'Instruction de cette même localité. Il convient de relever avec emphase que le Procureur de la République du lieu de commission des faits, en l'occurrence le Département de la Menchum n'était pas saisi des mêmes faits. Il en découle que la compétence du Juge d'Instruction de la Mezam n'était pas concurrentielle ou discutée avec celle d'une autre autorité judiciaire également compétente et pouvant déboucher sur un conflit positif de compétence.

41. S'agissant de l'instruction de l'affaire dans des délais raisonnables, il y a lieu de relever qu'en exerçant un recours contre l'Ordonnance de compétence du Juge d'Instruction,

en violation des cas d'appel contre les Ordonnances d'instruction limitativement énumérés à l'article 269 du CPP, les requérants ont contribué par leur attitude à faire traîner la procédure.

42. Toutefois, le pourvoi formé par le Procureur Général près la Cour d'Appel du Nord-ouest contre l'Ordonnance de la Chambre de Contrôle de l'Instruction n'a pas vocation à retarder la procédure. En effet, seul le duplicatum du dossier de procédure doit être transmis à la Cour Suprême, le Juge d'Instruction pouvant continuer l'instruction de l'affaire en vertu de l'article 287 du CPP d'après lequel l'appel interjeté contre les actes d'instruction autres que les Ordonnances de renvoi ou de non lieu, ne suspend pas l'information.

43. Cependant, par une correspondante datée du 07 avril 2017, les requérants se sont opposés à la poursuite de l'information judiciaire par le Juge d'Instruction, en arguant de ce que l'affaire était encore pendante devant la Chambre de Contrôle de l'Instruction de la Cour d'Appel du Nord-Ouest et que cette Juridiction n'avait pas encore vidé sa saisine. Par conséquent, l'instruction de cette procédure est retardée en raison du comportement des requérants. (ANNEXE 5)

#### **V- SUR L'ACCES DES PERSONNES DETENUES AUX MEMBRES DE LEURS FAMILLES ET LE RESPECT DE LEUR DROIT A LA SANTE**

44. Le droit aux visites des personnes détenues est respecté conformément à *l'Ensemble des Règles Minima pour le traitement des personnes détenues*. Ainsi, l'extrait des registres des visites de la Prison Centrale de Bamenda (ANNEXE 6) permet de constater qu'entre le 30 mai et le 30 novembre 2016, M. Philip KPWE a reçu environ 25 visites, tandis qu'ensemble, ses co-inculpés ont été visités environ 20 fois pendant la même période.

45. De même, le requérant KWPE Philip n'a pas saisi les autorités judiciaires ou pénitentiaires en vue de prendre part aux obsèques de son fils. Il le reconnaît d'ailleurs dans une déclaration qu'il a faite sur l'honneur, laquelle est attachée à la présente réponse (ANNEXE 7).

46. Par ailleurs, il existe à la Prison Centrale de Bamenda où sont détenus les requérants, une Infirmerie qui assure la prise en charge médicale des détenus. Lorsque l'évacuation d'un malade vers une structure plus appropriée est nécessaire, des dispositions sont prises à cette fin. Le Parquet effectue régulièrement des contrôles de l'état des dossiers et des conditions de détention des détenus de la Prison. Le Procureur Général lui-même sacrifie à ce devoir tous les trimestres. Il a ainsi effectué un contrôle à la Prison centrale de Bamenda courant février 2017. Il a, à plusieurs reprises répondu favorablement aux demandes d'audience des détenus et notamment de ceux concernés par la présente affaire.

47. Le Médecin en charge de l'Infirmierie de la Prison a d'ailleurs dressé le 07 avril 2017 un Rapport sur la situation médicale des requérants, duquel il ressort que **KPWE Philip** était en bonne santé, tandis que **Divine BIAME, ZONG Cyprian et FUH Bernard** avaient déjà recouvré leur santé après avoir reçu un traitement pour des pathologies mineures. (ANNEXE 8)

#### **VI- SUR LA PROTECTION DES DEFENSEURS DES DROITS DE L'HOMME AU CAMEROUN**

48. Les défenseurs des Droits de l'Homme mènent librement leurs activités au Cameroun, dans le respect des lois en vigueur. Si ces défenseurs n'appartiennent pas à une corporation qui a ses règles de fonctionnement, ils sont protégés au même titre que tous les autres citoyens et toute atteinte à leur égard peut être portée devant les autorités judiciaires pour sanction.

49. C'est d'ailleurs dans ce souci de prendre en compte les réclamations de l'EYDA que le Préfet du Département de Menchum a par Arrêté préfectoral N°001/PO/E28/PS/2016 du 05 janvier 2016 créé une Commission *ad hoc* pour examiner le conflit foncier entre la communauté ESU et M [REDACTED], propriétaire d'Elba Ranch.

50. La création de cette Commission témoigne de ce que les défenseurs des Droits de l'Homme évoluent au Cameroun dans un environnement sûr et que leurs préoccupations sont prises en compte par les pouvoirs publics.

#### **VII- LES DILIGENCES RAISONNABLES DES ENTREPRISES EN MATIERE DE DROITS DE L'HOMME**

51. La prise en compte des Droits de l'Homme par les Entreprises au Cameroun est l'une des priorités de l'Agenda gouvernemental. Des mesures destinées à assurer la protection et la promotion des Droits de l'Homme par les Entreprises ont été prises.

52. C'est ainsi qu'en septembre 2015, les Administrations publiques ont joué une part active dans un Atelier de sensibilisation de l'une des plus grandes entreprises agricoles locales (5000 employés) aux Principes Directeurs des Nations Unies sur les Droits de l'Homme et les entreprises.

53. Le Cameroun s'est doté en 2015 d'un Plan d'Action National de Promotion et de Protection des Droits de l'Homme, lequel intègre la mise en œuvre de ces Principes directeurs dans un des axes de son cadre stratégique. /-

## **LISTE DES ANNEXES**

**Communication conjointe des Procédures spéciales (Esu Youth Development Association Contre Etat du Cameroun)**

- 1- ORDONNANCE D'INCOMPETENCE DU JUGE D'INSTRUCTION DU 31 MAI 2016 SUR LE CAS DE REDEMPTION GODLOVE ;**
- 2- ORDONNANCE DE COMPETENCE DU JUGE D'INSTRUCTION DU 26 AOÛT 2016 DANS LE CAS DE M. PHILIP KPWE ET AL ;**
- 3- POURVOI DU PROCUREUR GENERAL PRES LA COUR D'APPEL DU NORD-OUEST CONTRE L'ORDONNANCE DE LA CHAMBRE DE CONTROLE DE L'INSTRUCTION DE LA COUR D'APPEL DU NORD-OUEST ;**
- 4- LETTRE DES REQUERANTS AU JUGE D'INSTRUCTION EXPRIMANT LEUR REFUS D'ETRE JUGE, TANT QUE LA CHAMBRE DE CONTROLE DE L'INSTRUCTION N'A PAS VIDE SA SAISINE ;**
- 5- EXTRAIT DU REGISTRE DES VISITES AU PROFIT DES REQUERANTS A LA PRISON CENTRALE DE BAMENDA ;**
- 6- LETTRE DE CLARIFICATIONS DE M PHILIP KPWE ;**
- 7- RAPPORT SUR L'ETAT DE SANTE DES DETENUS A LA PRISON CENTRALE DE BAMENDA.**

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REPUBLIC OF CAMEROON  
*Peace – Work – Fatherland*

**REPLY OF THE STATE OF CAMEROON TO THE JOINT APPEAL OF  
SPECIAL PROCEURES RELATING TO THE ALLEGATIONS OF  
ILLEGAL ARREST AND DETENTION AND JUDICIAL HARASSMENT  
OF MEMBERS OF THE ESU YOUTH DEVELOPMENT ASSOCIATION**

**SUBMITTED TO THE WORKING GROUP ON ARBITRARY DETENTION**

**OHCHR REGISTRY**

**- 8 MAI 2017**

**Recipients : ..W.C.A.D.....  
                          ..S.P.D.....**

**Enclosure .....**

**April 2017**

1. An Urgent Appeal to the Government of Cameroon has been made by the Working Group on Arbitrary Detention, Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, the Special Rapporteur on the Right to Freedom of Opinion and Expression, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the Special Rapporteur on the Situation of Human Rights Defenders and the Special Rapporteur on Minority Issues.

2. The said Urgent Appeal includes information on the illegality of the arrest and detention of members of the Esu Youth Development Association, judicial harassment against them, the deteriorating health of the detainees and lack of medical assistance, refusal for **Philip ABUE KPWE** to participate at his son's funeral and non access of detainees to their family members.

3. The Government of Cameroon has been asked to submit a separate response to the Working Group on Arbitrary Detention.

#### **I- FACTS OF THE CASE**

4. On 14 November 2015, over 1000 women, men and youths of Esu village invaded the Elba Ranch belonging to [REDACTED] apportioning to themselves land. They started constructing houses in the course of which they caused a lot of destruction. Members of the Esu Youth Development Association (EYDA) have defied all administrative efforts to resolve the protracted land dispute between the Esu Community and Elba Ranch in the Menchum Division of the North West Region as the population of the Esu village believe they have been despoiled of their land by the exploiter of this agropastoral area.

5. Hence, on 16 April 2016 members of EYDA under the leadership of **Philip ABUE KPWE** and **Redemption Godlove** are alleged to have entered Elba Ranch and set fire to some houses including one occupied by [REDACTED]. Investigations were opened in the matter by the Gendarmerie Brigade Zhoa in the Menchum Division for the offence of depredation by band under section 236 of the Penal Code. However, the said investigations were frustrated by the fact that the suspects were at large. Thus the Gendarmerie Brigade Zhoa transferred what it had done in the matter to the *Légion de Gendarmerie* of the North West Region which has competence to investigate offences all over the Region.

6. On 3 May 2016, in reaction to the arrest of **Redemption Godlove** in Wum, Menchum Division by the elements of the *Legion de Gendamerie* on 22 April 2016, members of EYDA once more entered Elba Ranch and destroyed a house under construction.

7. A Complaint was lodged by the Counsel of Elba Ranch, Zakari and Co Law Chambers on 4 May 2016 against **Philip ABUE KPWE, Divine BIAME, Cyprian AZONG, Bernard FUH, Ephraim KAGHA MBONG, Emmanuel WUNG, Ivo MEH, William MEH** and others.

8. On 25 May 2016, 4 of the suspects namely, **Philip ABUE KPWE, Divine BIAME, Cyprian AZONG** and **Bernard FUH** were arrested in Bamenda in the Mezam Division on suspicion of the offence of depredation by band contrary to section 236 of the Penal Code. On 26 May 2016, they were presented to the State Counsel of the Court of First Instance Bamenda and High Court Mezam who preferred an additional holding charge against them to the Examining Magistrate of the High Court Mezam.

9. Here below are clarifications from the State of Cameroon on the concerns raised in the Urgent Appeal concerning persons in detention.

## **II- LEGALITY OF THE ARREST AND DETENTION**

10. There are allegations that the real motive for the detention of **Philip ABUE KPWE, Divine BIAME, Cyprian AZONG** and **Bernard FUH** is a sanction for their peaceful and legitimate activities as defenders of land and environmental rights and who are opposing the seizure of community land.

11. In order to assess the legality of the applicants' detention under article 9 of the International Covenant on Civil and Political Rights, it must be shown that the applicants were arrested on grounds other than those advanced and that legal procedures were respected.

12. Applicants' detained are charged with depredation by band contrary to section 236 of the Penal Code which provides:

*"1) Whoever as a member of an assembly or band, and by open force, plunders or damages any moveable or immovable property, shall be punished with imprisonment for from 10 (ten) to 20 (twenty) years.*

*2) For such felony committed in a state of emergency or siege the punishment shall be imprisonment for life.*

*3) For such felony committed in time of war the punishment shall be death".*

13. The arrest of the applicants and the procedures that ensued were done following required standards.

14. After the arrest of **Redemption Godlove** by the *Legion de Gendarmerie*, he was presented to the State Counsel of the Court of First Instance Bamenda and High Court Mezam who on 3 May 2016, seized the Examining Magistrate of the High Court Mezam by a holding charge for a preliminary inquiry to be opened for depredation by band contrary to section 236 of the Penal Code as read with section 74 of same. He was charged and remanded into custody by the Examining Magistrate on the same day.

15. A preliminary objection was raised by **Redemption Godlove's** Counsel on the ground that that the said Magistrate of the High Court Mezam lacked competence to hear the matter as **Redemption Godlove** was arrested in the Mechum Division and the offence with which he was charged was committed there. The Examining Magistrate upheld the objection in his Ruling of 31 May 2016 (**Annexure 1**) and **Redemption Godlove** was released.

16. Subsequently Counsel for **Philip KPWE, Divine BIAME, Cyprian AZONG and Bernard FUH** raised a preliminary objection that the Examining Magistrate should decline jurisdiction to conduct a preliminary inquiry based on the same reasoning that the Examining Magistrate gave in his Ruling in the **Redemption Godlove** case. The Examining Magistrate by Ruling No. HCBM/PI.231/2016 of 26 August 2016 overruled the preliminary objection basing his argument on the fact that the defendants were arrested in the Mezam Division and thus he had competence as per section 140(1)(c) of the Criminal Procedure Code (CPC) (**Annexure 2**).

17. On 2 September 2016, Counsel for **Philip ABUE KPWE, Divine BIAME, Cyprian AZONG and Bernard FUH** appealed against the Ruling of the Examining Magistrate to the Inquiry Control Chamber of the Court of Appeal of the North West while applying for bail. Counsel later made a separate application for bail before this Chamber.

18. On 20 December 2016, the Inquiry Control Chamber granted bail to the 4 defendants. Dissatisfied with the Ruling, the Procureur General of the North West on 22 December 2016 appealed against the said Ruling to the Supreme Court (**Annexure 3**).

19. In support of the appeal, the Procureur General stated that an application for bail was never made before the Examining Magistrate, thus it was improper to have made same for the first time in the context of an appeal before the Inquiry Control Chamber. The Inquiry Control Chamber being an appellate jurisdiction can only rule on substantive issues that were raised before the Examining Magistrate.

20. Furthermore, the Ruling of the Examining Magistrate appealed against is on a matter of competence which is not one of the matters which can be appealed against as per section 269 of the CPC which provides "*The defendant may only appeal against rulings in respect of remand in custody, judicial supervision, request for expert or counter- expert opinion and of restitution of articles seized*".

21. The Civil Party as well is restrained from appealing against certain acts of the Examining Magistrate. Section 270 of the CPC provides "*The civil party may appeal only against rulings in respect of the refusal to commence an inquiry, the inadmissibility of an application to be a civil party in a criminal case, the rejection of an application for expert or counter-expert opinion, the restitution of articles seized and no case rulings*".

22. The Supreme Court has consistently sanctioned non-compliance with the two afore-mentioned sections which limit the acts of the Examining Magistrate that parties

may appeal against. It systematically declares appeals which do not comply with these provisions inadmissible<sup>1</sup>.

From what precedes, the detainees were regularly arrested, charged and detained.

### **III- APPLICATION FOR BAIL**

23. Bail is dealt with under sections 222 to 235 of the CPC. Bail can be granted with or without sureties.

24. Article 224(1) of the CPC provides *"Any person lawfully remanded in custody may be granted bail on condition that he fulfils one of the conditions referred to in section 246 (g), in particular to ensure his appearance either before the judicial police or any judicial authority"*.

25. These guarantees for bail are compatible with article 9(3) of the ICCPR which provides that release during criminal proceedings may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

26. Instead of relying on the remedies provided for in Articles 222 and 224 of the CPC, the Complainants' Counsel directly applied for their release to the Inquiry Control Chamber without first applying to the Examining Magistrate before whom the preliminary inquiry was pending. Article 222 (2) of the CPC provides *"Where bail is not granted as of right, or by the Examining Magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel, when the defendant enters into a recognizance to appear before the Examining Magistrate wherever convened and undertakes to inform the latter of his movements"*. The matter on appeal before the Inquiry Control Chamber concerns competence which is an interlocutory matter, thus it was improper for Counsel for the Complainants to file an action for bail when same was not the substance of the appeal before that Chamber. The Complainants cannot therefore take advantage of their own error to want to justify their action.

### **IV- RESPECT OF THE COMPLAINANT'S RIGHT TO FAIR TRIAL**

27. The right to fair trial of the applicants was respected in that they were treated with due regard of the provisions of article 14 of the ICCPR.

28. Indeed, with regard to the independence and competence of the Examining Magistrate of the High Court of the Mezam, Article 140 of the CPC gives jurisdiction to the State Counsel either of the place of commission of the offence, the residence of the

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<sup>1</sup> In this regard see Supreme Court judgment n° 227/P of 18 September 1997, Judgment n°57/P of 12 June 2008 delivered in the case *The People and Alice Nkom vs. Nyemb Jacques*.

suspect or the place of arrest of the suspect, and when one or more State Counsel is seised of the same matter, priority shall be given to the State Counsel of the place where the Offence was committed.

29. In the present case apart from **Redemption Godlove**, all the other Complainants were arrested in the jurisdiction of the High Court of the Mezam and brought before the State Counsel and Examining Magistrate of that area. It should be emphasized that the State Counsel of the place of commission of the offence, in this case, that of the Court of First Instance Wum and High Court Menchum, was not seised of the same facts. Therefore, the jurisdiction of the Examining Magistrate of the High Court Mezam could not be in conflict with another authority over the same matter. He was thus competent to carry out the preliminary inquiry.

30. Neither the appeal of the Procureur General against the Ruling of the Inquiry Control Chamber nor the appeal against the Ruling of the Examining Magistrate suspends the hearing of the preliminary inquiry. According to section 287 of the CPC, appeals against a Ruling delivered during preliminary inquiry other than that relating to a Committal order or a No case Ruling shall not suspend a preliminary inquiry. In spite of efforts to have the preliminary inquiry continue the defendants have opposed this as seen from their letter to the Examining Magistrate of the High Court Mezam dated 7 April 2017 protesting why the preliminary inquiry should go on when there was a pending appeal against the Ruling of the Examining Magistrate (**Annexure 4**). It is important to mention here that Counsel for the defendants appealed against the Ruling of the Examining Magistrate in breach of the provisions of article 269 of the CPC, according to which the defendant may only appeal against Rulings in respect of remand in custody, judicial supervision, and request for expert or counter- expert opinion and of restitution of articles seized. From the foregoing analysis, the delay in the proceedings is caused by the defendants.

#### **V- ACCESS OF DETAINEES TO MEMBERS OF THEIR FAMILY AND THE RESPECT FOR THEIR RIGHT TO HEALTH**

31. As concerns the allegation that the detained persons do not have access to family members an extract of the Visitors Log Book at the Bamenda Central Prison shows that the 4 defendants under discussion were regularly visited. Between 30 May and 30 November 2016, **Philip KPWE** alone was visited 15 times while he and the other defendants were jointly visited 20 times within the same period (**Annexure 5**).

32. **Philip KPWE** was never refused authorization to participate at his son's burial. Infact neither the prison authorities nor Judicial Authorities were aware that he lost his son. **Philip KPWE** never brought this fact to the attention of the said authorities as is evidenced by his letter to the Procureur General of the North West Region titled "Clarification of doubt" (**Annexure 6**). Therein he states that he lost his son in September 2016 and did not attend the burial of the said son because he was ignorant that he could apply for permission.

33. The Bamenda Central Prison has qualified medical staff and an Infirmary to cater for the health of inmates and referrals are made to the Regional Hospital in Bamenda or any other hospital for serious cases that the prison Infirmary cannot handle. The medical doctor in charge of the Infirmary writes Reports on the health situation of inmates and as of 7 April 2017, **Philip KPWE** was in good health while **Divine BIAME, ZONG Cyprian and FUH Bernard** were sick but not such that required referral to another health institution. They were receiving treatment prescribed by medical staff of the Prison Infirmary (**Annexure 7**).

34. The Procureur General in person carries out quarterly controls of the Bamenda Central Prison and last did so in February 2017. He has granted audiences to the defendants and if they had any queries they would have raised them then.

35. Upon review of circumstances surrounding access of detainees to their family members, the health of the detainees and their right to health, it cannot be held that the 4 persons detained are not treated with humanity and with respect for the inherent dignity of the human person as required by Article 10(1) of the ICCPR.

**From what precedes, the Working Group on Arbitrary Detention is urged to hold that the arrest and detention of Philip KPWE, Divine BIAME, ZONG Cyprian and FUH Bernard is not arbitrary.**

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### LIST OF ANNEXURES

Joint Communication of the Special Procedures (Esu Youth Development Association against the State of Cameroon)

- 1- Ruling of 31 May 2016 declaring the Examining Magistrate of the High Court Mezam incompetent to hear the matter concerning **Redemption GODLOVE** ;
- 2- Ruling of 26 August 2016 declaring the Examining Magistrate of the High Court Mezam Competent in the case of **Philip ABUE KPWE** and others ;
- 3- Appeal of the Procureur General of the Court of Appeal of the North against the Ruling of the Inquiry Control Chamber of the North West ;
- 4- Letter of the Complainants to the Examining Magistrate indicating their opposition to the continuation of the preliminary inquiry pending the hearing of their appeal by the Inquiry Control Chamber ;
- 5- Extract of Visitors Log Book at the Bamenda Central Prison showing Complainants were visited ;
- 6- Letter of clarification of **Philip ABUE KPWE** ; and
- 7- Report on the health situation of the detainees at the Bamenda Central Prison.

"REPUBLIC OF CAMEROON"  
"IN THE NAME OF THE PEOPLE OF CAMEROON"

IN THE CHAMBERS OF THE EXAMINING MAGISTRATE OF  
THE HIGH COURT OF MEZAM DIVISION  
HOLDEN AT BAMENDA

BEFORE JUSTICE [REDACTED] - EXAMINING MAGISTRATE  
V. MRS. MBORINGONG ANNA SHINDOH ESPE MANI AS REGISTRAR-IN-ATTENDANCE  
THIS 31<sup>st</sup> DAY OF MAY 2016  
SUIT NO.: HCMB/PI. 118/2016

VERIFIED TRUE COPY

THE PEOPLE..... COMPLAINANT

VS

- 1) REDEMPTION GODLOVE
- 2) KPWE PHILIP
- 3) BLAME DIVINE
- 4) KAGHA MBONG EHPRAIM
- 5) MEH WILLIAMS
- 6) WUNG EMMANUEL
- 7) FUI BERNARD
- 8) MEH IVO
- 9) AZONG CYPRIAN

..... DEFENDANTS

PARTIES: PWS absent.

1<sup>st</sup> defendant present 2<sup>nd</sup> to 9<sup>th</sup> absent.

APPEARANCES: None

COURT NOTE: Ruling on Preliminary Objection.

### RULING

This ruling is as a result of a Preliminary Objection file by Barrister [REDACTED] on behalf of the defendants on grounds that the Examining Magistrate of the High Court of Mezam lacks jurisdiction to entertain this matter. The notice of Preliminary Objection as duly served on the

Department never filed any reply to the Preliminary Objection and they never appeared in Court to make any submission.

The Preliminary Objection is grounded on the facts that this Examining Magistrate lack jurisdiction to entertain this Preliminary Inquiry because the defendants are resident in Esu village the offence is alleged to have been committed in Esu and the 1<sup>st</sup> defendant was arrested in Esu which is the Menchum Division of Mezam Division of the North West Region but it was the State Counsel of Mezam Division who prepared the holding charge and forwarded same to the Examining Magistrate of the High Court of Mezam for a Preliminary Inquiry to be conducted. He referred to Section 140 of the Criminal Procedure Code and concluded that from the facts in the file, it is the State Counsel of Menchum Division who has jurisdiction over the defendants and so he urge the Examining Magistrate of the High Court of Mezam to declare jurisdiction and released the defendant.

I have carefully read through the notice of Preliminary Objection and Section 140 of the Criminal Procedure Code. I have equally gone through the file in question and I find as a fact that the alleged offence was committed in Esu, the 1<sup>st</sup> defendant was arrested in Esu and all the parties are resident in Esu.

Esu is a village in the Menchum Division of the North West Region. Therefore it is the State Counsel of Menchum Division and the Examining Magistrate of the said Division who are competent to entertain this matter pursuant to Section 140 of the Criminal Procedure Code.

This Examining Magistrate therefore lacks jurisdiction to entertain this matter pursuant to Section 140 of the Criminal Procedure Code as read with Section 148 of same.

In consequence, I hereby decline jurisdiction to conduct this Preliminary Inquiry. This file together with 1<sup>st</sup> defendant are forwarded to the Legal Department Mezam for action.

The remand warrant of this Examining Magistrate based on which the 1<sup>st</sup> defendant is kept in custody is hereby withdrawn.

REGISTRAR-IN-ATTENDANCE

EXAMINING MAGISTRATE

Annexure

Annexe 2

"REPUBLIC OF CAMEROON"

"IN THE NAME OF THE PEOPLE OF CAMEROON"

IN THE CHAMBERS OF THE EXAMINING MAGISTRATE OF  
THE HIGH COURT OF MEZAM DIVISION  
HOLDEN AT BAMENDA

BEFORE JUSTICE [REDACTED] - EXAMINING MAGISTRATE  
WITH MRS. [REDACTED] AS REGISTRAR-IN-

ATTENDANCE

THIS 26<sup>TH</sup> DAY OF AUGUST 2016.

SUIT NO.: HCMB/Pl. 231/2016

THE PEOPLE OF CAMEROON ..... COMPLAINANT

VS

1) KPWE PHILIP ABUE  
2) FUH BERNARD  
3) AZONG CYPRIAN  
4) BIAME DIVINE

} ..... DEFENDANTS

**PARTIES:** All parties absent.

**APPEARANCES:** Barrister [REDACTED] for the defendants.

**COURT NOTE:** Ruling delivered.

## "RULING"

This ruling emanates from a Preliminary Objection raised by Barrister [REDACTED] Counsel for the defendants on the grounds that the Examining Magistrate of the High Court of Mezam lacks jurisdiction to entertain this Preliminary Inquiry.

In his submission Counsel for the defendants contends that the alleged offence was committed in Esu village in Menchum Division and the defendants are all resident in Esu. That they were never arrested in Mezam and so it the State Counsel of Menchum Division who is competent to prefer a holding charge and not he State Counsel of Mezam Division. He referred this Examining Magistrate to Section 140 of the Criminal Procedure Code to buttress their submission.

He went on to submit that this Court has earlier on declined jurisdiction on the 05/05/2016 to entertain this same Preliminary Inquiry on grounds that Section 140 cited supra was violated.

Barrister [REDACTED] submitted further that Section 144 (1) of the Criminal Procedure Code provides that the holding charge preferred by the State Counsel shall be in writing and made against a known or unknown person. He said the name of the parties in the ruling wherein this Examining Magistrate declines jurisdiction are the same in the present suit and that since the Examining Magistrate had earlier decline jurisdiction, the Preliminary Inquiry cannot be relisted.

He urged the Examining Magistrate to decline jurisdiction and released the defendants.

In their reply to the Preliminary Inquiry of Barrister [REDACTED] the State Counsel for Mezam Justice [REDACTED] in his written submission contends that the holding charge of the 03/5/2016 carries the names of all the defendants and that except for Redemption Godlove, all the other defendants were arrested within Mezam.

The State Counsel submitted further that pursuant to Section 140(1) of the Criminal Procedure Code they are competent to prefer a holding charge against the defendants and that they rely on Section 143 (1) to request the Examining Magistrate to conduct a Preliminary Inquiry against the defendants especially as the State Counsel of Menchum Division has not challenged their competence.

The Legal Department further referred this Examining Magistrate to Section 6(1) and (2) of the Criminal Procedure Code which talks of joint trial in offences that are indivisible. On this issue they submitted that Kpwe Philip, Redemption Godlove and others are listed on the holding charge for having committed the offence of depredation by band under Section 236 of the Penal Code and so they are supposed to be tried jointly. With their above submissions, they urge the Examining Magistrate to rely on Section 164(1) of the Criminal Procedure Code to open a Preliminary Inquiry against the defendants.

I have carefully gone through submissions of both sides alongside the provisions of the law that they cited.

Section 140 (1) of the Criminal Procedure Code gives the conditions which make States Counsel competent over a matter and sub (2) of the same Section provides that where more than one State Counsel is seized of a matter priority is given to the State Counsel in whose jurisdiction the offence was committed.

In the instance case, it is undisputed that except for Redemption Godlove that others to wit Kpwe Philip, Fuh Bernard, Biame Divine and Azong Cyprian were all arrested within Mezam Division. Therefore going by Section 140(1)(c) of the Criminal Procedure Code, the State Counsel of Mezam is competent to prefer a holding charge against them and forward same to this Examining Magistrate. This is more so because no other jurisdiction have within the North West Region has challenged the jurisdiction of the State Counsel for Mezam

vision. Not even the State Counsel of Menchum has raise his voice to cause priority to be given to Menchum Division as provided for in Section 140(2) cited above.

Counsel for the defendant raised the aspect of a ruling in which this Examining Magistrate declines jurisdiction to carry on this Preliminary Inquiry.

It is worth noting that in the ruling which Counsel is alluding to, it is only Redemption Godlove who appeared before. The other defendants were at large and investigations had not been open against them though their names were on the holding charge. He was arrested in Esu for an offence allegedly committed in Esu in Menchum Division. This Examining Magistrate could not proceed with the Preliminary Inquiry as the offence was not committed in Mezam and redemption Godlove was not arrested within Mezam. The ruling was therefore in respect of Redemption Godlove who was the only person before me at that moment since the other defendants were at large.

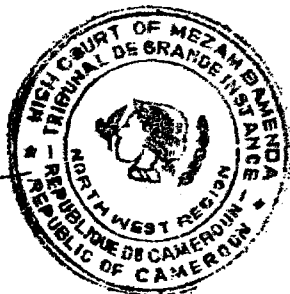
Kpwe Philip, Fuh Bernard, Biame Divine and Azong Cyprian whose names appeared on the holding charge alongside that of Redemption Godlove were arrested on the strength of arrest warrants issued against them when the investigations were on going. I therefore differ with Counsel for the defendants that this matter cannot be relisted because when the ruling was delivered, the other defendants were on the run.

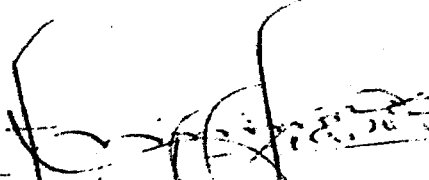
Now that some of the defendants have been arrested within Mezam Division and the State Counsel of Menchum has not challenged the jurisdiction of his colleague in Mezam, therefore the State Counsel of Mezam is competent to prefer a holding charge against the defendants.

It should be noted that the defendants are alleged to have committed the offence of depredation by band jointly. It therefore follows per Section 6(1) and (2) of the Criminal Procedure Code that they should be tried jointly as the Legal Department rightly submitted.

In the light of the foregoing, the Preliminary Objection of Counsel for the defendants is over ruled. Matter adjourned to the 30/08/2016 for the defendants to be formally charged and for hearing. Defendants to remain in custody.

  
REGISTRAR-IN-ATTENDANCE.



  
EXAMINING MAGISTRATE

11AG2

Annex 3

Annex 2

**IN THE SUPREME COURT OF CAMEROON  
HOLDEN AT YAOUNDE**

**BETWEEN:**

THE PEOPLE OF CAMEROON ..... APPELLANT

AND

- 1) KPWE Philippe ABUE
- 2) FUH Bernard
- 3) ZONG Cypryain
- 4) BIAME Divine

} ..... RESPONDENTS

**TO THE PRESIDENT OF THE SUPREME COURT YAOUNDE**

**SUBJECT: APPLICATION TO APPEAL AGAINST THE RULING IN  
SUIT N° CANWR/ICCM/2016, DELIVERED ON THE  
20<sup>TH</sup> DAY OF DECEMBER 2016, BY THEIR LORDSHIPS  
JUSTICES [REDACTED]  
[REDACTED] AND [REDACTED]**

Pursuant to section 479 (1) (2) (3) of the Criminal Procedure Code.

May it please your Lordships.

This appeal is against the ruling of the inquiry control Chamber of the Court of Appeal North West Region, delivered on the **20<sup>th</sup> December of the year 2016** in suit N° **CANWR/ICCM/2016**. The inquiry control chamber sat to examine an Appeal against the ruling of the examining Magistrate Justice [REDACTED] of the High Court of Mezam.

The 1<sup>st</sup> to the 4<sup>th</sup> respondents herein then defendants were charged before the examining Magistrate of the High Court of Mezam by a holding charge of the Legal Department of Bamenda for committing the offence of depredation by band, contrary to **section 236** of the Penal Code. **Elba RANCH** in **Esu** village was the victim and civil party. In the course of the inquiry, Counsel for the 1<sup>st</sup> to the 4<sup>th</sup> respondents, Barrister [REDACTED] raised a preliminary objection on the ground that the examining magistrate

//AG2

of the High Court of Mezam lacked the jurisdiction to conduct the preliminary inquiry. This Counsel argued that the alleged offence was committed in **Esu**, a village in Menchum Division, and the defendants are all resident in **Esu**. That they were never arrested in Mezam and so it is the State Counsel of Menchum Division who is competent to prefer a holding charge and not the State Counsel of Mezam Division. He referred this examining magistrate to section 140 of the Criminal Procedure Code to buttress his submissions.

In his reply to the preliminary objection raised by Barrister [REDACTED] the State Counsel for Mezam, [REDACTED] filed written submissions in which he contented that the holding charge of the **03/05/2016** carries the names of all the defendants and that except for Redemption Godlove, all the other defendants were arrested within Mezam Division.

The State Counsel submitted further that pursuant to **section 140(1)** of the Criminal Procedure Code he was competent to prefer a holding charge against the defendants. He further relied on **Section 143(1)** of the same code to request the examining magistrate to conduct a preliminary inquiry against the defendants. He further referred this examining magistrate to **section 6(1) (2)** of the Criminal Procedure Code which talks of joint trial in offences that are indivisible. On this issue he submitted that **KPWE Philippe**, Redemption Godlove and others are cited in the holding charge for having committed the offence of depredation by band contrary to **section 236** of the Penal Code and, they are legally supposed to be tried jointly.

In his ruling appealed against delivered on the 26<sup>th</sup> day of August 2016, the examining magistrate of the High Court of Mezam stated as follows:

*<< It should be noted that the defendants are alleged to have committed the offense of depredation by band jointly. It therefore follows per **section 6(1) (2)** of the Criminal Procedure Code that they should be tried jointly as the Legal Department rightly submitted. >>*

*<< In the light of the foregoing. The preliminary objection of counsel for defendants is overruled. >>*

This ruling gave rise to the appeal to the inquiry control chamber of the Court of Appeal of the North West Region by Barrister [REDACTED], Counsel for appellants, then defendants.

Although there was no application for bail before the examining magistrate and the ruling of the examining Magistrate

//AG2

now on appeal did not and off course could not say anything about bail, that explains why we found it strange that in their application for appeal, the appellants, stated as one of the grounds of appeal the failure of the examining magistrate to grant bail to the appellants, then defendants before him (see ground four of the appeal at page 04 of the record of proceedings.).

May it please your Lordships,

The appellants and their Counsel realized their error in including the issue of bail as a ground of appeal. They abandoned the ground of appeal on bail and proceeded to file an independent application for bail on the **26/09/2016**, pending the determination of the appeal.

Before that application for bail could be determined, the appellants herein signed and filed another application for bail on the **06/10/2016**, the inquiry control chamber ruled as follows, <<We are however reminded that in application for bail, under the new dispensation, we are guided by **Section 224 and 225. Section 224(1)** of the Criminal Procedure Code accords any person lawfully reminded the possibility of being granted bail on conditions that he fulfils one of the conditions referred to in **Section 246(9)** of the Criminal Procedure Code, in particular to ensure his appearance.>> however **Section 224(2)** of the Criminal Procedure Code gives exceptions to this as it states thus: <<The provisions of **Sub-section (1)** above shall not apply to persons charged with felonies punishable with life imprisonment of death. In the instant application, the applicants are charged under **Section 236** of the Penal Code which punishment does not fall within the exempted bracket which there before means they can be granted bail. Given the present circumstances, we consider it a case that merits to be granted but as long as the conditions of bail are fulfilled. As per our concrete opinion, the applicants are granted bail in the sum of **one million (1.000.000) francs CFA** and surety each in the amount the sureties should be persons with landed property and resident within Mezam Division. >>

Being dissatisfied with that ruling of the inquiry control chambers of the Court of Appeal of the North West Region-Bamenda in above cited suit, we filed a notice of appeal to Supreme Court Yaounde on the ground of appeal and arguments set out below pursuant to **Section 478(1)** of the Criminal Procedure Code.

Your lordships, the ruling appealed against touched only on the competence of the examining magistrate to conduct a

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preliminary inquiry. The inquiry control chamber gave its ruling without taking into consideration the admissibility of the appeal.

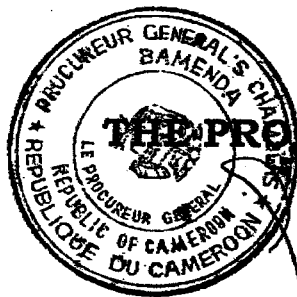
**Section 269** of the Criminal Procedure Code states:

*<<The defendant may only appeal ruling in respect of remand in custody, judicial supervision, request for expert or counter-expert opinion and of restitution of article cited. >>.* By that law the appeal filed the inquiry control chamber against the ruling of the examining magistrate which was on competence is not proper.

We urge your Lordships to declare the ruling now under appeal null and void, and also the entire proceedings before the inquiry control chamber which are clearly invalid.

We also Pray Your Lordships to order that the status quo ante be maintained ie that the parties should return to competent examining magistrate of the Mezam High Court before whom the respondents are at liberty to apply for bail. It is only when such an application for bail is made and rejected by the examining magistrate that the respondents can legally go on appeal before the inquiry control chamber as ordained by **Section 269** of the Criminal Procedure Code.

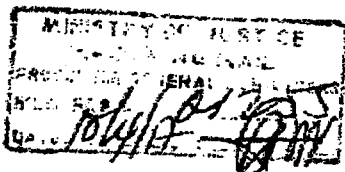
Done at Bamenda, this 22<sup>nd</sup> day of December 2016.



**THE PROCUREUR GENERAL**

*[Handwritten signature]*  
**Martina**

ATTENTION  
MRS KEMBO



- Annex 4
1. KPWE PHILIP ABUE
  2. FUH BERNARD
  3. AZONG CYPRIAN
  4. BIAHIE DIVINE
- C/o BAIWENDA CENTRAL PRISON  
07/04/2017

MAGISTRATE [REDACTED]  
EXAMINING MAGISTRATE  
HIGH COURT OF MEZAM, BAIWENDA

Sir,

Subject: YOUR CONTINUATION OF INQUIRY AGAINST US WHEN OUR APPEAL IN SUIT NO. CANWR/1CC/9 C/2016 HAS NOT BEEN DETERMINED AND DECISION GRANTING US BAIL HAS NOT BEEN EXECUTED

We write as the appellants in suit No. CANWR/ICC/9 c/2016 pending determination in the Inquiry Control Chamber of the Court of Appeal of the North West Region.

It should be recalled that we are residing in Esu village in Menchum Division of the North West Region and following a complaint by [REDACTED] the richest man in Central Africa that we purportedly committed an offence in Esu, Suit No. HCMB/PI.118/2016 was instituted against us in the High Court of Mezam Division on the 31/01/2016 and delivered a Ruling wherein you declared that you lacked the jurisdiction to conduct the Preliminary Inquiry against us pursuant to Section 140 of the Criminal Procedure Code as read with Section 148 of same as it is the State Counsel of Menchum Division and the Examining Magistrate of the said Division who are competent to entertain the matter. You then forwarded the file to the Legal Department of Mezam for necessary action.

We were very surprised when Suit No. HCMB/PI.118/2016 was relisted and Suit No. HCMB/PI.231/2016 later instituted against us on the same allegation as in Suit No. HCMB/PI.118/2016 and you were assigned to carry out Preliminary Inquiries against us. We honestly believed that your Inquiries in Suits Nos. HCMB/PI.118/2016 as relisted and HCMB/PI.231/2016 adversely affects our interest or the proper administration of justice and as a result, we filed an objection or applied for you to declare the act of carrying another Inquiry against us null and void. Unfortunately, on the 26/08/2016 you delivered another Ruling in Suit No. HCMB/PI.231/2016 assuming jurisdiction contrary to your earlier Ruling in Suit No. HCMB/PI.118/2016, and remanded us in prison custody.

We honestly Believed that your decision to assume jurisdiction to carry out an Inquiry against us in suit No. HCMB/PI.231/2016 contrary to your earlier Ruling in Suit No. HCMB/PI.118/2016 adversely affects our interest or the proper administration of justice. Following the provisions of Section 254(1)(a) of the Criminal Procedure Code which provides that where a party in that on act of the inquiry, with the exception of orders listed in Section 257(1), adversely affects his interest or the proper administration of justice, he shall apply to the Examining

*Magistrate for the annulment of such an act and Section 254(3) which provides that the State Counsel and any other interested party shall be competent to appeal against the said Ruling, we filed an appeal against your Ruling in Suit No. HCMB/PI.231/2016 to the Inquiry Control Chamber of the Court of Appeal of the North West Region and our appeal is pending determination in Suit No. CANWR/ICC/9 c/2016.*

The Inquiry Control Chamber of the Court of Appeal of the North West Region has been seized of our appeal and this was confirmed by the submissions of the Legal Department on behalf of the respondent in reply to our application for bail when it is stated therein in the 3<sup>rd</sup> paragraph and last sentence thus: *"We submit that his appeal filed within time is valid and pending determination before the Inquiry Control Chamber"* Our application for bail was made under the provisions of Section 225 of the C.P.C which provides that an application for bail may be made, as the case may be, to the judicial police officer, to the State Counsel, to the Examining Magistrate or to THE COURT SEIZED OF THE MATTER. The Inquiry Control Chamber is presently seized of our appeal.

On the 20<sup>th</sup> day of December 2016, the Inquiry Control Chamber of the Court of Appeal of the North West Region following our application pursuant to Section 225 of the C.P.C, granted us bail and since then till date our release on bail is pending execution by the Procureur General of the Court of Appeal of the North West Region.

We have been reliably informed that the Procureur General has refused to execute the Ruling of the Inquiry Control Chamber of the Court of Appeal of the North West Region granting us bail because he has appealed against the said Ruling. We were remanded in prison custody by you in your Ruling of the 26/08/2016 in Suit No. HCMB/PI.231/2016. Section 277(1) of the C.P.C gives the Inquiry Control Chamber the power to hear an appeal against a Ruling of the Examining Magistrate relating to remand in custody etc. When a decision is taken as in our present case, Section 277(2) of the Criminal Procedure Code provides that the Procureur General shall immediately ensure the execution of the decision given notwithstanding any eventual appeal by the party concerned. Even if the Procureur General has appealed against the decision granting us bail, we think that the law provides for the execution of the decision of the court, an appeal notwithstanding.

\* Things took a dramatic twist today when you invited us to your office and wanted to continue with the Inquiry against us when our appeal in suit No. CANWR/ICC/9 c/2016 is still pending determination and despite the fact that we reminded you of our appeal, you adjourned the matter to Monday the 10<sup>th</sup> of April 2017.

We therefore pray you to wait with the Inquiry against us until the Inquiry Control Chamber of the Court of Appeal of the North West Region must have determined our appeal in suit No. CANWR/ICC/9 c/2016 (especially as it will determine whether you have the jurisdiction to carry out the Inquiry or not.

Yours sincerely,

1. KPWE PHILIP ABUE

2. FUH BERNARD

3. AZONG CYPRIAN

4. BIAME DIVINE

Cc

1. The Honourable Minister of State, Minister of Justice and Keeper of the Seal, Ministry of Justice, Yaounde.
2. The President, Court of Appeal of the North West Region, Bamenda.
3. The President, Inquiry Control Chamber of the Court of Appeal of the North West Region, Bamenda.
4. The Procureur General, Court of Appeal of the North West Region, Bamenda. ✓





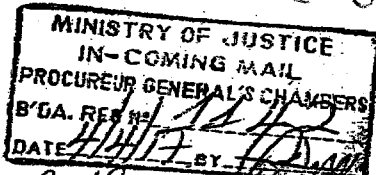








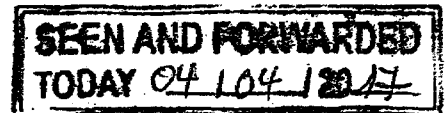
Annexure 6 Annexe 6



Kpwe Philip Abue  
Bamenda Central Prison  
04-04-2017 E

Through the Superintendent  
in charge of Bamenda  
central prison.

TO  
The Attorney General  
Bamenda Court of Appeal  
North West Region  
04-04-2017



Sir

Subject; CLARIFICATION OF DOUBTS

I humbly wish to clarify that I have never written any application for permission to your high office Sir. I have written four applications for audience and you have approved three pending one.

I lost my son last September 2016 and I could not see his burial because I had no knowledge that one could write a permission application to you

Kpwe Philip

