

# OVERCOMING BLANKET IMMUNITY IN NATIONAL CONSTITUTIONS: THE APPLICABILITY OF THE PRINCIPLE OF UNIVERSAL JURISDICTION TO CAMEROON

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## 1. Introduction

The adoption by the United Nations (UN) General Assembly of the Universal Declaration of Human Rights (UDHR) on 10 December 1948<sup>2</sup> has been pivotal to the current international human rights mechanism, as it has been the foundation upon which all subsequent human rights instruments have been developed. While the respect for human rights forms a vital component of democratic governance in Western nations, Cameroon, like many African countries, continues to perpetuate acts of egregious human rights violations upon its citizens. Unfortunately, national courts are subjected to the authority of the very state perpetrators of such violations, dealing a big blow to any prospect of accountability. How those responsible for gross human rights abuses in Cameroon can be brought to justice forms the core of this paper.

This paper argues that the immunity provisions brought about by the amendment of the Constitution in April 2008 have made Cameroon a serious candidate to the category of countries where the judiciary is deprived of its traditional chores of administering justice, that is, prosecute individuals including public officials for gross human rights violations. Despite this backward initiative, the principle of universal jurisdiction can still be successfully invoked to bring charges against state officials for human rights violations that qualify as breaches to international criminal law. The paper presents a brief overview of human rights violations in Cameroon; current international framework; and the ways universal jurisdiction could be used as an instrument of prosecution and punishment. In this respect, a

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<sup>2</sup> U.N. G.A. RES. 217A (III) of 10 Dec. 1948.

special attention will be paid to the effect of the recent immunity provisions in the 2008 amended Constitution of Cameroon.

## 2. The Cameroonian Landscape

Cameroon epitomises the massive violations of human rights that is ravaging the African continent. Since gaining independence in 1960/1961,<sup>3</sup> Cameroon has only known two Presidents, both of whom adequately qualify as brutal dictators. A clear look at the current socio-political situation in Cameroon may lead one into the mistaken perception that the country is cursed. After struggling for independence, Cameroonians have been rewarded with atrocities, inflicted on them by the successive governments of Ahmadou Ahidjo and Paul Biya.

As a country within the international legal order, the Government of Cameroon is bound by its international treaty obligations to respect and protect the human rights of everyone under its jurisdiction. Despite its international commitments, the situation of human rights in the Cameroon remains ominous. Not only is the government unable to afford its constituents the fundamental rights and freedoms which form the core of human existence, the state has become the main protagonist of human rights abuses.

In Cameroon, the government is such an egregious violator of human rights that scepticism reigns as to the ability of the national legal system to deal with the scourge. Cameroonians have experienced, and continue to experience grave atrocities committed on them by their own government.<sup>4</sup> Contrary to what should

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<sup>3</sup> The territory known today as the Republic of Cameroon is made up of two Cameroons, French and British Cameroon which gained their independence on January, 1<sup>st</sup>, 1960 and October 1<sup>st</sup>, 1961 respectively. See J Derrick: Cameroon: Dependence and Independence, *African Affairs (Lond)* 89, p.606; B Chem-Langhèè, 'The Road To The Unitary State Of Cameroon 1959-1972,' in *Perspectives on the State: From Political History to Ethnography in Cameroon*, Essays for Sally Chilver, <http://lucy.ukc.ac.uk/Chilver/Paideuma/paideuma-Introdu.html> accessed June 2008.

<sup>4</sup> Cases of human rights violations abound in Cameroon. See US State Department, 'Country Reports on Human Rights Practices - 2007,' Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008, available at

be the case, these violations have been carried out with complete impunity. Among the many reasons why impunity is so rampant in Cameroon is the lack of an independent judiciary to prosecute abusers, because most of them are public officials and actors of the very government leading these acts on its citizens.

### 3. Current International Legal Dispensation

Fortunately, the tide of international law is rapidly turning against this reign of impunity. The impact of the New World order, it is hoped, would make the whole world a much better place for human beings. Although the issue of who would have jurisdiction to try international crimes has been a point of concern and contention, it has received some very clear answers. In 1993 the United Nations Security Council set up the International Criminal Tribunal for the former Yugoslavia (ICTY) to prosecute individuals for international crimes committed in the former Yugoslavia.<sup>5</sup> On the same footing, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) to try individuals for international crimes committed during the Rwandan genocide.<sup>6</sup> The adoption of the Rome Statute of the International Criminal Court (ICC),<sup>7</sup> was supposed to be of great significance to Africa as its coming into existence was to mark the end of impunity and the dawn of a new era of criminal accountability.<sup>8</sup>

Therefore, the end of the last century brought about a great awakening; a new order of international law, in which the world would no longer stand by while some human beings subject their fellows to inhumane treatment without fear of being confronted by the judicial process. However, 10 years after the adoption of the Rome Statute, Cameroonians have instead found themselves held hostage

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<http://www.state.gov/g/drl/rls/hrrpt/2007/100470.htm>; 'Republic of Cameroon Amnesty International Report,' <http://www.amnesty.org/en/region/africa/central-africa/cameroon#report>.

<sup>5</sup> Statute of the International Tribunal for the former Yugoslavia, S.C. RES. 827 of 25 May 1993. UN Doc. S/25704, Annex (1993), reprinted in 32 *I.L.M.* 1163 app. 1192 (1993).

<sup>6</sup> Statute of the International Tribunal for Rwanda, S.C. RES. 955 of 8 Nov. 1994, U.N. SCOR, 49th Sess., 3453<sup>rd</sup> mtg., Annex, 3, U.N. Doc. S/Res/955 (1994), reprinted in 33 *I.L.M.* 1598, 1602 (1994).

<sup>7</sup> Adopted by the Rome Diplomatic Conference, 17 July 1998.

<sup>8</sup> C Eboe-Osuji, "Crimes against humanity: The End of Impunity in the New Order of International Criminal Law, *African Legal Aid*, Oct-Dec (1999), p. 15.

to a dictatorship and the prospect of accountability seems to be fading. A main feature of the ICC is that a state must have ratified the Rome Statute for the Court to have jurisdiction over that country. Since the adoption of the Statute of the ICC in 1998, Cameroon has refrained from ratifying the treaty in order to avoid criminal liability under the Court.

It must be noted that the nature of the abuses being committed on the Cameroonian people by their government clearly amount, in some instances, to crimes recognized by international criminal law. Considering the fact that the ICC does not have any formal jurisdiction over international crimes committed in Cameroon, and taking into account the fact that national courts lack the independence and ability to try state perpetrators of human rights violations, Cameroonians and advocates of justice must seek justice against public officials responsible for human rights violations through other international legal mechanisms.

#### **4. The Principle of Universal Jurisdiction**

The logical reaction to infringement of penal laws is prosecution. Violations must be prosecuted in order to bring their perpetrators to justice. This position is in line with the principle of the rule of law. The rule of law entails that all persons are equal before, and equally bound by the law. No one should be above the law. When crimes are not prosecuted, the principle of the rule of law is totally disregarded and perpetrators continue to be a threat to the society in which they reside.<sup>9</sup> Prosecuting criminals is based on the need to protect society and the international community as a whole.<sup>10</sup> Seen in legal perspective, the rationale is that gross infringements connected to abuses of state powers ought to be

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<sup>9</sup> K Kindiki, "Prosecuting the Perpetrators of the 1994 Genocide in Rwanda: Its Basis in International Law and Implications for the Protection of Human Rights in Africa", 1 *AHRLJ*, (2001), p. 71.

<sup>10</sup> T Farer, "Restraining the Barbarians: Can International Criminal Law Help?" *HRQ*, (2000), pp. 91-92.

prosecuted to prevent them from escalating, thus deterring them in the future.<sup>11</sup> A nation's respect for law suffers when civilian and military authorities can commit criminal acts with impunity. Viewed from this perspective, there is urgency to investigate and prosecute violators of human rights by government officials who now act with impunity under the cover and protection of the current regime in Cameroon.

Due to the limitation on the ICC and the inability of national courts in Cameroon to bring some perpetrators of human rights abuses to justice, the exercise of universal jurisdiction will offer the widest possibility whereby the legal systems of other countries can be utilized to bring public officials accused of international crimes to justice. Universal jurisdiction describes the competence of a State to define and to prescribe punishment for international crimes even in the absence of any of the traditional judicial links. It is defined as:

"the principle that certain crimes are so heinous, and so universally recognized and abhorred, that a state is entitled or even obliged to undertake legal proceedings without regard to where the crime was committed or the nationality of the perpetrators or the victims."<sup>12</sup>

Universal jurisdiction is based on the principle that certain crimes are sufficiently heinous to be crimes against the international community, the perpetrators of which are deemed to be enemies of humankind. According to this principle, any country where the perpetrator is found is expected to arrest and try or extradite the perpetrator to a State willing to prosecute.<sup>13</sup>

<sup>11</sup> S Macedo, *Universal Jurisdiction: National Courts and the Prosecution of Serious Crimes Under International Law* (Penn Studies in Human Rights, 2006); L Reydam, *Universal Jurisdiction: International & Municipal Legal Perspectives* (Oxford Monographs in International Law, 2004); M A Drumbl, *Atrocity, Punishment and International Law* (Cambridge, 2007).

<sup>12</sup> The Princeton Principles on Universal Jurisdiction, *Meeting of Internationally-Respected Scholars and Jurists* (2001), [http://lapa.princeton.edu/hosteddocs/unive\\_jur.pdf](http://lapa.princeton.edu/hosteddocs/unive_jur.pdf).

<sup>13</sup> W Slomanson, *Fundamental Perspectives on International Law*, (2000), p. 214. See also Genocide Convention (arts 1, 5 & 6); Geneva Conventions, arts 49, 50, 129, 146 of the four Geneva Conventions respectively & art; 85 of Protocol I; Apartheid Convention (arts 2 & 5); Convention Against Torture (arts 4 & 8).

The ability of states to prosecute perpetrators of genocide, crimes against humanity, and war crimes, regardless of who the perpetrators are has got a secured basis not only in the relevant international treaties,<sup>14</sup> but also under customary international law.<sup>15</sup> The significance of punishing these crimes under customary international law is that non-State parties to treaties are nonetheless bound by customary international law.<sup>16</sup> Therefore, anyone who commits such crimes is subject to international criminal jurisdiction even if there is no connection between the offense in question and the state exercising jurisdiction.<sup>17</sup> Under this circumstance, all Cameroonians, including public officials, are subject to international criminal jurisdiction, irrespective of any immunity that may have been crafted to grant cover for human rights violators under national law.

In the final analysis, the postulate that universal jurisdiction is fundamental to the effective functioning of the international human rights and criminal justice regime is twofold:

1. Anyone who perpetrates a criminal act in an area beyond the jurisdiction of a State should not be immune from prosecution merely because the *locus commissi* of the offense (the place in which the crime was committed) may not be covered by the domestic criminal law of any State. Instead, such acts should be made subject to the criminal jurisdiction of every state equally to increase deterrence.<sup>18</sup>
2. Certain acts, no matter where committed; whether in territory *res communis omnium* (a place where no State has authority to exercise jurisdiction) or within

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<sup>14</sup> Ibid.

<sup>15</sup> Goodwin-Gill, "Crimes in International Law: Obligations *Erga Omnes* and the Duty to Prosecute," in Goodwin-Gill & S Talmon (eds), *The Reality of International Law*, (1999), pp. 206-207.

<sup>16</sup> C Beyani, "The Legal Premises for the International Protection of Human Rights," in Goodwin-Gill and Talmon, *Ibid.* p. 32. This is because, customary international law, being the law of the community of nations, supersedes national law. On the relationship between international and national law, see T M Franck and G F Fox, *International Law Decisions in National Courts*, (1996); N Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, (2003).

<sup>17</sup> G Bottini, Universal Jurisdiction after the Creation of the International Criminal Court, *International Law and Politics*, 36:503(2004), p. 510.

<sup>18</sup> L Sunga, *The Emerging System of International Criminal Law: Developments in Codification and Implementation*, (1997), p. 252.

the territory of a State or States are of such gravity that every State should be authorized to exercise criminal jurisdiction over the offender.<sup>19</sup>

## 5. Applicability of the Principle of Universal Jurisdiction to Cameroon

A principal pragmatic reason why international law provides for universal jurisdiction is to make sure that there is no “safe haven” for those responsible for the most serious crimes. In this regard, the legality of some provisions of the 2008 Amended Constitution of Cameroon should be carefully scrutinized. The new article 53 has been extensively elaborated to provide controversial immunity to the actions of the President. In particular, article 53(3) states that:

“Acts committed by the President of the Republic in pursuance of Articles 5, 8, 9 and 10 [of the constitution] shall be covered by immunity and he shall not be accountable for them after the exercise of his functions”.<sup>20</sup>

The legality of this constitutional provision is contentious. Blanket immunity for all Presidential actions is illegal and null and void *ab initio*. Unlawful and atrocious acts committed by the President in the execution of his duties should still be subject to legal scrutiny. Therefore, despite instituting this provision into the constitution to provide cover for criminal conducts, the jurisdiction of international criminal law will not recognize such immunity. Accordingly, even if the acts of the President and members of his administration cannot be subjected to criminal prosecutions within the national legal system because of this immunity provision, international legal actions can still be brought against them successfully.

Meanwhile, it is worth mentioning that the functions of the Presidency do not entail as of right or privilege, criminality. In other words, a President can function effectively without engaging in criminal conduct. By using the constitution to provide blanket immunity for himself, the President is in essence recognizing that his actions run contrary to the law. Embedded in this immunity provision is also

<sup>19</sup> Ibid.

<sup>20</sup> Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

the inference that future presidential actions may continue to violate established legal framework. It is therefore important for the international community to pay close attention to the situation in Cameroon, and take all necessary steps to avert continued human rights violations, while bringing those responsible for such violations to justice, regardless of their official status.

Since World War II, the list of crimes giving rise to universal jurisdiction has grown to include what is today regarded as serious violations of international human rights and humanitarian law. Among the crimes for which public officials in Cameroon can be brought to account are crimes against humanity. Crimes against humanity are today regarded as part of *jus cogens*, which means a compelling law, the hierarchical position of which is presumably above all other principles, norms and rules, of both international and national law. The clearest definition of crimes against humanity provided under international law is found in article 7 of the Rome Statute of the ICC.<sup>21</sup> Among the acts included in the definition, which are applicable to the situation in Cameroon are:

- torture;
- murder;
- enslavement;
- deportation or forcible transfer of population;
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law.

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<sup>21</sup> Articles 7(1) (a)-(k). Articles 7 (2) (a)-(h) define the various components of crimes against humanity.

Not all acts within the categories above will qualify as crimes against humanity. According to article 7 of the Rome Statute, crimes against humanity are distinguished from ordinary crimes in 3 ways: first, the crimes must have been "committed as part of a widespread or systematic attack"; second, they must be "knowingly directed against a civilian population"; third, they must have been committed pursuant to a "State or organisational policy". Hence, crimes against humanity can be committed by state agents such as the President, Ministers, Governors, Senior Divisional Officers, Divisional Officers, Government Delegates, etc; traditional rulers acting on behalf of the government; and Generals, Commanders, Commissioners and members of the military, gendarmerie, and police force. Crimes against humanity can also be committed by persons acting at the instigation of or with the acquiescence of the above mentioned officials, such as vigilantes or para-military units like those maintained by some traditional rulers (Chiefs, Fons, and Lamidos) in Cameroon.

## 6. Conclusion

Various precedents exist for legal actions against state actors and former and sitting state officials under the principle of universal jurisdiction. On 8 June 2001, a Belgian Court convicted four Rwandans for their role in the 1994 Rwandan genocide.<sup>22</sup> The four were tried under a 1993 Belgian statute giving the country's courts universal jurisdiction for crimes against humanity, no matter where they occur in the world.<sup>23</sup> The case of Hissen Habré of Chad and Augusto Pinochet of Chile are among the several other cases where the principle of universal jurisdiction has been employed to bring officials to justice. Utilizing this principle to hold Cameroon public officials accountable for their human rights atrocities

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<sup>22</sup> K Richburg, "Rwandan Nuns Jailed for Genocide", *Washington Post Foreign Service*, 9 June 2001; P A01 <http://www.washingtonpost.com/ac2/wp-dyn/A42755-2001Jun8> accessed June 2008; "Vatican puzzled by verdict against Rwandan nuns", 10 June 2001 [http://www.afrol.com/News2001/rwa010\\_nuns\\_genocide.htm](http://www.afrol.com/News2001/rwa010_nuns_genocide.htm) , *Afro News*, accessed June 2008.

<sup>23</sup> Act of 16 June 1993 on the Punishment of Grave Breaches of the Geneva Conventions of 12 August 1949 and their Additional Protocols I and II of 18 June 1977; as amended by Act of 10 February 1999 on the Punishment of Grave Breaches of International Humanitarian Law.

would not be a novelty, rather it would be a great accomplishment of the international human rights regime.

The inability of existing national legal mechanisms to deal with gross human rights violations in Cameroon makes the case for the utilization of the principle of universal jurisdiction compelling. Making use of this international criminal law principle will strengthen the international community's commitment to safeguarding human beings from persecution. This legal avenue can help deter some of the worst crimes and help uphold stability and the rule of law not only in Cameroon, but in Africa and the world at large.