

June 21, 2004

**VIA COURIER, FACSIMILE AND EMAIL**

Mr. Germain Baricako  
Secretary  
African Commission on Human and Peoples' Rights  
Kairaba Avenue  
Fajara  
The Gambia

**Re: Article 55 Communication against the Republic of Cameroon  
for violations of Articles 1, 2, 9 and 14 of the Charter**

Dear Mr. Secretary:

The Open Society Justice Initiative requests that the Commission consider the following communication, submitted on behalf of Pius Njawè Noumeni and Groupe Le Messenger, and alleging multiple violations of their rights under the African Charter on Human and Peoples' Rights.

The Open Society Justice Initiative is a program of the Open Society Institute that pursues law reform activities grounded in the protection of human rights and principles of open societies. The Justice Initiative is duly authorized by the Complainants to submit this communication, and maintain correspondence with the Commission, on their behalf. Please find enclosed a letter of authority signed by Mr. Njawè. Also enclosed under separate cover is an urgent request for provisional measures submitted pursuant to Rule 111 of the Commission's Rules of Procedure.

**Complainants: Pius Njawè Noumeni and Groupe Le Messenger**

Name: Pius Njawè Noumeni

Nationality:     Cameroonian  
Occupation:     Journalist, General Director of Groupe Le Messenger  
Date of birth:    March 4, 1957  
Address:         266 Boulevard de la Liberte, Douala, Cameroon

**Representative**

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**State Party:    The Republic of Cameroon**

**STATEMENT OF FACTS**

1. We present first a summary of Cameroon’s laws and practices on licensing of broadcasters, followed by an account of the Complainants’ unsuccessful attempts to secure a radio license in Cameroon. We have also enclosed a number of documents relevant to the case, in French original. A list of the enclosed documents is provided in the Annex to this Communication.

**Cameroon’s Broadcasting Laws and Practices**

***The Law***

2. Cameroon had a state monopoly on radio and television broadcasting until 1990, when it passed a law with the stated aim of liberalizing broadcasting, inter alia.<sup>1</sup> Title III of the law provides that “audiovisual communication is free,” subject to the granting of a license. The law authorized the Executive to adopt regulations on “the conditions and modalities of the allocation and use of licenses,” in consultation with the National Communication Council (NCC) (art. 36.3).
3. The government of President Paul Biya took ten years to adopt the licensing regulations, effectively putting the enforcement of the 1990 Law on hold and extending the state monopoly throughout the 1990s. In April 2000 the government issued a decree determining the conditions and procedures for the establishment of private broadcasters.<sup>2</sup>

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<sup>1</sup> Law (no. 90/052) on Freedom of Social Communication (hereinafter 1990 Law).

<sup>2</sup> Decree 2000/158 of April 3, 2000 (hereinafter 2000 Decree).

4. The Decree provides for renewable 5-year licenses for radio and 10-year licenses for television. The licenses are to be issued “by a decision of the Minister in charge of communication, after a reasoned opinion of the National Communication Council” (arts. 8-9). The license applications are to be first reviewed by a “technical committee” chaired by the Minister of Communications and consisting of representatives of some thirteen ministries and regulatory agencies (art. 13). The conclusions of the technical committee are forwarded to the NCC, which should then arguably send its opinion to the Minister (even though the Decree is silent as to what happens after the NCC receives the conclusions of the technical committee).
5. The Minister of Communications has a maximum of six months to review a license application and notify the applicant of the decision (art. 15.3). Neither the 1990 Law, nor the 2000 Decree establish any substantive criteria to guide the Minister’s decisions whether to grant a license or not. If the Minister’s decision is favorable, the Minister and the applicant negotiate the specific terms of the license and the Minister issues “an authorization of installation.” The installed equipment is then subjected to a technical control, after which the Minister issues the license (art. 18.3). The refusal of the Minister to grant a license does not appear to be subject to judicial review.
6. The 2000 Decree included a transitional provision that gave all private broadcasters already in operation three months to “conform with its provisions,” which was widely understood as requiring them to apply for a license. It was not clear whether they would be allowed to continue broadcasting pending the review of their license applications.

### *The Practice*

7. In practice, the government of Cameroon has largely ignored its own licensing laws. Fourteen years after the passage of the ‘liberalizing’ 1990 Law, not a single private broadcaster in the country has received a proper license by the Ministry of Communication (MinCom). The government has also failed to set up a functioning National Communication Council.<sup>3</sup> Using this as an excuse – even though the NCC has a merely advisory role in the licensing scheme – the MinCom has developed, without any legal basis, a practice of granting provisional authorizations or simply allocating frequencies to broadcasters that it generally deems to be politically innocuous to the current government. For example, a May 27, 2003 decision of the Minister of Communication allocated

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<sup>3</sup> The Council, first appointed some 15 years ago, is virtually defunct. Its members are supposed to serve three-year terms, but the membership has never been renewed since its original constitution.

frequencies to fourteen radios in the capital Yaounde and ten radios in Douala without granting them a proper license.<sup>4</sup> Being outside the law, these informal authorizations do not grant broadcasters any of the rights, guarantees and legal certainties they are entitled to under the 1990 Law. They can be revoked at any time.

8. In many other cases, however, the MinCom has routinely chosen to ignore license applications altogether. A prominent example of the government's treatment of independent broadcasters is the case of Radio Veritas, the Douala-based radio of the Catholic Church. The Church applied for a license in early 2001 but never received a response. Given the silence of the authorities, it started broadcasting but was banned by the MinCom in November 2003 amid speculations that Cardinal Christian Tumi of Douala, an outspoken critic of the government, might run against President Biya in the upcoming presidential elections. Only after Cardinal Tumi publicly declared that he had no intention of running did the MinCom grant Radio Veritas an authorization to operate.
9. The MinCom ignores key aspects of the regulatory framework even when it chooses to consider (as opposed to ignore) license applications. For example, the 2000 Decree provides for the installment of broadcasting equipment after the Minister has approved the license application and issued an "installment authorization." MinCom, however, routinely requires applicants to purchase the equipment and have it checked by its technicians before making the initial determination required by article 15.3 of the Decree.

### **The Freedom FM Case**

10. We turn now to the facts related to the application of Le Messenger Group for a radio license. Le Messenger Group is headed by Pius Njawè, a Cameroonian journalist and one of the most prominent activists for media freedom in Africa. In 1979, Njawè established *Le Messenger* newspaper, which continues to be the most outspoken and independent voice among the national media. Since 1990 Njawè has been arrested more than thirty times, forced into exile, and imprisoned three times for weeks or months. *Le Messenger* and its satirical sister, *Le Messenger Popoli*, have been banned and seized, and their staff have been arrested and prosecuted, on numerous occasions.
11. In 1999 Le Messenger Group, which is based in the country's economic capital city of Douala, began operating a small radio station. The following is a chronological account of the Group's unsuccessful attempts, over more than four years, to secure a license for the lawful operation of the radio.

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<sup>4</sup> Decision no. 012.

12. In November 1999, Le Messenger Group started the Radio Sawa broadcasts on the day of the 20<sup>th</sup> anniversary of the foundation of *Le Messenger* newspaper. This was at about the same time other radio stations had begun to appear in Yaounde, the capital, under conditions of a regulatory vacuum. The police threatened Njawè with arrest and asked him to stop broadcasting. He was told by the authorities that, even though the 1990 Law had liberalized broadcasting, no one could operate until the government issued a decree to implement the Law. Njawè continued to broadcast nevertheless until April 2000, arguing that the government could not deny the entire citizenry indefinitely the ability to exercise their constitutional freedom of expression through the airwaves.
  13. The government finally issued the implementing Decree on April 3, 2000. Rather than apply right away for a license, Radio Sawa suspended broadcasting in order to obtain better equipment and a more powerful transmitter; at the time they were using a 20KW transmitter. It took Le Messenger more than two years to collect sufficient funds to purchase new equipment.
  14. On October 24, 2002, Njawè informed the Minister of Communications, Mr. Jacques Fame Ndongo, of his intent to apply for a license soon as well as to resume broadcasting pending review of the license application. The Minister encouraged Njawè to apply. They also discussed the orientation of the radio, which Njawè explained would focus on “human development” issues.
  15. On October 29, Le Messenger Group filed a formal application for a radio license with the Minister of Communications. The Minister asked his chief legal advisor to review the application and advise Le Messenger on the need for any clarifications. The legal advisor confirmed that the application appeared complete, but refused to formally acknowledge receipt of the application. He only did that on December 18, after several requests by Le Messenger.
  16. Pending review of the application, Le Messenger started buying equipment and building studios for the radio. It also decided to change the name of the radio to Freedom FM. On January 31, 2003, Njawè wrote to the Minister to inform him of the name change as well as request that the radio be allocated the 100.0 MHz frequency, as opposed to the 106.5 MHz frequency that was initially requested, which had been seized in the meantime by another radio.
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17. On February 7, a group of technicians from MinCom visited the premises of the radio and inspected the equipment for four hours. They told the staff that Freedom FM had “the best equipment in Douala.” On April 23, *Le Messenger* wrote to the MinCom to inform them that the radio was ready to start testing the equipment. On May 15, *Le Messenger* started advertising in print media the beginning of Freedom FM programs scheduled for May 24.
18. On May 21, 2003, almost seven months after the filing of the application, the Minister responded in writing that “the actual state of the review of your [license application] does not allow us to authorize you to start broadcasting.”
19. In the early morning of May 23, while Freedom FM had yet to start broadcasting, dozens of army, police and gendarmerie forces, headed by the Douala police commissioner and an army general, took over the Freedom FM building and sealed off the studios and transmission rooms. They claimed to be acting pursuant to an order of Minister Fame Ndongo for the “banning”<sup>5</sup> of Freedom FM because of its “illegal exercising of the profession of audiovisual broadcaster.” The order was to be executed by the Secretary of State for the Defense and the General Representative for National Security in Douala. Later in the day the new head of MinCom’s legal section arrived to personally serve the banning order on Njawè, relaying to him the Minister’s message that “Freedom FM should not emit a single sound” the next day. Freedom FM remains off the air to date.
20. The station’s equipment remains sealed, as well. Since the insulation and air-conditioning of the sealed rooms were unfinished on May 23, the equipment has been exposed for more than a year to Douala’s rainy and super-humid weather, which is bound to cause serious damage to it. The Complainants, however, have no access to the equipment and are unable to determine the precise extent of the damage. The value of the equipment is about 60 million CFA francs (110,000 U.S. dollars).
21. On May 26, in a meeting with MinCom staff requested by Njawè, the staff claimed initially that they had never received the application filed on October 29, 2002, but were then forced to acknowledge that it supposedly fell through the cracks due to a “malfunction of [their] services.” Minister Fame Ndongo received Njawè for two hours, proposing to change the name and programming nature of the radio. The Minister made it clear that Njawè would not be allowed to run a general current affairs

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<sup>5</sup> ‘Interdiction’ in the French original. Decision (no. 023) of May 21, 2003.

radio. Njawè agreed to submit a new application for a Douala-based “urban development” radio under the name of City FM.

22. On June 3, 2003, Le Messenger filed amendments to the initial application, including a letter of support from the Douala City Council for the new City FM concept. In the following weeks MinCom told Le Messenger that the Douala radio market was actually saturated and that City FM would have to transmit from another location outside Douala. Njawè proposed two new sites 60km west of Douala. The MinCom failed to respond.
23. On August 20, Njawè held a last meeting with the MinCom experts, who said they were still reviewing the application and would be visiting the proposed sites soon. Asked to intervene to have the equipment released, the MinCom staff promised to solve the matter within days.
24. Le Messenger has not received any formal notification from MinCom regarding the outcome of its license application. It has to date been denied all access to its seized equipment.

#### **Court Proceedings – The Case Brought by Le Messenger**

25. On September 4, 2003, Le Messenger filed an action for emergency relief (*refere d’heure a heure*) against the Douala Representative for National Security (agent of the central government), requesting the removal of the seals and release of the equipment, under seal continuously since May 23, 2003. The lawsuit argued that the sealing was without any legal basis and that Freedom FM had never started broadcasting.
26. The supposedly “urgent” hearing of the case, assigned to a judge of the Douala Court of First Instance, was postponed nineteen times in the next four and a half months because of the government side’s repeated failures to appear. Initially the judge set a September 20 deadline for the final decision, but then decided on that date to re-open the debate and request the opinion of the public prosecutor, a highly unusual measure in a private case like this. In the meantime, the MinCom was granted leave to intervene in the case as interested party, arguing that the sealing of the equipment was “a material act necessary to enforce a unilateral administrative act [the MinCom’s ban order].” MinCom also argued that the Court of First Instance had no jurisdiction over the case, which should be tried by an administrative tribunal.
27. In one of the final hearings the national police headquarters in Yaounde sent a representative to testify that the police had suspicions that Le Messenger was conspiring to use Freedom FM to overthrow the

government. The only attempt by the police representative to substantiate these outlandish allegations was a statement that the radio's "sophisticated equipment" could be programmed to enable radio communication among a selected group of people (i.e. like walkie talkie communication).

28. On January 26, 2004, heeding the MinCom's suggestion, and after months of opened debate on the merits, the court ruled that it was not competent to decide the case. The court took another three and a half months, until mid-May 2004, to prepare and notify Le Messenger of the written judgment, which the Complainant needed to be able to appeal. Shortly afterwards, Le Messenger appealed the ruling to the Douala Court of Appeal, arguing that the case belongs to the civil jurisdiction. The Court of Appeal has yet to set a date to hear the case.

### **The Criminal Case Against Njawè and Le Messenger**

29. On November 11, 2003, while the civil case was pending, Minister Fame Ndongo brought a criminal action (*citation directe*) against Njawè and Le Messenger for having illegally "created and operated" an unlicensed broadcasting company by having "acquired and installed the technical materiel" for the operation of Freedom FM. Invoking the 1990 Law, the Minister requested that Njawè and Le Messenger be fined 300,000 to 3 million CFA francs and that the equipment be seized. The lawsuit also noted that Freedom FM had never been granted a license.
30. The case is currently pending before Douala's First Division Magistrate Court. The court held the first hearing on April 22, 2004, after having postponed it half a dozen times because of the MinCom's failure to pay the court fees. On May 13 the case was reassigned without explanation to another judge of the same court, who will have to restart the case from scratch. A June 10 hearing was again postponed, with no reason provided.

### **ADMISSIBILITY OF THE COMMUNICATION**

31. Article 56 of the African Charter requires authors of communications to exhaust any available local remedies that are not "unduly prolonged." This Commission has held that the requirement does not apply where there are no remedies to be exhausted. Thus, in *Civil Liberties Organization v. Nigeria*, which involved a number of detentions carried out under a special decree that specifically barred any court challenges, the Commission held that the decree precluded access to any possible remedies under national law and rendered the requirement inapplicable.<sup>6</sup> Similarly, complainants are not

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<sup>6</sup> Communication 67/91 (1993).

required to exhaust discretionary or extraordinary remedies. In particular, the Commission has held that “where the remedy is at the complete discretion of the executive, the existence of local remedies is futile and to exhaust them would be ineffective.”<sup>7</sup> The Commission has also lifted the exhaustion requirement where the complainants had formal access to the courts, but the judicial proceedings were sham, ineffective or excessively protracted. Thus, in an earlier communication against Cameroon involving allegations of false imprisonment and miscarriage of justice by that state, the Commission considered an appeal procedure that had been pending for twelve years to have been “unduly prolonged.”<sup>8</sup> Similarly, in *Modise v. Botswana*, the complainant’s attempts over 16 years to obtain judicial recognition of his citizenship had been repeatedly interrupted due to his multiple and summary deportations from that country. The Commission held that the “national legal procedures were willfully obstructed,” denying Modise any effective remedies.<sup>9</sup>

32. We submit that in this case domestic remedies are in part inexistent within Cameroon, and therefore unavailable to the Complainants, and in part have been proven ineffective and “unduly prolonged.”

#### There Are No Effective Remedies Regarding the Silent Rejection of the License Application

33. Le Messenger applied for a radio license on October 29, 2002. The MinCom failed to notify Le Messenger of its decision regarding the application within the 6-month legal deadline and has continued to ignore the application to date. Minister Fame Ndongu’s refusal to act on the application, which amounts to a silent refusal to grant a license, is not subject to judicial review or any other effective remedy within Cameroon. Neither of the ongoing proceedings in the Freedom FM case is capable of producing effective remedies in this respect.<sup>10</sup>
34. Secondly, the local authorities have consistently refused to grant licenses to private radio broadcasters in accordance with the 1990 Law, developing instead an entrenched and unlawful practice of issuing

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<sup>7</sup> Communication 78/92 *Krishna Achuthan on behalf of Aleke Banda, Amnesty International on behalf of Orton and Vera Chirwa v. Malawi* (1994), para. 2. See also Communication 60/91 *Constitutional Rights Project v. Nigeria* (1994) (involving a nonjudicial appeal to the state governor).

<sup>8</sup> Communication 59/91 *Louis Emgba Mekongo v. Cameroon* (1994).

<sup>9</sup> Communication 97/93 *John Modise v. Botswana* (1997), para. 20.

<sup>10</sup> The Minister of Communications moved to ban Freedom FM, and then start a criminal case against Njawè and Le Messenger, after having engaged for months in intensive and ostensibly good faith negotiations with Le Messenger. The facts of the case leave little doubt that the Minister took the matter to court only as a pretext for continuing to evade his legal responsibility to justify, in the first place, his denial of Le Messenger’s application. As submitted below, there are strong reasons to believe that the Minister’s attitude is motivated by political and ideological bias against Le Messenger.

temporary or informal authorizations that give broadcasters no legal recognition or certainty. The Complainants are currently not in a position to challenge MinCom's practice because they have not been granted any form of authorization to broadcast. Even if they were to acquire standing to challenge the practice, however, any such challenge would most likely lead to the permanent revocation of any such authorization, considering MinCom's history of complete discretion and arbitrariness in this area. It is revealing that no holder of an informal authorization in Cameroon has chosen to take this matter to the courts.

35. Victims of such violative administrative practices are not required to exhaust on-paper remedies if judicial or administrative challenges to those practices are likely to be ineffective or to subject the victims to even greater abuse and harassment. Thus, the European Commission of Human Rights has lifted the exhaustion requirement in cases where its strict application would subject the victims to further violations of their rights, such as mistreatment in prison.<sup>11</sup> The Complainants in this case are essentially in the same position, because of Cameroon's policy of not granting licenses to private broadcasters and the great likelihood that any challenges to that policy would result in further retaliation by the government.
36. Thirdly, Cameroonian legislation grants the Minister of Communications unfettered discretion, and no substantive guidance whatsoever, in making licensing decisions. Even assuming *arguendo* that the Minister's licensing decisions could be subject to some form of judicial review, the legal framework provides no standards, and therefore gives applicants no basis, to challenge those decisions on their merits. For this and other reasons, we submit that the Cameroonian licensing legislation is *per se* in violation of Article 9 of the Charter (see below). Under these circumstances, only a domestic constitutional challenge to the licensing laws could provide an effective remedy to the Complainants.<sup>12</sup> The Constitution of Cameroon grants the Constitutional Council the power to review and strike down unconstitutional legislation. However, standing to bring actions before the

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<sup>11</sup> *Reed v. United Kingdom*, 19 D.R. 113 (1979); *Hilton v. United Kingdom*, 4 D.R. 177 (1976).

<sup>12</sup> See *Lithgow v. United Kingdom*, where the European Commission of Human Rights ruled that a regular judicial appeal is not an effective remedy if the complaint relates to the law itself and the courts have no power to strike down the law. 8 E.H.R.R. 329 (1986); 42 D.R. 33. The European Court of Human Rights requires applicants, on the other hand, to exhaust any constitutional review remedies that are available to them to challenge statutes or administrative practices. See *X v. Germany*, 21 D.R. 176 (1980); and *Castells v. Spain*, 14 E.H.R.R. 445 (1992), paras 24-32.

Constitutional Council is reserved to senior executive and elected officials.<sup>13</sup> The Complainants have no standing to challenge the constitutionality of the licensing laws.

37. In sum, there are no remedies available to the Complainants to challenge the Minister's silent denial of their license application and in any event, given the prevailing practice in the country and the lack of substantive standards on licensing, any challenges to the Minister's licensing decisions would be ineffective.

Remedies Against Seizure of Le Messenger's Equipment Have Been "Unduly Prolonged"

38. With respect to the seizure of Le Messenger's radio equipment, effectuated by the police through the sealing off of the Freedom FM studios and premises, Le Messenger's urgent legal action has been unduly and unreasonably delayed by the local courts, creating a strong presumption of political interference, or at least deference. The Douala Court of First Instance took more than four months to decide, in a supposedly urgent procedure, that it lacked jurisdiction to hear the case – even though jurisdiction is a preliminary matter that is typically decided before debate on the merits. The same court took another three months to produce a written judgment, without which the Complainants could not appeal. The Douala Court of Appeal has yet to set a date to begin hearing Le Messenger's appeal. In the meantime, the radio equipment of a US\$110,000 value is deteriorating on a daily basis.

39. We therefore submit that judicial procedures for the protection of the Complainants' property rights over the equipment have been "unduly prolonged." While the delays in this case are arguably shorter than those in the *Mekongo* and *Modise* cases, they are nevertheless unreasonable and excessive in view of the nature of the domestic proceedings and the rapid deterioration of the radio equipment, which may become virtually worthless with every week that passes.

40. With respect to the requirements of Article 56(7) of the Charter, the present case has not been submitted to, or settled by, any other international human rights mechanism.

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<sup>13</sup> Only the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or one-third of the Senators may refer matters to the Constitutional Council. Constitution of Cameroon (as amended by Law No. 96-06 of 18 January 1996), art. 47.2; Law (no. 2004/004 of April 21, 2004) on the Organization and Operation of the Constitutional Council, art. 19.1.

## **VIOLATIONS OF THE CHARTER**

41. We submit that Cameroon has violated the Complainants' freedom of expression under Article 9 of the Charter, in conjunction with Article 1; their right, guaranteed by Article 2, to enjoy their Charter rights and freedoms without discrimination; and their right to property guaranteed by Article 14 of the Charter.

### **Violation of Article 9 (Free Expression) and Article 1 (Giving Effect to Rights) of the Charter**

42. Article 9 of the Charter guarantees the right of every individual "to receive information" and to "express and disseminate his opinions within the law." Article 1 of the Charter requires States to give effect to the rights and freedoms guaranteed by the Charter by adopting "legislative or other measures."

43. This Commission has expounded the general language of Article 9 in its 2002 Declaration of Principles on Freedom of Expression in Africa, which reflects the status of international human rights law in this area.<sup>14</sup> Principle V [Private Broadcasting] of the Declaration provides:

1. States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression.
2. The broadcast regulatory system shall encourage private and community broadcasting in accordance with the following principles:
  - there shall be equitable allocation of frequencies between private broadcasting uses, both commercial and community;
  - an independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions;
  - licensing processes shall be fair and transparent, and shall seek to promote diversity in broadcasting; and
  - community broadcasting shall be promoted given its potential to broaden access by poor and rural communities to the airwaves.

38. Principle VII of the Declaration specifies the principles applicable to the legal status, appointment and accountability of regulatory bodies for broadcast and telecommunications.<sup>15</sup> Cameroon's laws and practices on licensing of private broadcasters are incompatible with these principles.

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<sup>14</sup> Adopted by the African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17 to 23 October 2002 (hereinafter 2002 Declaration).

<sup>15</sup> Principle VII provides:

Cameroon Had An Effective State Monopoly on Broadcasting Until April 2000

39. Groupe Le Messenger established Radio Sawa and started broadcasting in November 1999. At the time, the government maintained an effective state monopoly on broadcasting by virtue of its deliberate failure to adopt the secondary legislation required to implement the liberalized regime of the 1990 Law. Even though Le Messenger continued to broadcast between November 1999 and April 2000, it did so in the face of government threats to prosecute its managers and confiscate its equipment. These pressures constituted clear attempts to enforce the effective ban on private broadcasting, amounting to interference with Le Messenger's freedom of expression guaranteed by Article 9. In fact, the authorities could have quite possibly extended the ban indefinitely if Le Messenger and other Cameroonian broadcasters had not courageously insisted on exercising their rights under the Constitution and the 1990 Law.
40. Principle V of the 2002 Declaration states in unambiguous terms that "state monopoly over broadcasting is not compatible with the right to freedom of expression." This general principle had been clearly established in international human rights law while Cameroon continued to maintain the effective monopoly. In the leading *Informationsverein Lentia* case, the European Court of Human Rights (ECHR) reviewed challenges by a number of aspiring broadcasters against Austria's state broadcasting monopoly.<sup>16</sup> Ruling against the monopoly, the ECHR rejected Austria's arguments based on spectrum limitations, economic interest and the need to promote pluralism in the sector. While recognizing the State's ultimate responsibility to ensure pluralism in broadcasting, the Court noted that "[o]f all the means of ensuring that these values are respected, a public monopoly is the one which imposes the greatest restrictions on the freedom of expression" and is therefore, absent an especially pressing public interest, disproportionate and unnecessary in a democratic society.<sup>17</sup>

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1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.
  2. The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.
  3. Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.

<sup>16</sup> *Informationsverein Lentia and Others v. Austria*, 17 E.H.R.R. 93 (1994).

<sup>17</sup> *Id.*, at para. 39.

41. National courts in several countries have reached similar conclusions. The German Constitutional Court has recognized, starting in the early 1980s, that in a constitutional democracy private broadcasting has a role to play that is complementary to the mission of the public broadcasting system. As long as the public broadcaster is required to provide the public with comprehensive and impartial information and balanced programming, private broadcasters can co-exist under less restrictive state regulation.<sup>18</sup>
42. More recently, the Supreme Court of Zimbabwe ruled that the Zimbabwe Broadcasting Corporation's statutory monopoly was inconsistent with the freedom of expression guarantees of the national constitution.<sup>19</sup> The same Court had earlier invalidated the monopoly of the state-owned Posts and Telecommunications Corporation to provide cellular telephony services, under challenge by a private provider.<sup>20</sup> Referring to the principles developed by U.S. and other courts on freedom of communication, Chief Justice Gubbay of Zimbabwe reached the following conclusion in *Retrofit*:
- These cases ... underline the principle that restriction upon or interference with the means of communication, whatever form it may take, abridges the guarantee of freedom of expression. A fortiori any monopoly which has the effect, whatever its purpose, of hindering the right to receive and impart ideas and information, violates the protection of that paramount right.<sup>21</sup>
43. Cameroon's effective state monopoly on broadcasting, which ended only with the adoption of the April 2000 Decree, violated Article 9 of the Charter.

#### Cameroon's Licensing Regime Fails to Ensure Independence and Pluralism of Broadcasting

44. Under Principle V of the 2002 Declaration, one of the key preconditions for freedom and pluralism of broadcasting is a statutory licensing system that is fair, transparent and insulated from political interference. The institutional autonomy of the licensing authority is a critical requirement of such a system. We submit that Cameroon's licensing laws and practices are arbitrary and fail to meet these standards.

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<sup>18</sup> 73 BVerfGE 118 (1986) (*Fourth Television Case*).

<sup>19</sup> *Capital Radio (Pvt) Ltd. v. Minister of Information*, 2000 ZLR 243 (S).

<sup>20</sup> *Retrofit (Pvt) Ltd. v. Minister of Information* [1996] 4 LRC 512.

<sup>21</sup> *Id.*, at 503. The Privy Council followed the same approach in *Cable and Wireless v. Marpin* (involving the constitutionality of an exclusive license to provide telecommunications services in the Dominican Republic), 9 BHRC 486 (2000).

45. First, the rules governing the licensing process are not set by the legislature through a law, but by an executive decree. The 1990 Law delegated to the Executive the entire regulation of the “conditions and modalities of allocation and exploitation of licenses” (art. 36.3). In addition, the 2000 Decree regulates only the procedural aspects of the licensing regime, setting no substantive limits whatsoever on the discretion of the Minister of Communications. This is inconsistent with the basic principle of international human rights law that restrictions on fundamental rights and freedoms, including freedom of expression, must be set by law.<sup>22</sup> International and national tribunals have established that this principle applies fully to the restrictions on expression imposed, by definition, by a broadcast licensing regime.
46. Article 10.1 of the European Convention, for example, specifically authorizes states to regulate “licensing of broadcasting, television or cinema enterprises.” This notwithstanding, the ECHR has ruled that any licensing regime must meet the general test established by the second paragraph of Article 10: licensing restrictions must be prescribed by law, have legitimate aims and be necessary in a democratic society. The opposite interpretation “would lead to a result contrary to the object and purpose of Article 10 taken as a whole,” in the words of the Court.<sup>23</sup>
47. National constitutional tribunals have established similar doctrines. The Italian Constitutional Court has held that only parliamentary control can ensure the independence of radio and television, rendering executive control of the sector unconstitutional.<sup>24</sup> The German Federal Constitutional Court has ruled that, because of the essential importance of broadcasting as both a “medium” and a “factor” in shaping public opinion, its regulation cannot be left to executive agencies:

[Freedom of broadcasting] requires that a system be created to ensure that the diversity of existing opinions finds its greatest possible breadth and completeness through broadcasting . . . . In order to reach this goal the legislature must enact substantive, organizational and procedural provisions designed to effectuate the function of broadcasting liberty.<sup>25</sup>

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<sup>22</sup> See, inter alia, the International Covenant on Civil and Political Rights, art. 19.3; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10.2 (hereinafter European Convention); American Convention on Human Rights, art. 13.2; read in conjunction with Articles 60 and 61 of the African Charter.

<sup>23</sup> *Groppera Radio and Others v. Switzerland*, 12 E.H.R.R. 321 (1990), para. 61.

<sup>24</sup> Judgment 225/1974 [1974] Giur. cost. 1775.

<sup>25</sup> 57 BVerfGE 295 (1981) (*Third Television Case*), as translated in Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, (2<sup>nd</sup> ed., 1997), p. 409.

The German Court went on to strike down a broadcasting statute because of its failure, *inter alia*, to specify the procedures for license applications and the substantive standards to be used in deciding whether to grant a license or not.<sup>26</sup>

48. Cameroon's licensing practices are even more problematic than its flawed legal framework. As indicated above, the Minister of Communications has systematically refused to grant licenses to private broadcasters in compliance with the 1990 Law and the 2000 Decree. The informal practice of issuing simple authorizations to broadcast at designated frequencies, rather than full-fledged licenses, has no basis in Cameroonian law and cannot therefore be considered a restriction of Article 9 that is "prescribed by law."
49. Secondly, the entity responsible for issuing broadcasting licenses, the Minister of Communication, is not "an independent regulatory body" and is not "adequately protected against interference ... of a political nature." The Minister is a member of the government appointed by the President of the Republic, who is the head of the Executive branch, and serving at the President's pleasure.<sup>27</sup> The 2000 Decree, an executive regulation, grants the Minister unfettered discretion to make licensing decisions. Under the 1990 Law and the 2000 Decree, the Minister is to be advised in making licensing decisions by the National Communication Council and a group of technical experts.<sup>28</sup> The advisory role of the NCC, however, has been unavailable to the Minister for years due to that body's state of paralysis. The technical committee, on the other hand, is made up entirely of representatives of executive agencies who serve in their official capacities and cannot be expected to be independent of the government. In any event, the power to grant licenses rests ultimately with the Minister, and the Minister alone.
50. In view of this arrangement, it is not surprising that the Minister's licensing decisions are, in fact, politically motivated. In the Freedom FM case, in particular, the Minister made it clear to *Le Messager* that they would not be allowed to run a general current affairs radio because of their record

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<sup>26</sup> *Id.*, at 410.

<sup>27</sup> Constitution of Cameroon, art. 10.1.

<sup>28</sup> The group of experts should include one representative of each of the following institutions: the President's Office; the Prime Minister's Office; the ministries responsible for finances, urban planning, telecommunications, civil aviation, territorial administration, justice, defense and labor; the General Representative for National Security; an inter-ministerial group overseeing telecommunications; and the Telecommunications Regulatory Agency. 2000 Decree, art. 13.1.

of critical and independent-minded journalism. On one occasion during the license discussions, Minister Fame Ndongu unambiguously told Complainant Njawè that “Pius Njawè plus Freedom FM equals a Molotov cocktail” in Cameroon. It was this attitude that eventually forced Le Messenger to amend its initial request and apply instead for a Douala-focused urban development radio.

51. Cameroon’s licensing laws and practices leave the broadcasting sector at the mercy of the government. The government has total control over access to the airwaves and is therefore able to influence the content of what is, or what is not, broadcast. Individuals and groups, like Complainants Njawè and Le Messenger, who are likely to be critical or simply independent of the government are denied access. This arrangement is antithetical to a free, independent and pluralistic system of broadcasting, based on the concept of broadcasting as a public good rather than an instrument of government self-promotion. In contrast, most democratic countries leave licensing decisions in the hands of an independent authority that enjoys legal and structural protection from political interference. In South Africa, for example, licenses are awarded by an independent regulatory authority, whose members are appointed by the President, on the advice of the National Assembly.<sup>29</sup> In practice, the National Assembly nominates the members based on the recommendations of an independent panel that interviews candidates in public hearings. The law grants the authority members protection from arbitrary removals and specifically guarantees their independence, “subject only to the Constitution and the law.”<sup>30</sup>
  
52. The German Constitutional Court has held that a law granting a *Land* (state) government unlimited discretion in allocating licenses and frequencies is incompatible with freedom of expression under the German Basic Law. This would open the door to improper state interference with broadcasting content, violating the rights of private broadcasters and undermining the constitutional principles of balance and diversity in programming. The doctrine of broadcasting *Staatsfreiheit* (freedom from state control) required that licenses be awarded by an autonomous entity that must follow detailed statutory guidelines on the vetting of license applications.<sup>31</sup>

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<sup>29</sup> Independent Communications Authority of South Africa Act (No. 13 of 2000), section 5(1); available at [www.icasa.org.za](http://www.icasa.org.za).

<sup>30</sup> *Id.*, secs. 8 and 3(3).

<sup>31</sup> *Fourth Television Case*, note 18 above, at 182-184.

53. Thirdly, the licensing process in Cameroon is neither “fair” nor “transparent,” and fails to ensure “diversity in broadcasting.” In law and in practice, the process suffers from systemic unfairness and arbitrariness. In particular, the legal framework fails to determine the criteria for making licensing decisions; the MinCom systematically fails to act on license applications within the legal deadline or provide any reasons for its refusals to grant licenses; there are strong indications that licensing decisions are politically motivated; and ultimately, refusals or silent refusals to grant licenses are not subject to judicial review.

54. These practices are incompatible with Cameroon’s obligations under the Charter to ensure respect for broadcasting freedom. In *Communication Media Rights Agenda v. Nigeria*, this Commission reviewed the legality under the Charter of a similar registration and licensing regime for the print media. Finding a violation of Article 9, the Commission noted with concern

the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspapers or magazines they chose. This invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9(1).<sup>32</sup>

55. Not unlike the Nigerian case, the MinCom’s total discretion and finality in deciding whether to grant licenses to aspiring broadcasters gives the Cameroonian government the power to control what information and ideas reach the public through the airwaves. Other international human rights bodies have expressed similar concerns about arbitrary licensing practices. Thus, the U.N. Human Rights Committee has criticized Lebanon for its lack of “reasonable and objective criteria for the award of [radio and television] licenses.” The Committee recommended that Lebanon establish an independent licensing authority with the power to grant licenses on the basis of such criteria.<sup>33</sup> In 2000 the Committee expressed concern about the licensing regime in Kyrgyzstan, where an agency attached to the Ministry of Justice had “wholly discretionary power to grant or deny licenses to radio and television broadcasters.”<sup>34</sup> Also in 2000, the Committee of Ministers of the Council of Europe noted

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<sup>32</sup> *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, 31 October 1998, Communication Nos. 105/93, 128/94, 130/94 and 152/96, para. 57.

<sup>33</sup> *Annual Report of the U.N. Human Rights Committee*, September 21, 1997, U.N. Doc. A/52/40.

<sup>34</sup> Concluding Observations on Kyrgyzstan’s Initial Report, July 24, 2000, U.N. Doc. CCPR/CO/69/KGZ, para. 21.

in a recommendation to the member states that the “basic conditions and criteria governing the granting and renewal of broadcasting licenses should be clearly defined in the law.”<sup>35</sup>

56. The government’s direct control over the private entities’ entry into the broadcasting sector deserves the closest scrutiny, especially in view of the critical importance of broadcasting for Africa’s informed citizenries. As the preamble to the 2002 Declaration notes, the broadcast media has a “capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy. ... [O]ral traditions, which are rooted in African cultures, lend themselves particularly well to radio broadcasting.” It is for these reasons that undemocratic governments strive to keep radio and television under close watch, and it is imperative, for those same reasons, that they are forced to open up the airwaves to the widest possible range of freely expressed views.

57. In sum, Cameroon’s licensing laws and practices fail to ensure independence and pluralism of broadcasting and are therefore in violation of Article 9 of the Charter. By the same token, Cameroon has also violated Article 1 of the Convention by virtue of its failure to adopt adequate “legislative or other measures” to give effect to the rights guaranteed by Article 9 in the area of broadcasting.

#### Cameroon Has Violated the Complainants’ Rights Under Article 9 and Article 1 of the Charter

58. Between November 1999 and April 2000 the Complainants’ rights were violated by Cameroon’s effective state monopoly over broadcasting and the government’s attempts to enforce the effective ban on private broadcasting by ordering the closure of Radio Sawa and threatening to prosecute the Complainants.

59. After October 24, 2002, the government treated Le Messenger’s application for the Freedom FM license with bad faith and arbitrariness, despite Freedom FM’s scrupulous compliance with legal procedures. In particular, more than nineteen months after the submission of its license application, Le Messenger has not yet received a formal response or any reasons for the MinCom’s silent refusal to grant them a license. The MinCom’s inaction leaves the Complainants in a legal limbo that constitutes a continuous violation of their rights. Furthermore, by seizing Le Messenger’s equipment and instituting criminal proceedings against the group and its director, the authorities have provided clear indications of their intent to continue to violate the Complainants’ rights.

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<sup>35</sup> Recommendation (2000) 23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, adopted December 20, 2000, Guideline 13.

60. As the Inter-American Court of Human Rights has noted, “freedom of expression requires, in principle, that the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”<sup>36</sup> National and international tribunals have guaranteed such access to all media of mass communication, including in the broadcast sector. In *Benjamin v. Minister of Information and Broadcasting*, the Privy Council reviewed the lawfulness of the suspension of a current affairs radio program by the government of Anguilla.<sup>37</sup> The government claimed that there was no generalized right of access to the radio and therefore the suspension did not infringe upon the free speech rights of the program host or its listeners. The Privy Council rejected that argument, relying in part on the case law of the European Commission of Human Rights, which had held that the “the denial of broadcasting time to one or more specific groups or persons may, in particular circumstances, raise an issue under the [the right to freedom of expression].”<sup>38</sup> The underlying principle was more recently formulated in the *Prolife Alliance* case by Lord Hoffmann of the British House of Lords, who reasoned that Article 10 of the European Convention guaranteed a “right not to have one’s access to [broadcast] media denied on discriminatory, arbitrary or unreasonable grounds.”<sup>39</sup>
61. The facts and issues of the Freedom FM case are very similar to those in *Observer Publications Ltd. v. Matthew*, a case from Antigua and Barbuda on appeal to the Privy Council.<sup>40</sup> *Observer Publications*, a private company, applied for a radio license in March 1995. The Antiguan government claimed first to be considering the application and requested additional information. In June 1995, however, the applicant was told that the government had adopted a policy against licensing private broadcasters, even though it had by that time granted a 25-year license to a private radio managed by the Prime Minister and his family. Considering the government’s policy plainly

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<sup>36</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of November 13, 1985, Series A, No.5 (1985), para. 34.

<sup>37</sup> [2001] 1 WLR 1040 (PC). The Judicial Committee of the Privy Council is the court of final appeal for the United Kingdom’s overseas territories, as well as for a number of Commonwealth countries that continue to recognize its appeal jurisdiction.

<sup>38</sup> *X and Association Z. v. United Kingdom*, 38 C.D. 86 (1971), para. 31.

<sup>39</sup> *R. v British Broadcasting Corporation, ex parte Prolife Alliance* [2003] 2 WLR 1403 (HL), para. 58. The issue in *Prolife Alliance* was one of denial of a private group’s access to already existing media (in this case the public broadcaster). However, the principle established by the quoted national and international jurisprudence, including that of the Inter-American Court and the House of Lords, applies generally to freedom of access to broadcasting.

<sup>40</sup> [2001] UKPC 11.

unlawful, Observer Publications started broadcasting on September 1, 1996. The next day the police served a search and seizure warrant at the radio, switching off its transmitter and seizing its equipment. By the time of the Privy Council hearing in late 2000 the applicants were still being denied a license.

62. The Privy Council noted that, under Antiguan law, a license application could be denied only for technical reasons, such as spectrum saturation. Since no technical or indeed any other reasons had been raised with respect to the application at issue, the denial violated the law and the applicant's constitutionally protected freedom of expression. The Privy Council held that the local courts had erred in finding no constitutional violation:

[The lower court] cited authorities from a number of countries standing for the proposition that no one has a right to a broadcasting license. As a general proposition that is unquestioned. The airwaves are public property whose use has to be regulated and rationed in the general interest. But none of the authorities supports any proposition that a broadcasting license may be refused on grounds inconsistent with the Constitution or without any stated or apparent grounds. ... [T]he right of freedom of communication is at the heart of this case. On the evidence it has been denied without [any constitutional] justification.<sup>41</sup>

Furthermore, the Council held that the seizure of the radio equipment had violated the applicant's constitutional rights to property and freedom from arbitrary searches and seizures: "the constitutional invalidity of the refusal of the company's application for a broadcasting license would itself invalidate the warrant also." The Council ordered that the applicant be granted a broadcasting license, have the seized equipment returned and be allowed to claim damages from the government.<sup>42</sup>

63. The *Observer Publication* rationale is fully applicable in the current case. Like Observer Publications, Le Messenger was denied a license, "without any stated or apparent grounds," for more than nineteen months. Cameroon's failure to ensure consideration of Le Messenger's application by an independent authority, on the basis of clear, politically-blind criteria and transparent procedures established by law constitutes a clear and persistent violation of the Complainants' right to freedom of expression under Article 9.

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<sup>41</sup> *Id.*, at paras 49, 53.

<sup>42</sup> *Id.*, at para. 38, 54.

64. The denial of Le Messenger's license application amounts to prior censorship. While Le Messenger was not automatically entitled to a license, Cameroon's unjustified denial of its application precluded the group's access to broadcasting arbitrarily. Indeed, the MinCom's statements, actions and inactions are equivalent to a clear government policy that, because of its history of critical journalism, Le Messenger will never be granted a radio license. Under these circumstances, the banning of Freedom FM and the seizure of its equipment have essentially the same censorial effect as the shutting down of a print publication or the taking off-the-air of an already operating radio. By denying Le Messenger access to radio in a discriminatory and arbitrary fashion, Cameroon has impermissibly prevented them from participating in the "marketplace of ideas" through the airwaves. This amounts to prior restraint of legitimate communication.

65. Courts all over the democratic world have looked at prior restraints as the most insidious form of government interference with freedom of expression. It has indeed been noted that "it is the chief purpose of the guaranty [of free expression] to prevent previous restraints upon publication."<sup>43</sup> The United States Supreme Court eloquently described the exceptional nature of the threat posed by prior restraints in *Nebraska Press Association v. Stuart*:

[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on [the right to freedom of expression]. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. ... A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time.<sup>44</sup>

66. It is for these reasons that national and international courts have insisted that prior restraint is immediately suspect and can be sustained only in the most exceptional circumstances. In the renowned *Pentagon Papers* case, the U.S. Supreme Court established that "any system of prior restraints of expression [bears] a heavy presumption against its constitutional validity" and that the government had to meet the "heavy burden of showing justification for the imposition of such a restraint."<sup>45</sup>

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<sup>43</sup> *Near v. Minnesota*, 283 U.S. 697, at 713 (1931) (U.S. Supreme Ct.).

<sup>44</sup> 427 U.S. 539, at 559 (1976).

<sup>45</sup> *New York Times Co. v. United States*, 403 U.S. 713, *per curiam*, at 714 (1971).

67. The ECHR established a similar doctrine in the *Spycatcher* case:

[T]he dangers inherent in prior restraints are such that they call for the most careful scrutiny ... This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest.<sup>46</sup>

Furthermore, the ECHR has specifically recognized that the unjustified denial of registration to a periodical amounts to prior restraint if registration is a condition for publication.<sup>47</sup>

68. The principles summarized above have been primarily developed in the context of prior restraints imposed on print media and other publications. However, their underlying rationale is fully applicable to broadcasting. The common thread of the freedom of broadcasting jurisprudence referred to above -- including, among others, the *Benjamin* and *Observer Publications* judgments of the Privy Council -- is that a government should not be able to arbitrarily deny the citizenry access to the airwaves any more than it can "freeze" expression in print or other traditional forms of communication. Broadcasting is too essential a part of the modern "marketplace of ideas" to leave control of its gates to the unchecked discretion of government officials. Arbitrary licensing is to freedom of broadcasting what blue-penciled censoring is to freedom of the press. Cameroon's prior censoring of *Le Messenger* is arbitrary and hence a most serious and persistent violation of Article 9.

#### **Violation of Article 14 (Right to Property) of the Charter**

69. Article 14 guarantees the right to property. Any encroachments must be "in the interest of the public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

70. In addition to preventing the Complainants from operating the radio, the sealing off of the Freedom FM equipment has deprived them of their right to have access to, maintain and dispose of their property. In the meantime, the radio equipment, which is sensitive to humidity and other climate

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<sup>46</sup> *Observer and Guardian v United Kingdom*, 14 E.H.R.R. 84 (1991), para. 152.

<sup>47</sup> *Gaweda v. Poland*, Judgment of March 14, 2002, Application No. 26229/95. The ECHR held in this case that a registration regulation, as interpreted by the Polish courts, allowed for prior restraints on publication that were not "prescribed by law," in the meaning of Article 10.2 of the European Convention.

conditions, is likely to have suffered persistent deterioration due to the Complainants' inability to maintain it in appropriate conditions. In addition, Le Messenger continues to pay rent on the sealed premises where the equipment is located. The sealing of the radio equipment and the premises constitutes therefore a clear encroachment on the Complainants' right to property.

71. In *Media Rights Agenda v. Nigeria*, this Commission concluded that the sealing of the premises of several publications without due process by the Nigerian government violated Article 14 of the Charter:

Those affected were not previously accused in a court of law, of any wrongdoing. The right to property necessarily includes a right to have access to property of one's own and the right not for one's property to be removed. The Decrees which enabled these premises to be sealed up and for publications to be seized cannot be said to be "appropriate" or in the interest of the public or the community in general.<sup>48</sup>

72. The sealing of Le Messenger's equipment was similarly done in accordance with no "appropriate laws" and without any due process of law. As the Privy Council ruled in *Observer Publications*, the unlawful denial of the license renders any measures aimed at enforcing the ban equally unlawful. Furthermore, the authorities had no reason to seize the equipment because Freedom FM had not started broadcasting and clearly expressed its intention not to do so until the issue of the license was resolved. Under the circumstances of the continued violation of the Complainants' rights under Article 9, the persistent deterioration of the equipment and Le Messenger's continuing obligations to pay rent for the sealed premises, as well as the failure of the Cameroonian courts to resolve the matter with the promptness it requires, the continued seizure of the equipment and premises amounts to an unreasonable and disproportionate encroachment upon the Complainants' right to property. At the same time, it constitutes a separate violation of Article 9 that is corollary to the violation perpetrated through the arbitrary denial of Le Messenger's license application.

### **Violation of Article 2 (Non-discrimination) of the Charter**

73. Article 2 guarantees the enjoyment of the Charter provisions, including freedom of expression, "without distinction ... of political or other opinion." The Cameroonian authorities have violated the Complainants' rights under Article 2 by rejecting their application for the Freedom FM license on the specific basis that they would not be allowed to operate a current affairs radio that would cover and comment on the general socio-political developments in the country. The Minister of Communication

specifically hinted at Pius Njawè's political and professional background as a reason for refusing to license Freedom FM. The MinCom has ultimately refused to grant the Complainants a license even for a radio that would primarily cover urban development issues. In view of these facts, which create a strong presumption of political bias, it is incumbent upon the Cameroonian authorities to prove that their decisions were not politically motivated.


#### **OBJECT OF THE COMMUNICATION**

74. In conclusion, and for the reasons outlined above, we respectfully request that the Commission:

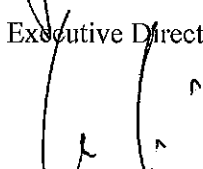
- a. hold that Cameroon's laws and practices on licensing of private broadcasters, as well as its silent refusal to grant Le Messenger a radio license, violate Article 9 and Article 1 of the Charter;
- b. hold that Cameroon has violated the Complainants' right to property under Article 14 of the Charter;
- c. hold that Cameroon has violated the Complainants' right under Article 2 of the Charter to enjoy freedom of expression without being subjected to politically-motivated discrimination;
- d. request that Cameroon bring its broadcasting laws and practices in conformity with Article 9 of the Charter and this Commission's Declaration of Principles on Freedom of Expression in Africa; and
- e. request that Cameroon pay appropriate compensation to the Complainants for the multiple violations of their Charter rights and freedoms.

We remain ready to provide any clarifications the Commission may require.

Respectfully submitted,



James A. Goldston  
Executive Director



Darian K. Pavli  
Legal Officer

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<sup>48</sup> *Media Rights Agenda v. Nigeria*, note 32 above, para. 77.

**ANNEX:  
LIST OF DOCUMENTS**

Enclosed are copies of the following documents, in French original, unless otherwise indicated:

**Legislation**

1. Law on Freedom of Social Communication (no. 90/052 of December 19, 1990)
2. Decree 2000/158 of April 3, 2000

**Documents related to the Freedom FM case**

3. Cover letter of Le Messenger's license application to the MinCom (date stamped December 18, 2002)
4. Letter of Le Messenger to MinCom's Delegate for the Littoral Province, informing the Delegate that Freedom FM was about to begin testing its equipment (dated April 23, 2003)
5. Decision no. 023 of the Minister of Communication imposing the ban on Freedom FM (dated May 21, 2003)
6. Letter of Le Messenger to the MinCom requesting the unsealing of the equipment (dated June 26, 2003)
7. Bailiff's certified report (*procès verbal de constat d'huissier*) regarding the conditions of the sealed premises (dated July 3, 2003)
8. Letter of the Government Delegate for the City of Douala to the Minister of Communication, informing him of the City's support for the City FM application (dated August 19, 2003)
9. Summons (*assignation*) to the Provincial Delegate for National Security in the interim measures proceedings (*refere d'heure a heure*) initiated by Le Messenger (dated September 4, 2003)
10. Criminal action (*citation directe*) brought by the Minister of Communication against Pius Njawe and Le Messenger (dated November 13, 2003)
11. Letter of Mr. Njawe's attorney to the Minister of Communication requesting that the MinCom notify Le Messenger of its overdue decision regarding the license application (dated May 24, 2004)
12. Statements of media freedom groups regarding the Freedom FM and similar cases (May-December 2003) (in English)
13. Photographs of Freedom FM's sealed premises (taken April 9, 2004)
14. Decision no. 012 of the Minister of Communication assigning frequencies (without granting licenses) to several radio stations in Yaounde and Douala (dated May 27, 2003)