

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
Forty-Fifth Ordinary Session
13-27 May 2009

KEVIN MGWANGA GUNME ET AL

V.

CAMEROON

DECISION

BEFORE:CHAIRPERSON: Sanji Mmasenono Monageng
COMMISSIONERS: Catherine Dupe Atoki, Musa Ngary Bitaye, Reine Alapini-
Gansou, Soyata Maiga, Mumba Malila, Bahame Tom Mukirya Nyanduga,
Kayitesi Zainabo Sylvie, Pansy Tlakula; Yeung Kam John Yeung Sik Yuen

Citation: Mgwanga Gunme v. Cameroon, Comm. 266/2003, 26th ACHPR AAR Annex
(Dec 2008 – May 2009)

SUMMARY OF FACTS

1. The Complainants are 14 individuals who brought the communication on their behalf and on behalf of the people of Southern Cameroon [FN1] against the Republic of Cameroon, a State Party to the African Charter on Human and Peoples' Rights.

[FN1] The use of the term "Southern Cameroon" in this Communication is not intended to confer any legal status or recognition. The words "Southern Cameroon" describe the territory of the Respondent State where violations are alleged to have occurred. Unless otherwise expressly stated, the terms, "Southern Cameroonians," "Anglophones," or "Francophones" describe the people said to occupy the two parts of the Republic of Cameroon, which were prior to 1st January 1961 either English or French administered UN Trust territories respectively, organised to determine the political future of Southern Cameroon, and the failure by the Respondent State to abide by the 1961 federal constitutional.

2. The Complaints allege violations which can be traced to the period shortly after "La

Republique du Cameroun" became independent on 1st January 1960. The Complainants state that Southern Cameroon was a United Nations Trust Territory administered by the British, separately from the Francophone part of the Republic of Cameroon, itself a French administered United Nations Trust Territory. Both became UN Trust Territories at the end of the 2nd World War, on 13 December 1946 under the UN Trusteeship system.

3. The Complainants allege that during the 1961 UN plebiscite, Southern Cameroonians were offered "two alternatives", namely: a choice to join Nigeria or Cameroon. They voted for the later. Subsequently, Southern Cameroon and La Republique du Cameroun, negotiated and adopted the September 1961 federal constitution, at Foumban, leading to the formation of the Federal Republic of Cameroon on 1st October 1961. The Complainants allege further that the UN plebiscite ignored a third alternative, namely the right to independence and statehood for Southern Cameroon.

4. The Complainants allege that the overwhelming majority of Southern Cameroonians preferred independence to the two alternatives offered during the UN plebiscite. They favoured a prolonged period of trusteeship to allow for further evaluation of a third alternative. They allege further that the September 1961 federal constitution did not receive the endorsement of the Southern Cameroon House of Assembly.

5. The Complainants allege that the violations suffered by the people of Southern Cameroon emanate from the UN plebiscite of 11 February 1961

6. They allege that on 1st October 1961 La Republique du Cameroun, with the tacit approval of the British government, drafted gendarmes, police and soldiers from the Francophone side into Southern Cameroon, which amounted to "forceful annexation" of Southern Cameroon. They allege that, "[a]t no time was sovereignty over Southern Cameroon transferred to a new Federal United Cameroons or any other entity." They argue that the failure to exercise the third alternative, impacted negatively on the right of the people of Southern Cameroon to self determination.

7. The Complainants allege further that "notwithstanding the forceful annexation," the people of Southern Cameroon remained a separate and distinct people. Their official working language is English, whereas the people in La Republique du Cameroun are Francophones. The legal, educational and cultural traditions of the two parts remained different, as was the character of local administration. In spite of the foregoing, they allege further that the Respondent State manipulate demographic data to deny the people of Southern Cameroon equal rights to representation in government. They allege that the people of Southern Cameroon have been denied powerful positions within the national/federal government. They claim that the September 1961 federal constitution was designed to respect those differences.

8. The Complainants allege further that from the outset of unification in 1961, and the declaration of a unitary state in 1972, Southern Cameroonians remain marginalised. They allege that Southern Cameroon was allocated 20% instead of 22% of the seats in the Federal/National Assembly, as per the population ratio, thus denying them equal representation. They allege that in 1961 West Cameroon was allocated 20 representatives in the Federal Assembly instead of 26. Later when representation to the Assembly was expanded to 180 representatives, West Cameroon was allocated 35 representatives, instead of 40 representatives. The Complainants allege further that the Francophones occupy local

administrative positions in Southern Cameroon, and abuse their positions to amass land, and access economic resources, while the Southern Cameroonians play the minutest role at the local or national level.

9. It is further alleged that several towns in Southern Cameroon were denied basic infrastructure, hence denying them the right to development. It is alleged that the Respondent State, relocated or located various economic enterprises and projects, such as the Chad - Cameroon Oil Pipeline, the deep seaport, and the oil refinery to towns and cities in Francophone Cameroon, notwithstanding their lack of economic viability, thereby denying employment opportunities and secondary economic benefits to the people of Southern Cameroon.

10. The Complainants allege further that the Francophones have monopolistic control of the Ministry of National Education. That the Respondent State has under funded primary education in Southern Cameroon, it failed to build new schools, understaffed primary schools, and it is closing all teacher training colleges. They allege further that the Respondent State "Cameroonised" the GCE from the University of London, leading to mass protests which forced government to create an independent GCE Board. That, upon unification, diplomas awarded by the City & Guild, a technical education institution based in England, were replaced by the Certificat d'Aptitude Professionale (CAP) and the BAC Technique. These measure have resulted in persistent high levels of illiteracy in many areas in Southern Cameroon.

11. The Complainants allege that political unification and the application of the civil law system resulted in the discrimination against Anglophones in the legal and judicial system. Southern Cameroonian companies and businesses were forced to operate under the civil law system. The Companies Ordinance of the Federation of Nigeria, which was until then applicable in Southern Cameroon was abolished. Many Southern Cameroonian businesses went bankrupt, following the refusal by Francophone banks to lend them finances, in some cases, unless their articles of association were drafted in French.

12. They allege that Anglophones facing criminal charges were transferred to the Francophone zone for trial, under the Napoleonic Code, thereby adversely affecting their civil rights. The Complainants state that the common law presumption of innocence upon arrest is not recognised under the civil law tradition, since guilt is presumed upon arrest and detention. The courts conduct trial in the French language without interpreters. Furthermore, they allege that Southern Cameroon court decisions are ignored by the Respondent State.

13. The Complainants allege that the entry by the Respondent State as a State Party to the Organisation pour l'Harmonisation des Droits d'Affaires en Afrique (OHADA), a treaty for the harmonisation of business legislation amongst Francophone countries in Africa, constituted discrimination against the people of Southern Cameroon on the basis of language. OHADA stipulates that the language of interpretation of the treaty shall be French. The Complainants argue that the Constitution recognises English and French as the official languages of Cameroon. They argue therefore that by signing the OHADA treaty, Cameroon violated the language rights of the English speaking people of Cameroon. They allege that any company not registered under the OHADA law cannot open a bank account in Cameroon.

14. The Complainants allege further that, on 3rd April 1993, representatives of the people of

Anglophone Cameroon adopted the Buea Declaration, which declared the preparedness of the Anglophones "... to participate in the forthcoming Constitutional talks with their Francophone brothers...." The Declaration stated that;

(i) "...the imposition of the Unitary State on Anglophone Cameroon in 1972 was unconstitutional, illegal and a breach of faith,"

(ii) "That the only redress adequate to right the wrongs done to Anglophone Cameroon and its people since the imposition of the Unitary state is a return to the original form of government of the Reunified Cameroon,

(iii) That to this end, all Cameroonians of Anglophone heritage are committed to working for the restoration of a federal Constitution and a federal form of government, which takes cognizance of the bicultural nature of Cameroon and under which citizens shall be protected against such violations as have been enumerated.

(iv) That the survival of Cameroon in peace and harmony depends upon the attainment of this objective towards which all patriotic Cameroonians, Francophones as well as Anglophones, should relentlessly work."

15. Subsequent to the 1993 Buea Declaration, it is alleged that between 29th April and 1st May 1994, the Second Anglophone Conference convened in Bamenda adopted the Bamenda Proclamation, which stated, inter alia, that:

"...one year since the Anglophone constitutional proposals were officially submitted, the government had not reacted to them;

that all efforts to generate the interest and understanding of the Francophone officials and Francophone public generally in the Anglophone constitutional proposals had been greeted with responses ranging from indifference through apathy to hostility....."

IN THE LIGHT OF THE FOREGOING the Anglophone people of Cameroon.....;reiterated the Resolution taken at its first session in April 1993..... It stated further in paragraph 6 of the Proclamation that;

"6. Should the Government either persist in its refusal to engage in meaningful constitutional talks or fail to engage in such talks within a reasonable time, the Anglophone Council shall inform the Anglophone people by all suitable means. It shall, thereupon, proclaim the revival of the independence and sovereignty of the Anglophone territory of Southern Cameroon and take all measures necessary to secure, defend and preserve the independence, sovereignty and integrity of the said territory." (emphasis added)

16. The Complainants allege that the failure by the Respondent State to address the concerns of the Southern Cameroon people for a new constitution, coupled with the adoption of the 1995 December Constitution by the National Assembly of La Republique du Cameroun without public debate, meant that the door was being finally closed on any future constitutional links between the Southern Cameroon and La Republique du Cameroun. Henceforth, the Complainants decided to conduct a signature referendum, in view of "the hostile atmosphere created by the occupying power.....which would not want to allow any form of consultation which might reveal the true suppressed aspirations of the people of

Southern Cameroons."

17. The Complainants aver that between 1st and 30th September 1995, the Southern Cameroons National Council (SCNC) conducted a signature referendum which revealed that 99% of Southern Cameroonians favour full independence by peaceful separation from the Respondent State.

18. Besides their claim for statehood, the Complainants allege further that human rights of various individuals have been systematically violated by the Respondent State. The Complainants compiled eye witness accounts and field investigations relating to arbitrary arrests, detentions, torture, punishment, maiming and killings of persons who have advocated for the self determination of Southern Cameroon.

COMPLAINT

19. The Complainants allege that;

(i) Articles 2, 3, 4, 5, 6, 7(1), 9, 10, 11, 12, 13, 17(1), 19, 20, 21, 22, 23(1), 24 of the African Charter have been violated.

(ii) the Republic of Cameroon has violated its general duty under in Article 26 of the African Charter to guarantee the independence of the judiciary.

PROCEDURE

20. The complaint was received at the Secretariat of the African Commission on 9th January 2003.

21. On 10 January 2003, the Secretariat acknowledged receipt of the complaint.

22. On 19 January 2003, the Secretariat wrote another letter to the Complainants requesting for further information relating to the communication.

23. On 21 April 2003, the Secretariat sent a reminder to the Complainants requesting them to forward their clarifications. By a letter dated 8 May 2003, Counsel for the Complainants sent the clarifications sought by the Secretariat.

24. At its 33rd Ordinary Session held from 15 - 29 May 2003 in Niamey, Niger, the African Commission considered the communication and decided to be seized of the matter.

25. On 9 June 2003, the Secretariat informed the parties that the African Commission had been seized with the matter and requested them to forward their submissions on admissibility within 3 months.

26. On 9 September 2003, the Complainants informed the Secretariat that they would be forwarding their submissions on admissibility and requested to make oral submissions at the 34th session of the African Commission.

27. On 22 September 2003, the Secretariat received the Complainant's submissions on admissibility along with supplemental evidence. The Secretariat acknowledged receipt

thereof on the same day.

28. On 3 October 2003, the Respondent State informed the Secretariat that it had not received a copy of the communication forwarded to it by DHL on 9th June 2003.

29. On 6 October 2003, the Secretariat wrote to the Complainant requesting for another copy of the supplemental evidence to be forwarded to the Respondent State.

30. On 27 October 2003, the Secretariat transmitted a copy of the Complainant's submissions on admissibility to the Respondent State and informed the latter that the Secretariat would give the accompanying documents to the delegation of Cameroon attending the 34th Ordinary Session. The Secretariat also informed the Respondent State that the DHL office in Cameroon had confirmed delivery of the communication.

31. On 27 October 2003, the Secretariat received another copy of the supplemental evidence from the Complainant for onward transmission to the Respondent State. The Secretariat acknowledged receipt of the same.

32. At its 34th Ordinary Session held from 6th to 20th November 2003 in Banjul, The Gambia, the African Commission examined the matter and decided to defer consideration on admissibility of the matter to the 35th Ordinary Session because the Respondent State claimed that they were unaware of the communication.

33. On 14 November 2003, the Secretariat furnished the delegates representing the Respondent State at the 34th Ordinary Session with the following documents:

i. A copy of communication 266/2003

ii. A copy of the Complainants' submissions on admissibility and the accompanying documents

34. On 4 December 2003, both parties to the communication were informed of the decision of the African Commission to defer consideration of the matter on admissibility to the 35th Ordinary Session. The Respondent State was reminded to forward its submissions on admissibility to the Secretariat of the African Commission within 3 months.

35. On 5 March 2004, the Secretariat of the African Commission received the Respondent State's submissions on admissibility and acknowledged receipt of the same on 9 March 2004.

36. At its 35th Ordinary Session held in Banjul, The Gambia, from 21 May - 4 June 2004, the African Commission heard the oral submissions of the parties, and declared the communication admissible.

37. On 15 June 2004, the Secretariat informed the parties about the African Commission's decision and requested them to submit their written submissions on the merits within 3 months.

38. On 13 August 2004, the Secretariat of the African Commission received a correspondence from the Respondent State, which was forwarded to the complainant on 26

August 2004.

39. On 20 September 2004, the Secretariat received the written submissions of the Respondent State on merits, which was transmitted to the Complainants on 12 November 2004.

40. On 23 and 28 September 2004, the Secretariat received the written submissions of the Complainants on the merits, which was transmitted to the Respondent State on 12 November 2004.

41. At its 36th Ordinary Session held in Dakar, Senegal from 24 November - 7 December 2004, the African Commission decided to defer its consideration on the merits to the next session. It also rejected an application to stay the proceedings by third parties purporting to represent the applicants claiming to have entered into negotiation with the Respondent State.

42. On 23 December 2004, the Secretariat wrote to the said third parties informing them of this decision.

43. The Commission also decided to forward the decision on admissibility of the communication to the Respondent State, upon its request.

44. On 30 March 2005, the Secretariat received further submissions from the Complainants, who also requested to make oral presentation to the next session.

45. On 31 March 2005, the Secretariat handed over copies of the decision on admissibility and the various submissions from the Complainants to the delegation of the Respondent State that visited the Secretariat on the same date.

46. At the 37th Ordinary Session held in Banjul, The Gambia, from 27 April - 11 May 2005, the African Commission considered this communication and decided to defer its decision to the 38th Ordinary Session.

47. On 7 May 2005, the Secretariat informed the Respondent State of this decision.

48. The Complainants were notified of the decision on 13 May 2005.

49. On 7 June 2005, the Secretariat received submissions from the complainant, which were sent to the Respondent State.

50. On 12 July 2005, the Secretariat received submissions from the Respondent State, which were later sent to the complainant.

51. At the 38th Ordinary Session held from 21 November - 5 December 2005 in Banjul, The Gambia, the African Commission considered the communication and deferred its decision on the merits to the 39th Ordinary Session.

52. On 30 January 2006, the Secretariat informed the Respondent State of this decision.

53. The Complainants were notified of this decision on 5th February 2006.

54. At the 39th Ordinary session held in Banjul, The Gambia, from 11 - 25 May 2006, the African Commission considered the communication and decided to defer it for further consideration at the 40th Ordinary Session.

55. At the 40th Ordinary session held in Banjul, The Gambia from 14 - 28 November 2006, the African Commission considered the communication and decided to defer its decision on the merits to the 41st Session.

56. At the 41st Ordinary Session held in Accra, Ghana, from 16 - 30 May 2007 the Commission considered the communication and deferred its decision to allow more time for the Secretariat to conduct further research and finalise the draft decision.

57. At the 42nd Ordinary session held in Brazzaville, Congo, from 14 - 28 November 2007, the African Commission considered the communication and decided to defer it for further consideration at the 43rd Ordinary Session.

58. At the 43rd Ordinary Session held in Ezulwini, Swaziland, from 7 - 22 May 2008, the African Commission considered the communication and decided to defer its decision on the merits to the 44th Ordinary Session.

59. At the 44th Ordinary Session held in Abuja, Nigeria, from 10 - 24 November 2008, the African Commission considered the communication and decided to defer it to the 45th Ordinary Session in order to finalise the draft decision on the merits.

60. During the 6th Extra Ordinary session held from 28 March - 3 April 2009 in Banjul, The Gambia, the Commission considered the communication and resolved to finalise it during the 45th Ordinary Session.

61. At the 45th Ordinary Session held in Banjul, The Gambia, between 13 and 27 May 2009, the Commission adopted the decision on the merits of the communication.

LAW

ADMISSIBILITY

62. The admissibility of communications brought pursuant to Article 55 of the African Charter is governed by the conditions stipulated in Article 56 of the African Charter. This Article lays down seven (7) conditions, which must be fulfilled by a Complainant for a communication to be declared admissible.

63. Of the seven conditions, the Respondent State claims that the Complainants have not fulfilled four, namely: Article 56(1), (2), (3) and (4). From the submissions of the Respondent State, there is an inference that Article 56(7) has not been fulfilled by the Complainant.

64. The Respondent State submits that contrary to Article 56(1) of the African Charter, the victims of the alleged violations, indicated in the communication have not been identified.

65. Article 56(1) of the African Charter provides that:

"Communications ... received by the Commission shall be considered if they: (1) Indicate their authors even if the latter request anonymity."

66. In this particular matter, the African Commission notes that the authors of the communication have been identified at page 1 of the communication and they are 14 in number. Their ages and professions have also been given as well as their addresses of service. Furthermore, the communication reveals that the authors of the communication are members of the Southern Cameroons National Council (SCNC) and the Southern Cameroons Peoples' Organization (SCAPO), organisations that were established principally to protect and advance the human and peoples' rights of Southern Cameroonians, including their right to self-determination.

67. Article 56 (1) of the African Charter requires a communication to indicate its authors and not the victims of the violations. Thus the present communication cannot be declared inadmissible on the basis of Article 56(1). In coming to this decision, the African Commission would like to refer to its decision in consolidated communication – Malawi African Association et al/ Mauritania [FN2] where it held that "Article 56(1) demands simply that communications should indicate the names of those submitting and not those of all the victims of the alleged violations".

[FN2] Consolidated Communications 54/91, 61/91, 98/93, 164/97 & 196/97, 210/98 – Malawi African Association, Amnesty International, Ms Sarr Diop, Union Inter africaine des Droits de l'Homme and RADDHO, Collectif des Veuves et Ayants Droit, Association Mauritanienne des Droits de l'Homme/Mauritania.

68. The Respondent State argues that this communication does not meet the requirements of Article 56(2), because the Complainants are advocating for secession under the pretext of allegations of violation of the provisions of the African Charter and other universal human rights instruments. While conceding that the right to self determination is an inalienable right, the Respondent State argues that the UN has established that this right should not "be interpreted as authorising or encouraging any measure that would partly or wholly compromise the entire territory or the political unity of sovereign and independent States". The Respondent State submits further that it is established that the only entities likely as peoples to call for the external right to self determination from pre-existing States are the "peoples under foreign subjugation, domination and exploitation".

69. The Complainants argue that the communication meets the requirements in Article 56(2) because it alleges violations of the African Charter and other international human rights instruments.

70. Article 56(2) provides that "Communications ... received by the African Commission shall be considered if they:

(2) are compatible with the Charter of the Organisation of African Unity or with the present Charter."

71. The condition relating to compatibility with the African Charter basically requires that:

The communication should be brought against a State party to the African Charter [FN3];

The communication must allege prima facie violations of rights protected by the African Charter [FN4];

The communication should be brought in respect of violations that occurred after State's ratification of the African Charter, or where violations began before the State Party ratified the African Charter, have continued even after such ratification.[FN5]

[FN3] Communication 2/88 – Iheanyichukwu A. Ihebereme/United States of America

[FN4] Communication 1/88 – Frederick Korvah/Liberia

[FN5] Communication 97/93 (2) – John K. Modise/Botswana

72. It is apparent to the African Commission that the present communication meets all the above requirements. The communication has been brought against Cameroon, which is State party to the African Charter. It reveals prima facie violations of the African Charter, all of which are alleged to have continued to occur following Cameroon's ratification of the African Charter.

73. The Respondent State also submits that the communication has been written in disparaging or insulting language. The Respondent State argues that the Complainants' use of the phrases such as "forceful annexation" and "State sponsored terrorism" to characterise violations by the government of Cameroon against the people of Southern Cameroons, allegedly committed between 1961 and 2002 and a report titled "Let My People Go Part II", are disparaging and insulting language, contrary to Article 56 (3), of the African Charter.

74. Article 56(3) of the African Charter provides that:

Communications ... received by the Commission shall be considered if they :

(3) Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity.

75. The African Commission acknowledges that the above-mentioned provision is quite subjective because statements that could be disparaging or insulting to one person may not be seen in the same light by another person. Matters relating to human rights violations normally elicit strong language from the victims of the said violations. Nonetheless Complainants should endeavour to be respectful in the phrases they choose to use when presenting their communications.

76. The Respondent State submits further that the Complainants are not the sole authors of some of the documents and that the facts have been distorted.

77. The Complainants submit that they did not author the offensive publication, but rely on it to buttress their allegations. They argue further that the communication is not based exclusively on news disseminated through the media. They state that the evidence in support of their allegations is based on eye-witness accounts and documents prepared by those who have personal knowledge of the events and from official Records.

78. Article 56(4) of the African Charter provides that:

Communications ... received by the Commission shall be considered if they: (4) are not based exclusively on news disseminated through the mass media

79. The African Commission has perused the appendices to the communication and has observed that they contain the following documents :

a. Appendix II is a publication by SCNC/SCAPO – Let my People Go!

b. Appendix IV contains court documents, namely a motion on notice, 2 affidavits, originating summons, a ruling of the Federal High Court of Nigeria in Abuja, terms agreed by the parties to be embodied in the order of the court and an enrolment of order.

c. Exhibit SC contains among others numerous documents, declarations, agreements between Germany and Great Britain, UN General Assembly Resolutions, the Statute of the International Court of Justice and the UN Charter, a Petition made by the Federal Republic of Southern Cameroons to the United Nations etc.

80. Article 56(4) relates to communications brought before the African Commission based exclusively on news disseminated through the mass media. Looking at the nature of documents described herein above, it is quite clear that the Complainants do not base their case on mass media news, but on official records and documents, as well as international statutes. This clearly falls outside the ambit of Article 56(4).

81. With respect to Article 56(5), which relates to exhaustion of local remedies, the Complainants submits that there are no local remedies to exhaust in respect of the claim for self-determination because this is a matter for an international forum and not a domestic one. They argue that the issue for determination in this communication is whether or not the "union" of La République du Cameroun and Southern Cameroons was effected in accordance with UN Resolutions, International Treaty obligations and indeed International law. They assert that the right to self determination is a matter that cannot be determined by a domestic court.

82. The Respondent State concedes that no local remedies exist with respect to the claim for self determination. The Respondent State, however argues that, the right to self determination for the people of Southern Cameroon was solved when the British Trusteeship over British Cameroon ended following the plebiscite of 11th and 12th February 1961. Furthermore, it argues that the 1963 International Court of Justice (ICJ) decision in the Northern Cameroon case found in favour of the Republic of Cameroon and put the matter of Southern Cameroon to rest. The Respondent State believes that the Complainants are seeking a similar declaratory decision which should not be entertained by the African Commission.

83. The African Commission believes that this argument is an inference by the Respondent State that the Complainants have not met the conditions laid down in Article 56(7) of the African Charter. Article 56(7) provides :

Communications ... received by the African Commission shall be considered if they:

(7) do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.

84. Article 56(7) of the African Charter bars the African Commission from entertaining cases that have been settled by another international settlement procedure.[FN6] The issue that the African Commission needs to examine is whether the abovementioned complaint has been settled by some other international settlement procedure.

[FN6] Communication 15/88 – Mpaka-Nsusu Andre Alphonse/Zaire.

85. The African Commission has read the judgment of the ICJ in the Northern Cameroons case [FN7]. In that case the Government of the Republic of Cameroon asked the Court to declare whether, "in the application of the Trusteeship Agreement for the Territory of the Cameroons under the British Administration, the United Kingdom failed, with regard to the Northern Cameroons, to respect certain obligations flowing from that Agreement." [FN8]

[FN7] Cameroon v United Kingdom – judgement of 2nd December 1963

[FN8] Ibid

86. It is the view of the African Commission that the matter before the ICJ was unrelated to the issues before the African Commission. The African Commission states that for a matter to fall within the scope of Article 56(7) of the African Charter it should have involved the same parties, the same issues, raised by the complaint before the African Commission, and must have been settled by an international or regional mechanism. The case before the ICJ was between the Republic of Cameroon and the United Kingdom, and involved the interpretation and application of the Trusteeship treaty. These facts clearly differ from the complaint before the Commission. As such the case falls outside the scope of Article 56(7) of the African Charter.

87. For the reasons outlined herein above, the African Commission declares this communication admissible.

Preliminary issue raised by the Respondent State regarding the jurisdiction of the African Commission;

88. Before dwelling on the substance of the allegations, the Commission wishes to dispose of some preliminary legal issues raised by the Respondent State. The Respondent State questions the Commission's jurisdiction *rationae temporis*, and states the following:

"...the complaint by the complainants contains an impressive number of cases of so called massive violations of human rights which alleged to have been carried out between 1961 and 2002. In this regard, the State of Cameroon refuses to acknowledge in *limine litis* the jurisdiction *rationae temporis* of the Commission with regard to acts before 18 December 1989, the date of entry into force of the Charter."

89. The Respondent State also challenged the notion, or the existence of a territory known as "Southern Cameroon." It states as follows:

"...it should be pointed out that in spite of the fact that the complainants refused to reveal their identities, they by no means ascertained to have been victims[FN9] of violations imputed to the State of Cameroon. And even when they act on behalf of a so called territory called Southern Cameroon, the State of Cameroon will point out that no territory exists called as such in the Republic of Cameroon...'

[FN9] The issue whether or not a complainant needs to be a victim in order to submit a communication before the Commission is addressed, in para 62 hereinabove, when discussing Article 56 (1) of the African Charter.

90. The Respondent State, similarly, questions the existence of a "people" known as "Southern Cameroonians" and as such states that,

"...[s]upposing that there are a people of Southern Cameroons, nevertheless, it would have to be proven that it is entitled to claim its self determination, under the specific form of "separate statehood"

91. The Commission proposes to deal, firstly, with the question of its jurisdiction then the question whether the people of "Southern Cameroon" exist as a "people," and whether the territory otherwise referred to as "Southern Cameroon" does exist, and if it does, can its "people" exercise their alleged "right to self-determination?"

DECISION ON THE PRELIMINARY ISSUE OF THE COMMISSION'S JURISDICTION RATIONAE TEMPORIS

92. The Respondent State raises objection to the Commission's exercise of jurisdiction rationae temporis. The Complainants responded that although those violations were carried out before the African Charter came into force for Cameroon, they did not stop even after 18 December 1989.

93. The Commission acknowledges the Respondent State's argument that its jurisdiction rationae temporis is limited in limine, and as such it cannot address violations retrospective the entry into force of the Charter. The Commission is aware that the Africa Charter entered into force in respect of the Respondent State on 18 December 1989. The Commission has been informed by the Complainants that some of the alleged violations occurred before that date.

94. The Commission stated its position on this principle in Communication 97/93, John K. Modise v. Botswana. In that communication the complainant was arrested by the Botswana authorities in 1978 and deported to apartheid South Africa, in violation of his citizenship rights. The communication was filed in 1993. The Commission held that:

"The Republic of Botswana ratified the African Charter on 17 July 1986. Although some of the events described in the communication took place before ratification, their effects

continue to the present day. The current circumstances of the complainant are a result of a present policy decision taken by the Botswana government against him."

95. The Commission expanded the principle further in its decision on the Consolidated Communications Nos 54/91 Malawi African Association, et al v. Mauritania, where it, *inter alia*, considered an allegation of violations of the right to a fair trial. The Commission held that:

"Mauritania ratified the Charter on 14 June 1986, and it came into force on 21 October 1986. The September trials, thus took place prior to the entry into force of the Charter. These trials led to the imprisonment of various persons. The Commission can only consider a violation that took place prior to the entry into force of the Charter if such a violation continues or has effects which themselves constitute violations after the entry into force of the Charter..." [FN10]

[FN10] § See Paragraph 91 of the decision.

96. The Commission has through its jurisprudence established the principle that violations that occurred prior to the entry into force of the Charter, in respect of a State party, shall be deemed to be within the jurisdiction *rationae temporis* of the Commission, if they continue, after the entry into force of the Charter. The effects of such violations may themselves constitute violations under the Charter. In other words, this principle presupposes the failure by the State party to adopt measures, as required by Article 1 of the Africa Charter to redress the violations and their effects, hence failing to respect, and guarantee the rights

97. The Commission therefore decides that it has the competence to consider this complaint against the Respondent State, in relation to violations which emanated prior to 18 December 1989, the date the African Charter entered into force for the Republic of Cameroon, if such violations or their residual effects continued after that date.

CONSIDERATION OF THE MERITS

98. The communication alleges that the Respondent State violated Articles 2, 3, 4, 5, 6, 7(1), 9, 10, 11, 12, 13, and 17(1) in respect of individual Southern Cameroonians; and Articles 19, 20, 21, 22, 23(1), and 24 in respect of the Peoples of Southern Cameroons; and the general obligation under article 26 of the African Charter.

DECISION ON THE MERITS

ALLEGED VIOLATION OF ARTICLE 2

99. The Complainants allege that there have been various cases of discrimination against the people of Southern Cameroon contrary to Article 2 of the African Charter. Article 2 states that:

"Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social

origin, fortune, birth or any status".

100. The Complainants submit that Southern Cameroonians are discriminated against by the Respondent State, in various forms. These include under-representation of Southern Cameroonians in national institutions, economic marginalisation through the denial of basic infrastructure; such as roads, persistence high levels of unemployment and illiteracy in Southern Cameroon. It is submitted that Southern Cameroonians are discriminated against in the legal and judicial system.

101. The Complainants submitted further that the company law applied in Southern Cameroon was abolished in favour of the Napoleonic Code upon unification in 1972. They argued that Southern Cameroonians could not register companies whose articles of association were in the English language.

102. The issue for determination is whether the refusal to register the said companies was directly related to the unification of the legal system in 1972, and if it constituted discrimination? Could the 1972 unification prejudice registration of companies after ratification on 18 December 1989? This would be the case only if the unification impacted negatively on the registration of companies after December 1989. The Complainants argue that the refusal to register companies had such an effect. In order for the Southern Cameroonian companies to do business they had to register under the Francophone civil law system. The Respondent State did not dispute this allegation. English is one of the official languages in Cameroon. Southern Cameroonians had a legitimate expectation that the English language could be used to conduct official business, including the registration of companies. The Commission makes a finding that the refusal to register companies established by Southern Cameroonians on account of language amounted to a violation of Article 2 of the African Charter.

103. The Complainants submit further that the ratification of the Treaty for the Harmonisation of Business Law in Africa, otherwise known as "Organisation pour l'Harmonisation des Droits d'Affaires en Afrique" (OHADA), has discriminated against the people of Southern Cameroon on the basis of language. OHADA is an instrument harmonising business law amongst French-speaking countries in Africa. It states that the language of interpretation and settlement of disputes arising under OHADA shall be French.

104. The Complainants alleged that the ratification of OHADA was discriminatory to individual businesses and business people from Southern Cameroon. At this point we adopt the legal principle that businesses or corporate bodies are legal persons. The Complainants submit that objections against OHADA were ignored, and that companies not registered under OHADA could not open bank accounts in Cameroon.

105. The Respondent State argued that OHADA is not aimed at promoting the superiority of one legal system over the other, but rather to harmonise business law in the contracting states by elaborating simple, modern, common rules aimed at encouraging regional development and growth, setting up appropriate judicial procedures and encouraging arbitration for the settlement of contractual disputes.

106. It states further that other non French speaking countries including Ghana and Nigeria, were undergoing the process of acceding to the OHADA treaty. The Respondent State submitted that it had taken several measures, such as the translation of the OHADA laws

into English, with the support of the OHADA Permanent Secretariat and the African Development Bank, and the training of Anglophone and Francophone magistrates at the Ecole regionale Superieure de magistrature in Porto Novo, Republic of Benin. It stated further that the apprehension by the Anglophones was merely a transitory situation.

107. The Commission takes note of the fact that the Respondent State had taken measures to address the discriminatory effects of the ratification of OHADA. Had such measures not been taken upon the ratification of OHADA in 1996, the Commission would not have hesitated to find a violation. The Commission is cognisant of the bilingual nature of the Respondent State and the Western African region, in which the Respondent State finds itself. The Respondent State is from time to time being expected to interact with its neighbours in ECOWAS, or any other sub regional group, where both the French and the English language continue to be lingua franca.

108. The mere accession or ratification of OHADA, should not be deemed a violation of Article 2, unless the Respondent State had manifestly failed to take any steps to ameliorate the effects of the linguistic differences. The Respondent State has shown that it took measures, such as the training of magistrates, and translation of texts to address the discriminatory concerns. The OHADA ratification, however, resulted in the discrimination of Anglophone based companies and businesses, which could not open bank accounts unless they registered under OHADA. There was no response from the Respondent State on this issue. Nor were any measures taken to address this complaint. Notwithstanding the translation of OHADA into English, it was wrong for institutions, such as banks to force Southern Cameroon based companies to change their basic documents into French. The banks and other institutions could have dealt with the companies without imposing the language conditionality. Banking documents should have been translated into English. The Commission finds that the Respondent State failed to address the concerns of Southern Cameroonian businesses, which were forced to re-register under OHADA, and as such violated Article 2 of the African Charter.

ALLEGATION OF VIOLATION OF ARTICLE 3

109. The Complainants alleged violation of Article 3, which protects the individual's right to equality before the law and equal protection of the law. African Commission notes that although the communication alleges violation of Article 3 of the African Charter, the Complainants did not specifically argue or bring evidence of any instance against the Respondent State. In the absence of such evidence, the African Commission cannot find violation of Article 3 of the Charter.

ALLEGED VIOLATION OF ARTICLE 4

110. The Complainants allege violations of Article 4, the right to life, inviolability of the human being, and the integrity of the person. They submit that the Respondent State committed violations against individuals in Southern Cameroon. The communication gives account of people who were killed by the police during violent suppressions of peaceful demonstrations, or died in detention as a result of the bad conditions and the ill-treatment in prison.

111. The Respondent State contends that the allegations are not substantiated by documentary evidence. No certificates to ascertain the cause of death, no forensic medical

certificates, no investigation reports by human rights organisation were produced. It states further that "the catalogue published by the press organs of the SCNC and SCAPO cannot be considered as a reliable source".[FN11] The Respondent State however, admitted to the death of six people on the 26th March 1990, which occurred after a confrontation between security forces and demonstrators, whom it argued, were involved in an illegal political rally in Bamenda.

[FN11] The SCNC (Southern Cameroons National Council) and the SCAPO (Southern Cameroons People's Organisation) are two political organisations defending the rights of the people of Southern Cameroons, including their right to self-determination.

112. The African Commission observes that the parties do not have equal access to official evidences such as police reports, death certificates and forensic medical certificates. The Complainants endeavoured to inquire into the alleged violations, and gave names of the alleged victims. The Respondent State restricted itself to questioning the reliability of the evidence presented by the Complainants. It did not deny the alleged violations. The Respondent State had the opportunity to inquire into the alleged violations. The Respondent State did not conduct such investigation and redress the victims, it thus failed to protect the rights of the alleged victims. The Commission finds that it violated Article 4 of the African Charter.

ALLEGED VIOLATION OF ARTICLE 5

113. The communication gives details of victims who were subjected to torture, amputations, and denial of medical treatment by the Respondent State's law enforcement officers, in violation of Article 5 of the African Charter. The Respondent State responded by stating that some SCNC and SCAPO members had perpetrated terrorist acts in the country, killing law enforcement officers, vandalising State properties, stealing weapons and ammunitions.

114. The Commission holds the view that even if the State was fighting alleged terrorist activities, it was not justified to subject victims to torture, cruel, inhuman and degrading punishment and treatment. It therefore finds that the Respondent State violated Article 5 of the African Charter.

ALLEGED VIOLATION OF ARTICLE 6

115. The communication further gives details of victims who were arrested, detained for days, sometimes for months without trial before being released in violation of Article 6 of the Charter.

116. The Respondent State did not deny the allegations, instead it tried to justify them. For instance, it states that:

"...concerning citizens who had been arrested for committing various ordinary law offences since the return to multi party democratic processes, most of them are SCNC and SCAPO activists who, in their logic of contestation, defied republican institutions especially the forces of law and order, either during demonstration of the anniversary of "Southern

Cameroon" every 1 October of the year, or at the approach, during and after important elections."

117. It goes on to state that,

"whatever the circumstances, the more it is true that every individual shall have the right to liberty and the security of his person, the more it is accepted that an individual may be deprived of his freedom for reason and conditions previously laid down by the law. (Article 6 of the Charter) The cases of arrest registered since the return to multiparty politics in this part of the territory has always obeyed the principle of legality....."

118. The Commission states that a State Party cannot justify violations of the African Charter by relying on the limitation under Article 6 of the Charter The Respondent State is required to convince the Commission that the measures or conditions it had put in place were in compliance with Article 6 of the Charter. The Commission has previously expressed itself on the effect of claw back clauses. Communication 211/98; Legal Resources Foundation/Zambia,[FN12] states the following;

"The Commission has argued forcefully that no State Party to the Charter should avoid its responsibility by recourse to the limitations and "claw back" clauses in the Charter. It was stated following developments in other jurisdictions, that the Charter cannot be used to justify violations of sections of it. The Charter must be interpreted holistically and all clauses must reinforce each other. The purpose or effect of any limitation must also be examined, as the limitation of the right cannot be used to subvert from the popular will, as such cannot be used to limit the responsibilities of State Parties in terms of the Charter."

[FN12] 14th Annual Activity Report, 2000-2001

119. Further to the foregoing, Communication 147/95 and 149/96, Sir Dawda Jawara/The Gambia, the Commission stated that,

" [t]he Commission in its decision on communication 101/93 laid down a general principle with respect to freedom of association, that 'competent authorities should not enact provisions which limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by constitution or international human rights standards.' This therefore applies not only to right to freedom of expression of association, but also to all other rights and freedoms ... for a State to avail itself of this plea, it must show that such a law is consistent with its obligations under the Charter."[FN13]

[FN13] The principle was stated in Communication 101/93; Civil Liberties Organization (In respect of the Nigerian Bar Association)/Nigeria, where the Commission discussed the effect of the claw back clause in Article 10 on the right to freedom of association and stated the following; " [f]reedom of association is enunciated as an individual right and is first and foremost a duty of the State to abstain from interfering with the free formation of association. There must always be a general capacity for citizens to join, without State interference, in association in order to attain various ends. In regulating the use of this right,

the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine rights guaranteed by the constitution and international human rights standards. (emphasis is added)

120. In view of the foregoing, the Commission finds that the Respondent State has violated Article 6 as alleged by the Complainants.

ALLEGED VIOLATION OF ARTICLE 7(1)

121. The Complainants alleged that the Respondent State violated Article 7(1), on the right to fair trial. They allege that individuals were transferred from Southern Cameroon to Francophone Cameroon for trial by military tribunals and that other victims were tried in civil law courts, without interpreters.

122. The Respondent State admits that between 1997 and 2001, some individuals were transferred from the North West Cameroon, and were tried for various criminal offences by the Yaoundé Military Tribunal, These offences include unlawful incitement, disturbances of public peace, destruction of public property, assassination of gendarmes and civilian individuals, illegal possession of weapons and ammunition, and the illegal declaration of the independence of Anglophone Cameroon on 30 December 1999.

123. The Respondent States asserts the following;

" [a]ware that in the past the actions of SCNC militants have always ended up in assassinations, kidnapping of persons, destruction and setting ablaze of public buildings, public authorities could not remain indifferent in front of this manifest determination to cause disorder and disturbances. About three days before 1 October 2001, gendarmes were dispatched nearly everywhere in the areas and localities targeted by the SCNC."

124. The Respondent State submitted that some of the victims were released, albeit after prolonged periods of detention, for lack of evidence. Others were released on bail, and fled the country. It argues that the prolonged detention was due to administrative bottlenecks, which are a constant concern of the government. The Respondent State did not indicate the measures it had taken to address the chronic administrative problems causing prolonged detentions.

125. The Respondent State denied that it ignored or failed to implement Court decisions in Anglophone Cameroon. It cited a number court decision it had complied with, including those which overturned executive decisions. The Complainant did not give any specific case or decision which was not complied with by the Respondent State.

126. The Commission wishes to state that the rights outlined in Article 7 constitute fundamental tenets of any democratic state. It is through respect for these rights that other rights guaranteed by the Charter may also be realised. The Commission has adopted the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, to assist State Parties to better guarantee the rights enshrined in Article 7.

127. The Respondent state did not explain why it transferred individuals from North West

Cameroon for trial by the Yaoundé and Bafoussam Military Tribunals, nor the reason why the victims were tried by tribunals outside the jurisdictions where the offence were allegedly committed. The Commission has stated previously that trial by military courts does not per se constitute a violation of the right to be tried by a competent organ. What poses problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military. In communication 218/98 Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria the Commission stated the following:

"The military tribunals are not negated by the mere fact of being presided over by military officers. The critical factor is whether the process is fair, just and impartial" [FN14]

[FN14] § See para 27.

128. The accused persons were not military personnel. The offences alleged to have been committed were quite capable of being tried by normal courts, within the jurisdictional areas the offences were allegedly committed. The Commission finds that trying civilians by the Yaoundé and the Bafoussam Military Tribunals was a violation of Article 7(1) (b) of the Charter.

129. The Complaints submit that the accused were tried in a language they did not understand, without the help of interpreters. The Respondent State did not contradict that allegation. The Commission states that it is a prerequisite of the right to a fair trial, for a person to be tried in a language he understands, otherwise the right to defence is clearly hampered. A person put in such a situation cannot adequately prepare his defence, since he would not understand what he is being accused of, nor would he apprehend the legal arguments mounted against him.[FN15] The aforementioned Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, states that one of the essential elements of a fair hearing is:

"...an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body." [FN16]

[FN15] See the decision of the Commission on communications 54/91, 61/91, 98/93, 164/97 to 196/97 and 210/98 Malawi African Association, Amnesty International, Ms. Sarr Diop, UIDH and RADDHO, Collectif des veuves et ayants-droits, and Association mauritanienne des droits de l'homme v. Mauritania, 13th Annual Activity Report, [FN16] § 97. § 2(g).

130. The Commission recognizes that the Respondent State is a bilingual country. Its institutions including the judiciary can use either French or English. However since not all the citizens are fluent in both languages, it is the State's duty to make sure that, when a trial is conducted in a language that the accused does not speak, he/she is provided with the assistance of an interpreter. Failing to do that amounts to a violation of the right to a fair trial.

131. The Commission therefore concludes that the Respondent State violated Article 7(1)(b) (c) and (d) of the Charter.

ALLEGED VIOLATION OF ARTICLE 9

132. The communication alleges violation of article 9 of the Charter. The Complainants did not make any submissions concerning Article 9. The Commission has therefore not made any finding regarding Article 9.

ALLEGED VIOLATION OF ARTICLE 10

133. The Complainants allege that the Respondent State violated Articles 10 of the African Charter. The parties did not make any submission on Article 10 of the Charter. The Commission finds no violation of Article 10.

ALLEGED VIOLATION OF ARTICLE 11

134. The Commission examined whether Articles 11 was violated. The Commission deems that there is enough information on the record, based on the both parties to enable the Commission to make its determination.

135. Article 11 states that:

"Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety of others, health, ethics and rights and freedoms of others."

136. The facts before the Commission depict cases of suppression of demonstrations, including the use of force against, the arrest and detention of people taking part in such demonstrations. The Commission has held previously that;

".....the Charter must be interpreted holistically and all clauses must reinforce each other."[FN17]

[FN17] Communication 211/98 Legal Resources Foundation/Zambia, at para 70.

137. The Complainant states that several victims were arrested and held in detention for long periods, for exercising their right to freedom of assembly. Some of the detained persons were acquitted. There were others who died at the hands of security forces or in detention, after being accused of participation in "unlawful political rallies." The victims who died, or had been detained suffered while exercising their exercise of the right to freedom of assembly.

138. The Commission does not condone unlawful acts by individuals or organisations to advance political objectives, because such actions or their consequences are likely to violate the African Charter. It encourages individuals and organisations, when exercising their right

to freedom of assembly, to operate within the national legal framework. This requirement does not absolve States Parties from their duty to guarantee the rights to freedom of assembly, while maintaining law and order. The Respondent States admits that it detained demonstrators, applied excessive force to enforce law and order, and in some cases lives were lost. The Commission concludes therefore that Article 11 of the African Charter was violated.

ALLEGED VIOLATION OF ARTICLE 12

139. The Complainants alleged that Article 12 was violated by the Respondent State. They did not substantiate any infringement by the Respondent State of the right to freedom of movement. The Commission finds no violation of Article 12.

ALLEGED VIOLATION OF ARTICLE 13

140. The Complainants alleged violation of Article 13. They stated that the people of Southern Cameroon were not adequately represented in the institutions of the Republic of Cameroon except for "token" appointments. They allege further that the Respondent State manipulated demographic data to deny Southern Cameroonians equal representation in government.

141. The Respondent State submitted that, upon the introduction of multi-partyism in 1992, many Southern Cameroonian opposition parties, such as the Social Democratic Front (SDF), have participated in municipal, legislative and presidential elections. Opposition parties control several councils and are represented in the National Assembly. It argues that access to high office is open to all citizens without distinction. The Respondent State accused the Complainants of bad faith, and stated that some of the highest positions in the Republic had been held by Southern Cameroonians. It accuses SCNC and SCAPO of persecuting fellow Anglophones who refuse to adhere to the secession agenda.

142. The Complainants claim that Southern Cameroonians have since 1961 been accorded only 20 % representation in the Federal/National Assembly instead of the 22% they think they deserve. The Complainants' main complaint is the ratio of representation, rather than the non representation. The Respondent State states that 20% representation cannot be said to be "tokenism."

143. The Commission is inclined to agree with the Respondent State. It finds that in spite of the alleged disproportionate percentage, Southern Cameroonians were representation, and hence participated in public affairs of the Respondent State as required under Article 13 of the African Charter.

144. The Commission states that it is not sufficient for the Complainants to assert in general terms that a certain category of citizens were denied the right to access public positions or that they were under-represented in government or public administration. The Complainants did not furnish the Commission with information or cases that individuals in Southern Cameroon were denied representation or denied access to public services. The Commission finds that allegations concerning "tokenism" have not been substantiated and concludes that there is no violation of Article 13.

ALLEGED VIOLATION OF ARTICLE 17

145. The Complainants allege that the Respondent State violated Article 17 of the Charter, because it is destroying education in the Southern Cameroons by under funding and understaffing primary education. That it imposed inappropriate reform of secondary and technical education. It discriminates Southern Cameroonians in the admission into the Polytechnique in Yaoundé, and refused to grant authorisation for registration of the Bamenda University of Science and Technology, thereby violating article 17 on the right to education.

146. The Respondent State denied that it is destroying the education system in the Southern Cameroon. It provided detailed data and statistics on the measures it had taken to cater for the education sector in the Southern Cameroons. It stated that in certain cases it had provided more resources to Southern Cameroon than it had done for other regions. The Complainants contested the reliability of the data and statistics, but did not convince the Commission that the data should not be relied upon.

147. Regarding the alleged discrimination concerning admission of Southern Cameroonians into the Polytechnique in Yaounde, the Respondent State argued that admission to the National Advanced School of Engineering is based on merit, as is the case with all higher institutions of learning. It stated that the School has trained a number of civil engineers from both the Anglophone and Francophone parts.

148. Concerning the alleged refusal to grant authorisation for the registration of the Bamenda University of Science and Technology, the Respondent State stated that the said university did not fulfill conditions for establishment of private universities. The Complainant did not show whether the criteria were met by the Bamenda University of Science and Technology or not. The Commission reiterates that for it to make finding on any allegations, the Parties have to provide it with the necessary information. Rule 119 of the 1995 Rules of Procedure of the Commission, (which govern this communication) require parties to furnish explanation or statements, including additional information.

149. The Complainants should have done so under Rule 119 (3) of the Rules of Procedure. The Commission allowed Parties to make oral submission in this particular case. The Complainants did not substantiate the allegations. For the above reasons, the African Commissions finds that there is no violation of Article 17(1) of the Charter.

150. The Commission then examined the alleged violation of Articles 19, 20, 21, 22, 23(1), and 20 of the African Charter.

ALLEGED VIOLATION OF ARTICLE 19

151. The Complainants premised the complaint alleging violation of their collective rights on the events which happened prior to 18 December 1989. The Commission has already expressed itself on the question of its jurisdiction *rationae temporis*. The Complainants alleged that the Respondent State, "forcefully and unlawfully annexed" Southern Cameroon. They argue that the Respondent State:

".....established its colonial rule there, complete with its structures, and its administrative, military and police personnel, applying a system and operating in a language alien to the Southern Cameroon, ... and continues to exercise a colonial sovereignty over Southern

Cameroon to this day."

152. They argue further that:

"... the occupation and assumption of a colonial sovereignty over Southern Cameroon by the Respondent State amounts to violation of Articles 19 and 20 of the African Charter..., both of which outlaw domination, and colonialism in all its forms and manifestations. Article 19 places an absolute ban on the domination of one people by another. Article 20 emphatically asserts the right of every people to existence, to self determination, and of resistance to colonialism or oppression by resorting to any internationally recognised means of resistance"

153. These are very serious allegations which go to the root of the statehood and sovereignty of the Republic of Cameroon. The Respondent State responded by arguing that the Commission is:

"...incompetent to handle the issue of the process of decolonisation that took place in this State and under the auspices of the United Nations."

154. Respondent State submits further that the Commission cannot examine or adjudicate on the 1961 UN plebiscite, on events which took place between the October 1961 and 1972, when the Federal and Union Constitutions were adopted, because they predated the entry into force of the Charter.

155. The Commission concedes that it is not competent to adjudicate on the legality of those events, due to limitation imposed on its jurisdiction *rationae temporis*, for reasons stated hereinabove. The Commission cannot make a finding on allegations made by the Complainants concerning "illegal and forced annexation, or colonial occupation of Southern Cameroon by the Respondent State," since they fall outside its jurisdiction *rationae temporis*.

156. The Commission states, however that, if the Complainants can establish that any violation committed before 18 December 1989, continued thereafter, then the Commission shall have competence to examine it.

157. The Complainants alleged cases of economic marginalisation, and denial of basic infrastructure by the Respondent State, as constituting violations of Article 19. They allege that these violations were a consequence of the events of 1961 and 1972, and continued after 18 December 1989.

158. The Respondent State contested the allegation of economic marginalisation. It submitted documents and statistics in support of its provision of basic infrastructure in Southern Cameroon. The statistical information and data show that, for the period 1998 up to 2003/4, the North West and South West provinces, (Southern Cameroon,) were allocated substantially higher budgetary resources, than the Francophone provinces, for the construction, and maintenance of roads, and running of education training institutions. The documents show that the situation in the Anglophone regions is not that different from other parts of the country. It argued that the problem concerning inadequate infrastructural development is not peculiar to Southern Cameroon.

159. The Complainants rejected as adulterated the data and statistics provided by the Respondent. The complainant did not furnish any document to support their allegation. The Commission finds no reason why it should not rely on the data and statistics provided by the respondent State in its decision. The Commission holds that the Respondent State allocated public resources to the Anglophone provinces without discrimination.

160. The Respondent State did not however respond specifically to the allegations concerning the relocation of major economic projects and enterprises from Southern Cameroon. It explained the reason for relocating the seaport to Douala from Limbe, otherwise known as Victoria. It argues that, Douala being the gateway into Cameroon, the government needed to monitor the movement of persons and good for evident security reasons and efficient customs control.

161. Every State has an obligation under international law to preserve the integrity of its entire territory. The maintenance of security and movements of persons and goods on the territory is part of that obligation. The argument by the Respondent State that it could not guarantee the security of persons and goods at Limbe, unless it moved the port, is tantamount to acknowledging that it had no control of Limbe. The Commission believes that the security and customs authorities could have effectively monitored the movement of persons and goods, even if the seaport had continued to be at Limbe.

162. The Commission states that the relocation of business enterprises and location of economic projects to Francophone Cameroon, which generated negative effects on the economic life of Southern Cameroon constituted violation of Article 19 of the Charter.

ALLEGED VIOLATION OF ARTICLE 20

163. The Complainants state that the "alleged unlawful and forced annexation and colonial occupation" of Southern Cameroon by the Respondent State constituted a violation of Article 20 of the Charter. They claim that Southern Cameroonians are entitled to exercise the rights to self determination under Article 20 of the Charter as a separate and distinct people from the people of "La Republic du Cameroon." Article 20 stipulates that:

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

1. Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.

2. All peoples shall have the right to the assistance of the states parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

164. The Complainants submit that the UN plebiscite was premised on certain conditions, including the convening of a conference of equal representative delegations from the Republic of Cameroon and Southern Cameroon to work out the conditions for the transfer of sovereign powers to the future federation. It is further submitted that such arrangements should have been approved by the separate parliaments of the Republic of Cameroon and Southern Cameroon before sovereignty was transferred to a single entity representing both

sides. The Complainants submit that the results of the plebiscite were never submitted to the parliament of the Southern Cameroon for approval.

165. The Respondent State did not respond to the allegations concerning "unlawful annexation and colonialism." It submitted instead that the issues are incapable of adjudication by the Commission on account of its lack of jurisdiction.

166. The Respondent State contested further the claim that Southern Cameroonians are a "separate and distinct people". The Commission shall examine this issue.

167. The Complainants reiterate that their "separate and distinct" identity is based on the British administration over Southern Cameroon. They submit that they speak the English language, and apply the common law legal tradition, as opposed to the Francophone zone, where French is spoken and the civil law system is applicable.

168. The Respondent State submitted that it does not dispute the basic historical facts concerning the Trust administration, but denies that Southern Cameroonians exist as a "people." It states the following;

" [t]he complainants raise in order to shore up this assertion the use of the English language (working language), the specificity of the legal system, of the educational system, of the system of government, traditional cultures. In fact, the specificities of former Southern Cameroons stem solely from the heritage of British administration and the legacy of Anglo-Saxon culture. No ethno-anthropological argument can be put forward to determine the existence of a people of Southern Cameroons, the Southern part being of the large Sawa cultural area, the northern part being part of the Grass fields' cultural area. Since 1961, although some specificities had been preserved on more than one aspect, there had been remarkable rapprochement at the administrative and legal levels. The 'separate and distinct people' thesis is no longer valid today."

169. The Commission shall clarify its understanding of "peoples' rights," under the African Charter. The Commission is aware the controversial nature of the issue, due to the political connotation that it carries. That controversy is as old as the Charter. The drafters of the Charter refrained deliberately from defining it. [FN18] To date, the concept has not been defined under international law. However, there is recognition that certain objective features attributable to a collective of individuals, may warrant them to be considered as "people".

[FN18] See the Report of the Rapporteur of the OAU ministerial meeting on the draft African Charter on Human and Peoples' Rights held in Banjul, the Gambia, from 9 to 15 June 1980 (CAB/LEG/67/3/Draft Rapt. Rpt (II), p.4.

170. A group of international law experts commissioned by UNESCO to reflect on the concept of "people" concluded that where a group of people manifest some of the following characteristics; a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered to be a "people.". Such a group may also identify itself as a people, by virtue of their consciousness that they are a people.[FN19] This characterisation does not bind the Commission but can only be used as a guide.

[FN19] See the Final Report and Recommendations of the Meeting of Experts on extending of the debate on the concept of "peoples' rights" held in Paris, France, from 27 to 30 November 1989,(SHS-89/CONF.602/COL.1) § 22

171. In the context of the African Charter, the notion of "people" is closely related to collective rights. Collective rights enumerated under Articles 19 to 24 of the Charter can be exercised by a people, bound together by their historical, traditional, racial, ethnic, cultural, linguistic, religious, ideological, geographical, economic identities and affinities, or other bonds. .

172. The drafters of the Charter provided for the protection of "peoples rights" under the Charter. In his book, entitled; *The Law of the African (Banjul) Charter on Human and Peoples' Rights*, Justice Hassan B. Jallow, [FN20] an eminent African Jurist, who participated in the drafting the African Charter, sheds light on this issue. He says that:

"[t]he concept of peoples' rights, to which a whole chapter had been devoted in the draft did not mean there was any grading of rights. There were economic, social and cultural rights which have particular importance to developing countries and which together with civil rights and political rights in one complementary whole should henceforth be give an important place."[FN21]

[FN20] Trafford Publishing, Canada 2007

[FN21] Hassan B. Jallow, *ibid*, page 28.

173. Justice Jallow cites the late President Leopold Sedar Senghor, the first President of Senegal and an eminent African Statesman, who told the inaugural meeting of African Legal Experts to draft the Charter, the following:

"People will perhaps expatiate for a long time upon the 'People Rights' we were very keen on referring to. We simply meant, by so doing, to show our attachment to economic, social, and cultural rights, to collective rights in general, rights which have a particular importance in our situation of a developing country. We are certainly not drawing lines of demarcation between the different categories of rights. We want to show essentially that beside civil and political rights, economic, social and cultural rights should henceforth be given the important place they deserve. We wanted to lay emphasis on the right to development and the other rights which need the solidarity of our States to be fully met; the right to peace and security, the right to a healthy environment, right to participate in the equitable share of the common heritage of mankind, the right to enjoy a fair international economic order and, finally the right to natural wealth and resources."[FN22]

[FN22] *Ibid* page 29.

174. The African Commission has itself dealt with the issues of peoples' rights without

defining the term "people" or "peoples' right." In its acclaimed Report of the Working Group of Experts on Indigenous Populations/Communities,[FN23] the African Commission described its dilemma of defining the concepts in the following terms:

"[d]espite its mandate to interpret all provisions of the African Charter as per Article 45(3), the African Commission initially shied away from interpreting the concept of 'peoples'. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESR do not define 'peoples'. It is evident that the drafters of the African Charter intended to distinguish between the traditional individual rights where the sections preceding Article 17 make reference to "every individual". Article 18 serves as a break by referring to the family. Article 19-24 make specific reference to "all peoples"

[FN23] Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, published jointly by the ACHPR/IWGIA 2005

175. It continues:

"Given such specificity, it is surprising that the African Charter fails to define "peoples" unless it was trusted that its meaning could be discerned from the prevailing international instruments and norms. Two conclusions can be drawn from this. One, that the African Charter seeks to make provision for a group or collective rights, that is, that set of rights that can conceivably be enjoyed only in a collective manner like the right to self determination or independence or sovereignty...".[FN24]

[FN24] Ibid, at page 72-73, Part 3.4 Jurisprudence from the African Commission on Human and Peoples' Rights, under Chapter 3; An analysis of the African Charter and its Jurisprudence on the Concept of 'Peoples'

176. The Commission deduces from the foregoing discourse that peoples' rights are equally important as are individual rights. They deserve, and must be given protection. The minimum that can be said of peoples' rights is that, each member of the group carries with him/her the individual rights into the group, on top of what the group enjoys in its collectivity, i.e. common rights which benefit the community such as the right to development, peace, security, a healthy environment, self determination, and the right to equitable share of their resources.

177. It is in the light of the above that the Commission shall examine the allegations against the Respondent State, concerning the violations of the collective rights cited hereinabove.

178. The Commission states that after thorough analysis of the arguments and literature, it finds that the people of Southern Cameroon can legitimately claim to be a "people." Besides the individual rights due to Southern Cameroon, they have a distinct identity which attracts certain collective rights. The UNESCO group of Experts report referred to hereinabove, states that for a collective of individuals to constitute a "people" they need to manifest some, or all the identified attributes. The Commission agrees with the Respondent State that a

"people" may manifest ethno- anthropological attributes. Ethno-anthropological attributes may be added to the characteristics of a "people." Such attributes are necessary only when determining indigenology of a "people," but cannot be used as the only determinant factor to accord or deny the enjoyment or protection of peoples' rights. Was it the intention of the State Parties to rely on ethno anthropological roots only to determine "peoples' rights," they would have said so in the African Charter? As it is, the African Charter guarantees equal protection to people on the continent, including other racial groups whose ethno anthropological roots are not African.

179. Based on that reasoning, the Commission finds that "the people of Southern Cameroon" qualify to be referred to as a "people" because they manifest numerous characteristics and affinities, which include a common history, linguistic tradition, territorial connection, and political outlook. More importantly they identify themselves as a people with a separate and distinct identity. Identity is an innate characteristic within a people. It is up to other external people to recognise such existence, but not to deny it.

180. The Respondent State might not recognise such innate characteristics. That shall not resolve the question of self identification of Southern Cameroonians. It might actually postpone the solution to the problems in Southern Cameroon, including those already highlighted hereinabove. The Respondent State acknowledges that there have been problems created regularly by the secessionist SCNC and SCAPO, in that part of its territory, which calls itself the "Southern Cameroon".

181. The Commission is aware that post colonial Africa has witnessed numerous cases of domination of one group of people over others, either on the basis of race, religion, or ethnicity, without such domination constituting colonialism in the classical sense. Civil wars and internal conflicts on the continent are testimony to that fact. It is incumbent on State Parties, therefore, whenever faced with allegations of the nature contained in the present communication, to address them rather than ignore them under the guise of sovereignty and territorial integrity. Mechanisms such as the African Commission were established to resolve disputes in an amicable and peaceful manner. If such mechanisms are utilised in good faith, they can spare the continent valuable human and material resources, otherwise lost due to conflicts fighting against ethnic, religious domination or economic marginalisation.

182. The Commission shall address the question, whether the people of Southern Cameroon are entitled to the right to self determination. In so doing it shall contextualise the question by dealing, not with the 1961 UN Plebsicite, or the 1972 Unification, but rather the events of 1993 and 1994 on the constitutional demands vis-à-vis the claim for the right to self determination of the Southern Cameroonian people.

183. The Complainants allege that the 1993 Buea and 1994 Bamenda Anglophone conferences submitted constitutional proposals, which were ignored by the Respondent State. This forced the Complainants to conduct a signature referendum of Southern Cameroonians in 1995, which endorsed separation.

184. The Complainants argued that the people of Southern Cameroon through the 1993, 1994 conferences, and the 1995 signature referendum, raised issues of constitutional, political and economic marginalisation. They allege further that the Constitution adopted by the Respondent State in December 1995 did not address their appeals for autonomy. The

Commission is of the view that these complaints merit its determination.

185. The Complainants submit that the Respondent State's refusal or failure to address their grievances amounted to a violation of Article 20. They claim therefore that they are entitled to exercise their right to self determination under the Charter. The Respondent State responds that these grievances constitute a secessionist agenda by SCNC and SCAPO. It denies that the Complainants are entitled to exercise the right to self determination under Article 20.

186. The Respondent State submitted that the Buea Declaration of 3 April 1993 recognised that the Southern Cameroonians had freely joined La Republique du Cameroun in 1961, and further that the transition to a unitary state in 1972 was approved by both Francophones and Anglophones who voted 98.26% and 97.9% respectively through a national referendum. It states further that the so called referendum of September 1995 by SCNC does not invalidate the 1972 data. The Respondent State doubts the accuracy of the referendum. It states that:

"[s]ince 1996, the State of Cameroon is a unitary decentralised State, adopted by members of parliament, including those from the Anglophone part of the country. Legal instruments relating to putting in place of the decentralised regional and local authorities, ...were enacted in July 2004'

187. The Respondent State argues further that:

"[t]he self determination of the "people" of Southern Cameroon, following the logic of the Commission (cf per the Katanga case) would be understandable where there are tangible evidence of massive violations of human rights, and where there is evidence ascertaining the refusal of the nationals of Southern Cameroon, the right to take part in the management of public affairs of the State of Cameroon. There is no such proof.....:

188. The Commission recalls that the Katangese had urged the Commission to recognise the independence of Katanga. In reaching its decision in that case, the Commission stated the following:

"The claim is brought under Article 20(1) of the African Charter....There are no allegations of specific breaches of other human rights apart from the claim of the denial of self determination.

All peoples have a right to self determination. There may however be controversy as to the definition of peoples and the content of the right. The issue in this case is not self determination for all Zaireoise as a people but specifically the Katangese. Whether the Katangese consist of one or more ethnic groups is, fore this purpose immaterial and no evidence has been adduced to that effect.

The Commission believes that Self determination may be exercised in any of the following ways: independence, self-government, local government, federalism, confederalism, unitarism or any form of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity"[FN25]

[FN25] Communication 75/92, 8th Annual Activity Report,

189. The Respondent State condemns the Complainants' secessionist agenda. This Commission stated in the Katangese case that, it;

"... is obliged to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU and a party to the African Charter of Human and peoples' Rights."

190. The Commission notes that the Republic of Cameroon is a party to the Constitutive Act (and was a state party to the OAU Charter). It is a party to the African Charter on Human and Peoples' Rights as well. The Commission is obliged to uphold the territorial integrity of the Respondent State. As a consequence, the Commission cannot envisage, condone or encourage secession, as a form of self-determination for the Southern Cameroons. That will jeopardise the territorial integrity of the Republic of Cameroon.

191. The Commission states that secession is not the sole avenue open to Southern Cameroonians to exercise the right to self determination.[FN26] The African Charter cannot be invoked by a complainant to threaten the sovereignty and territorial integrity of a State party. The Commission has however accepted that autonomy within a sovereign state, in the context of self government, confederacy, or federation, while preserving territorial integrity of a State party, can be exercised under the Charter. In their submission, the Respondent State implicitly accepted that self determination may be exercisable by the Complainants on condition that they establish cases of massive violations of human rights, or denial of participation in public affairs.

[FN26] §4. See above para 185.

192. The Complainants have submitted that the people of the Southern Cameroon are marginalised, oppressed, and discriminated against to such an extent that they demand to exert their right to self-determination.

193. The Respondent States submitted that the 1996 Constitution was adopted by the National Assembly, which included representatives of the people of Southern Cameroon. The Respondent State argues that, within the framework of the 1996 Constitution, three laws on decentralisation, which "will enable Cameroon to resume the development of local potentials," were adopted by the Parliament. The Respondent State submits further that since 2004 measures are being taken to give more autonomy to regions. Whether the laws shall be applied to address the concerns of South Cameroonians, will depend on the goodwill of both sides.

194. The Commission has so far found that the Respondent has violated Articles 2, 4, 5, 6, 7, 11, and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self determination under the African Charter, they must meet the test set out in the Katanga case, that is, there must be:

"concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their

right to participate in the government as guaranteed by Article 13 (1)." (emphasis added)

195. The Commission has already made a finding that Article 13 was not violated. The Commission saw ample evidence that the people of Southern Cameroon are represented in the National Assembly, at least through an opposition party, the SDF. Information on the record suggests that there has been some form of representation of the people of Southern Cameroon in the national institutions prior to, and after 18 December 1989. The Complainants may not recognise the representatives elected to the national institutions under the current constitutional arrangement. The Respondent State on the other hand may not share the same views or even recognise the SCNC and SCAPO as representing a section of the people of Southern Cameroon.

196. The Complainants' main complaint is that the people of Southern Cameroon are denied equal status in the determination of national issues. They allege that their constitutional demands have been ignored by the Respondent State. In other words they assert their right to exist and hence the right to determine their own political, and social economic affairs under Article 20(1).

197. The Commission is not convinced that the Respondent State violated Article 20 of the Charter. The Commission holds the view that when a Complainant seeks to invoke Article 20 of the African Charter, it must satisfy the Commission that the two conditions under Article 20(2), namely oppression and domination have been met.

198. The Complainants have not demonstrated if these conditions have been met to warrant invoking the right to self determination. The basic demands of the SCNC and SCAPO as well as the two Anglophone Conferences, is the holding of constitutional negotiations to address economic marginalisation, unequal representation and access to economic benefits. Secession was the last option after the demands of Buea and Bamenda Conferences were ignored by the Respondent State.

199. Going by the Katanga decision, the right to self determination cannot be exercised, in the absence of proof of massive violation of human rights under the Charter. The Respondent State holds the same view. The Commission states that the various forms of governance or self determination such as federalism, local government, unitarism, confederacy, and self government can be exercised only subject to conformity with state sovereignty and territorial integrity of a State party. It must take into account the popular will of the entire population, exercised through democratic means, such as by way of a referendum, or other means of creating national consensus. Such forms of governance cannot be imposed on a State Party or a people by the African Commission.

200. The African Commission finds that the people of Southern Cameroon cannot engage in secession, except within the terms expressed hereinabove, since secession is not recognised as a variant of the right to self determination within the context of the African Charter.

201. The Commission, however, finds also that the Respondent State violated various rights protected by the African Charter in respect of Southern Cameroonians. It urges the Respondent State to address the grievances expressed by the Southern Cameroonians through its democratic institutions. The 1993 Buea and 1994 Bamenda Anglophone conferences raised constitutional and human rights issues which have been a matter of concern to a sizable section of the Southern Cameroonian population for quite a long time.

The demand for these rights has led to civil unrest, demonstrations, arrests, detention, and the deaths of various people, which culminated in the demand for secession.

202. The Respondent State implicitly acknowledges the existence of this unwelcome state of affairs. It is evident that the 1995 Constitution did not address the Southern Cameroonians' demands, particularly since it did not accommodate the concerns expressed through the 1993 Buea Declaration and 1994 Bamenda Proclamation.

203. The Commission believes that the Southern Cameroonians' grievances cannot be resolved through secession but through a comprehensive national dialogue.

ALLEGED VIOLATION OF ARTICLE 21

204. The Complainants allege violation of Article 21. They did not bring any evidence to support their allegation. In the absence of any such evidence, the Commission finds no violation against the Respondent State.

ALLEGED VIOLATION OF ARTICLE 22

205. The Complainants alleged cases of economic marginalisation, and lack of economic infrastructure. The lack of such resources, if proven would constitute violation of the right to development under Article 22.

206. The Commission is cognisant of the fact that the realisation of the right to development is a big challenge to the Respondent State, as it is for State Parties to the Charter, which are developing countries with scarce resources. The Respondent State gave explanations and statistical data showing its allocation of development resources in various socio-economic sectors. The Respondent State is under obligation to invest its resources in the best way possible to attain the progressive realization of the right to development, and other economic, social and cultural rights. This may not reach all parts of its territory to the satisfaction of all individuals and peoples, hence generating grievances. This alone cannot be a basis for the finding of a violation. The Commission does not find a violation of Article 22.

ALLEGED VIOLATION OF ARTICLE 23(1)

207. The Complainants did not substantiate their allegations on the violation under Article 23(1). The Commission therefore finds that there was no violation of article 23(1) of the Charter.

ALLEGED VIOLATION OF ARTICLE 24

208. No evidence was brought to support the allegation that article 24 has been violated. Consequently, the Commission finds no violation.

ALLEGED VIOLATION OF ARTICLE 26

209. The Complainants alleged violation of Article 26. They submitted that the judiciary in the Respondent State is not independent. They allege that the Executive branch influences the judiciary through the appointments, promotions, or transfer policy. It is also alleged that

the President of the Republic convenes and presides over the Higher Judicial Council.

210. The Respondent State avers that judicial independence is guaranteed by the Constitution. It states that Article 37 of the 1972 Constitution requires every institution and person, including the President to respect it. The State argues further that the Higher Judicial Council which is the appointing and disciplinary authority for magistrates does not necessarily require magistrates to pledge allegiance to the President. It concedes that the President of the Republic chairs the Higher Judicial Council, the Minister for Justice, is the Vice Chairperson, three members of Parliament, three members of the bench, and an independent personality.

211. The Commission states that the doctrine of separation of powers requires the three pillars of the state to exercise powers independently. The executive branch must be seen to be separate from the judiciary, and parliament. Likewise in order to guarantee its independence, the judiciary, must be seen to be independent from the executive and parliament. The admission by the Respondent State that the President of the Republic, and the Minister responsible for Justice are the Chairperson and Vice Chairperson of the Higher Judicial Council respectively is manifest proof that the judiciary is not independent.

212. The composition of the Higher Judicial Council by other members is not likely to provide the necessary "checks and balance" against the Chairperson, who happens to be the President of the Republic. The allegations by the Complainants in this regard are therefore substantiated. The Commission does not hesitate to find the Respondent State in violation of Article 26.

213. The complainants did not mention Article 1 among the provisions of the African Charter alleged to have been violated by the respondent State. However, according to its well established jurisprudence,[FN27] the African Commission holds that a violation of any other provision of the African Charter automatically constitutes a violation of Article as it depicts a failure of the State Party concern to adopt adequate measures to give effect to the provisions of the African Charter. Thus, having found violations of several provisions in the above analysis, the African Commission also finds that the Respondent State violated Article 1.

[FN27]

214. For the above reasons, the African Commission:

- i. Finds that Articles 12, 13, 17(1), 20, 21, 22, 23(1) and 24 have not been violated.
- ii. Finds that the Republic of Cameroon has violated Articles 1, 2, 4, 5, 6, 7(1), 10, 11, 19 and 26 of the Charter.

RECOMMENDATIONS

215. The African Commission therefore recommends as follows;

1. That the Respondent State:

- I. Abolishes all discriminatory practices against people of Northwest and Southwest Cameroon, including equal usage of the English language in business transactions;
- II. Stops the transfer of accused persons from the Anglophone provinces for trial in the Francophone provinces;
- III. Ensures that every person facing criminal charges be tried under the language he/she understands. In the alternative, the Respondent State must ensure that interpreters are employed in Courts to avoid jeopardising the rights of accused persons;
- IV. Locates national projects, equitably throughout the country, including Northwest and Southwest Cameroon, in accordance with economic viability as well as regional balance;
- V. Pays compensation to companies in Northwest and Southwest Cameroon, which suffered as a result of discriminatory treatment by banks;
- VI. Enters into constructive dialogue with the Complainants, and in particular, SCNC and SCAPO to resolve the constitutional issues, as well as grievances which could threaten national unity; and
- VII. Reforms the Higher Judicial Council, by ensuring that it is composed of personalities other than the President of the Republic, the Minister for Justice and other members of the Executive Branch.

2. To the Complainants, and SCNC and SCAPO in particular,

(i) to transform into political parties,

(ii) to abandon secessionism and engage in constructive dialogue with the

Respondent State on the Constitutional issues and grievances.

3. The African Commission places its good offices at the disposal of the parties to

mediate an amicable solution and to ensure the effective implementation of the above recommendations.

4. The African Commission requests the Parties to report on the implementation of the aforesaid recommendations within 180 days of the adoption of this decision by the AU Assembly.

Done in Banjul, The Gambia at the 45th Ordinary Session, 13 - 27 May 2009.

ANNEX 5: RESOLUTIONS ADOPTED DURING THE 45TH ORDINARY SESSION

o RESOLUTION ON THE ESTABLISHMENT OF AN ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS

o RESOLUTION ON THE TRANSFORMATION OF THE FOCAL POINT ON THE

RIGHTS OF OLDER PERSONS IN AFRICA INTO A WORKING GROUP ON THE
RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

o RESOLUTION ON COOPERATION BETWEEN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD IN AFRICA

o RESOLUTION ON THE ESTABLISHMENT OF AN ADVISORY COMMITTEE ON BUDGETARY AND STAFF MATTERS

[1] The African Commission on Human Peoples' Rights (the African Commission) meeting at its 45th Ordinary Session in Banjul, The Gambia from 13 – 27 May 2009:

[2] Conscious of its mandate under the African Charter on Human and Peoples' Rights (the Charter) to promote and protect human & peoples' rights in Africa;

[3] Aware of the vital role of its Secretariat in ensuring the effective discharge of its mandate and the importance of having an effective Secretariat;

[4] Further conscious of the difficulties the Commission has had in the preparation, presentation and execution of its budget, and desirous of facilitating its budgetary preparation process;

[5] Welcoming the decision of the Executive Council of the African Union to strengthen the human resources capacity of the Commission through the recruitment of 33 more staff over the next five years;

[6] Recalling the decision at its 6th Extra Ordinary Session to establish an Advisory Committee to work with the Secretariat to prepare the Programs budget of the Commission;

HEREBY RESOLVES TO

a. Establish an Advisory Committee entitled "Advisory Committee on Budgetary and Staff Matters", with the following mandate:

i. To work with the Secretariat to identify activities from the 2008 – 2012

b. Strategic Plan of the ACHPR that would feature in the Commission's

c. budget Proposals; (ii) To work with the Secretariat to prepare the programs budget of the

d. Commission for presentation to the relevant Organs of the African

e. Union; (iii) To work with the Secretariat to ensure proper execution of the

f. programs; and (iv) To work with the Secretariat on the implementation of the approved

g. new structure of the Secretariat of the Commission

a. Appoint the following to the Committee:

- i. Commissioner Musa Ngary Bitaye
- ii. Commissioner Kaytesi Zainabou Sylvie
- iii. Commissioner Reine Alapini-Gansou
- iv. the Secretary to the Commission (ex-officio)
- v. 1 Senior Legal Officer (ex-officio)
- vi. the Admin and Finance Officer (ex-officio)

FURTHER RESOLVES THAT

- a. The Advisory Committee shall work in conformity with these terms
- b. of reference, the Rules of Procedure of the African Commission, the provisions of the African Charter on Human and Peoples' Rights and the relevant African Union Rules and Regulations;
- a. The Advisory Committee shall report at the Ordinary Sessions of the Commission on the implementation of this Resolution;
- b. The Advisory Committee is established for an initial period of two years.

Done in Banjul, the Gambia on the 27th May 2009.