

# **THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

## **COMMUNICATION 266/2003**

**Submission by the Representatives of the People of the former United Nations Trust Territory of the Southern Cameroons under United Kingdom Administration.**

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*African Commission on Human &  
Peoples' Rights*

*Commission Africaine des Droits de  
'Homme & des Peuples*

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Ref: ACHPR/COMM/FA  
15<sup>th</sup> June 2004

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**Dear Mr Ajomo**

**RE: COMMUNICATION 266/2003**

I have the honour to inform you that at its just concluded 34<sup>th</sup> Ordinary Session held in Banjul, The Gambia, from 21<sup>st</sup> May to 4<sup>th</sup> June 2004, the African Commission examined the abovementioned communication and declared it admissible.

You are hereby informed that the African Commission will consider the abovementioned communication on the merits at its forthcoming 36<sup>th</sup> Ordinary Session. You are therefore requested to forward your written submissions on the merits of the communication within **three (3) months from the date of notification hereof**

Yours Sincerely

**Germain Baricako**  
**Secretary to the African Commission**

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# COMMUNICATION 266/2003

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## REPLY BY COMPLAINANTS TO REQUEST BY REPUBLIQUE DU CAMEROUN FOR ADMISSIBILITY REVIEW

1. On 5 August 2004 Republique du Cameroun through its Minister for External Relations addressed a note to the African Commission on Human and Peoples' Rights requesting that the Commission reviews its decision declaring admissible for consideration on the merits communication 266/2003 (Dr Kevin Gumne & Others v. Republique du Cameroun). The submission was transmitted to complainants.

2. Republique du Cameroun feels able to have found some bases for its curious request in: (i) an alleged violation by the Commission of r.119 of its rules of procedure; (ii) a claimed availability of review under other human rights systems; (iii) a claimed lack of *ratione temporis* jurisdiction by the Commission to entertain communication 266/2003; (iv) a claimed incompatibility of the communication with the Constitutive Act of the African Union; (v) an alleged non-exhaustion of local remedies by the complainants; and (vi) a claimed resolution of the self-determination claim of the people of the Southern Cameroons.

Here below is complainants' point-by-point reply.

### 1. The alleged violation by the Commission of r.119 of its rules of procedure

3. Republique du Cameroun alleges that the Commission, in violation of rule 119 of its Rules of Procedure, failed to signify to it "the entire text giving the reasons for its decision" on admissibility in communication 266/2003. The State party then asks the Commission to forward to it "the full text of its decision" to enable it subsequently to prepare its defense on the merits as well as to enable it to understand the exact terms and scope of the admissibility decision.

4. In the same breath as it alleges a violation of rule 119 Republique du Cameroun concedes that it is not the practice of the Commission to make the 'text' of its decision on admissibility available to the concerned parties. The State party however avers that this practice is neither consistent with 'principles of justice' nor with 'the practice of other international human rights protective bodies' nor with 'the Commission's own rules of procedure'. The averment is specious.

5. Republique du Cameroun misreads of rule 119. That rule clearly ordains that if the Commission decides that a communication is admissible under the Charter, "its *decision* and the *text of the relevant documents*" shall be submitted to the State party concerned. Two things are to be submitted, the decision declaring the communication admissible; and the text of the relevant documents. There is no requirement that when it declares a communication admissible the

Commission should write something in the nature of a judgment, the full transcript of which should then be transmitted to the State party. It is sufficient, for the purpose of r.119 that the Commission takes a decision on admissibility, which is then submitted, to the State party.

6. The phrase ‘text of the relevant documents’ refers to the communication and any other documents from the author of the communication, and not to the transcript of whatever discussions the Commission may have had on the issue of admissibility. That is why in respect of the author of a communication r.119 requires only that he be merely informed of the admissibility decision. There is no requirement that the ‘text of the relevant documents’ be submitted to him since, as author of the same; he must be taken to have copies thereof. Not even in the case of a court, municipal or international, does any known legal system require that the deliberations of the court should be transcribed and made available to the litigants.

7. To the best of the knowledge and belief of the authors of communication 266/2003 Republique du Cameroun was duly served the admissibility decision as well as the text of the relevant documents (twice in fact). The complainants’ submission on the merits will doubtlessly also be transmitted to Republique du Cameroun as required by the provisions of the Charter and the Commission’s rules of procedure. The State party cannot feign ignorance of the scope of communication 266/2003 and what it is expected to respond to. The points it has again raised, this time in French and under the headings A, B, C and D of its note, is conclusive proof that it is fully aware of all the issues involved in this matter. There is thus no known provision of the rules of procedure that has been violated. And there is also no known principle of justice that has been violated. If the State party wants the current rules of procedure amended one would imagine that it knows what to do in order to achieve that ambition. The appeal to the practice of other international human rights protective bodies is misconceived.

## **2. The claimed availability of review under other human rights systems**

8. Republique du Cameroun concedes that neither the rules of procedure of the Commission nor the jurisprudence and practice of the Commission empower the Commission to entertain an application for review of an admissibility decision. Yet, it insists that the Commission reviews the admissibility decision in this case. The State party nurses the unhealthy ambition to have the Commission bend the rules, overlook its well-established practice and jurisprudence and ignore its rules and procedure. This cannot be. The request is made *mala fides* and is as anomalous as it is facetious. The State party cannot ask for special favourable treatment. It must play by the rules of ‘the game’. The fact of the matter is that the Commission’s rules of procedure advisedly do not provide for review of admissibility; which could have been the case had that been the intention of the Commission, particularly so as provision is made for a review on inadmissibility and not on admissibility.

9. The State party rests its extraordinary request for special favourable treatment on two very thin and controversial assertions. The first assertion is that the Commission’s reasons for rejecting Eritrea’s application for review in communication 250/2002 (Liesbeth Zegveld & Mussie Ephrem v. Eritrea) implies ‘in logic’ and by argument *a contrario* that the review it is requesting is permissible under the African human rights system. In that communication Eritrea’s request for review was rejected. In doing so the Commission observed that Eritrea did not ground its request on any new information (as claimed); that the Commission’s rules of procedure do not provide for review; and that the practice of the Commission is not to review its admissibility decision.

10. Republique du Cameroun reasons that because the Commission’s first observation related to the absence of any new information produced by Eritrea, it inexorably follows that had new information been forthcoming the request for review would have been entertained. The reasoning is idle and unconvincing. For, the State party’s conclusion does not follow. This *non sequitur* invalidates its argument. It did not even occur to Republique du Cameroun that regarding Eritrea’s request for review the Commission made its observations upon consideration of the

communication on the merits. Even as a species of syllogistic reasoning the State party's logic is absurd as it suggests that the Commission's observations were made in an order of hierarchical importance, so that the first observation prevailed over the others.

**11.** Reasonable minds would easily see that the Commission's observations form one connected whole; a totality rather than a sequential ordering based on a value judgment. The Commission must be taken to be saying that Eritrea did not state any new information (as contended); but that even if it did its request was still bound to fail because neither the Commission's rules nor its practice allow it to entertain such a request.

**12.** The second assertion by Republique du Cameroun is that review of admissibility decision is standard procedure followed by other international human rights bodies, especially the United Nations Human Rights Committee. The State party then invites the Commission to ape that procedure. The claim betrays yet another misconception, this time a misconception of the operation of international human rights mechanisms. No regional human rights system provides for review of its admissibility decision. For, a decision on admissibility is always taken after the State party has duly been heard. The European system does not provide for review; nor does the Inter-American system. The reason for this non-review is the principle of legal security.

**13.** Republique du Cameroun prays in aid the procedure of the UN Human Rights Committee. But the rules of procedure of the Committee do not provide for an independent review consideration divorced from the consideration on the merits. The Committee's rules of procedure do of course provide that the Committee *may* review a decision that a communication is admissible. However, it *may* do so only "upon consideration of the merits." There is thus no independent review process. There *may* be a review, but only at the merit stage; and the matter is entirely at the discretion of the Committee. Moreover, even if the Committee were minded to review it would do so only "in the light of any explanations or statements submitted by the State party" "clarifying the matter under consideration."

**14.** So even if the African Commission were slavishly to imitate the Committee, as the State party is inviting it to do, the review would still not be forthcoming. It will not be forthcoming for at least three reasons. First, under the Committee's rules of procedure review is discretionary not mandatory. Secondly, even if the Commission applied the Committee's rules of procedure and was minded to exercise its discretion in favour of the applicant the stage at which the review consideration can be undertaken will be at the merit stage, which means Republique du Cameroun still has to address the communication on its merits. Thirdly, the discretion might only be exercised where there is new information clarifying the matter under consideration. But as will later be shown, Republique du Cameroun offers no statement or explanation clarifying the matter under consideration. All it could do and has been able to do is to impugn the admissibility decision, even though it claims not to have been served. Further, the State party does no more than rehearse the same old and futile arguments it had earlier unsuccessfully canvassed at the admissibility stage.

**15.** There is something farcical in the assumption by Republique du Cameroun that a review necessarily leads to a reversal of the admissibility decision. In communication 458/1991 the UN Human Rights Committee was unimpressed with the request for review by Republique du Cameroun, which thus failed to get a reversal of the admissibility decision of the UN Human Rights Committee.

**16.** There is also another way in which the request by Republique du Cameroun betrays a misconception of the functioning of international human rights systems. Regional human rights systems operate independently of the international human rights system. They are not licensed or franchised by the international system. They do not operate under the aegis of the international system. Each regional system is self-contained. That each system mandates the protective body or bodies to draw inspiration from international human rights law only goes to emphasize the universality of human rights. Even so, the protective body is required merely to 'draw inspiration'. There is no question of slavishly copying norms of the universal human rights system because

then the norms of the regional system would lose their *raison d'être* and the regional system would become otiose.

17. Further, Articles 60 and 61 of the African Charter referred to by République du Cameroun do not mandate the African Commission to discard the Charter norms in favour of international human rights norms. Article 60 invites the Commission to 'draw inspiration' from those norms. It is common learning that the Commission does so when it is confronted with a lacuna or an ambiguous term or concept in the Charter. Moreover, that article mandates the Commission to draw inspiration from *law* and not from *procedure and practice*. Under article 61 the Commission is required to 'take into consideration' *inter alia* conventions, customs generally accepted as law, general principles of law, legal precedents and doctrine. But the Commission is required to resort to these norms only "*as subsidiary measures* to determine the principles of law." Where the Charter itself speaks clearly and unequivocally on any matter or point, the Charter norm applies to the complete exclusion of any other.

### **3. The claimed lack of *ratione temporis* jurisdiction by the Commission to entertain communication 266/2003**

18. République du Cameroun claims to have been able to discover and to marshal "new arguments which inevitably ought to lead to the communication being declared inadmissible." On examination however the claimed 'new arguments' turn out to be the same old, weary, hackneyed and unconvincing points République du Cameroun had earlier canvassed without success. What is new, this time round, is that the points are no longer presented in some English but in French. However, the State party's fall back on French, its actual official language, does not make the points new. But even if the points raised were new they would still not impel the Commission to revisit the admissibility decision because neither the Charter nor the Commission's rules of procedure provide for review.

19. Even a cursory look at the points advanced as reasons why the Commission should review its admissibility decision clearly shows that République du Cameroun is merely rehearsing the same old points it had unsuccessfully pleaded.

20. The claimed lack of *ratione temporis* jurisdiction by the Commission is a point République du Cameroun had argued, unconvincingly, under item V of its 'rejoinder' and during its oral presentation at the 35<sup>th</sup> session of the Commission. The argument in effect impugns the Commission's decision both on seizure and admissibility. The State party's line of argument is as follows. The problem of the self-determination of the people of the Southern Cameroons was dealt with by the UN in 1961. République du Cameroun subscribed to the African Charter on Human and Peoples' Rights in June 1989 and the Charter entered into force for it in December 1989. The Charter cannot therefore have retroactive effect binding République du Cameroun in relation to "an event that happened in 1961".

21. Either République du Cameroun is deliberately trying to mislead or it does not appreciate the status of self-determination as an inalienable and unquestionable right, a norm of *jus cogens* having an *erga omnes* character. République du Cameroun has assumed a colonial sovereignty over the people and territory of the Southern Cameroons. That colonial domination has not ceased to exist. The violation of the right of the people of the Southern Cameroons is thus a continuing violation offending against the African Charter and cognizable by the African Commission. Article 28 of the Vienna Convention on the Law of Treaties, 1969, provides: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which *ceased to exist* before the date of the entry into force of the treaty with respect to that party." (Emphasis added)

22. The colonization of the Southern Cameroons by République du Cameroun has not ceased to exist. It is on going, 14 long years after the African Charter entered into force with respect to the

respondent state. The argument of the respondent state under head 'A' is therefore totally misconceived and must fail.

#### **4. The claimed incompatibility of the communication with the Constitutive Act of the African Union**

**23.** This point had also unsuccessfully been raised by Republique du Cameroun in its 'rejoinder' and at its oral presentation at the 35<sup>th</sup> session of the Commission. Respondent state claims that the communication is not compatible with the OAU Charter (or the Constitutive Act of the African Union). This is a rephrasing of the tired secession bogy it is in the habit of always conjuring. That bogy is a familiar ploy by colonizing States. Ethiopia laid claim to Eritrea as falling under the sovereignty of the Ethiopian Emperor; Morocco claimed sovereignty over both Mauritania and the Saharawi Republic as part of an entity called 'Greater Morocco'; France repeated *ad nauseam* that "l'Algerie est francaise". Each colonizing State conjured the secession bogy to deflect international scrutiny of the colonial sovereignty each had assumed over other lands. The several peoples of those lands as well as the international community were unimpressed and refused to sanction those bogus claims.

**24.** Communication 266/2003 relates to the violation of the right of the people of the Southern Cameroons to self-determination, and of other human rights. It is definitely compatible with the African Charter on Human and Peoples' Rights. Article 20 of that instrument guarantees to all peoples the right to existence as a people and the unquestionable and inalienable right to self-determination. In the preamble to the Charter States parties reaffirm their commitment "to eradicate all forms of colonialism from Africa" and "to eliminate colonialism [and] neo-colonialism". The State parties also express their conviction that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the peoples of Africa."

**25.** The Charter is an African regional treaty adopted under the auspices of the defunct OAU and succeeded to by the African Union; and the African Commission is an organ of the African Union. A communication that is compatible with the African Charter on Human and Peoples' Rights is necessarily compatible with the Constitutive Act of the African Union (as well as the now terminated OAU Charter). For, the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments are core objectives of the Union stated in its Constitutive Act. A communication cannot at one and the same time be compatible with the Charter and incompatible with the Constitutive Act.

**26.** Of course the Union assigns to itself a responsibility to defend the sovereignty, territorial integrity and independence of its Members. But one of the basic principles to which the Union adheres is *respect for borders existing on achievement of independence*. That is the only territorial framework the Union has assumed, and can legally assume, a responsibility to defend. An expansionist state, a colonizing state, cannot call on or expect the Union to defend its expansionism or its colonization of other territories and peoples. Imperialism or colonialism, whether of the Black type or the neo-colonial type, is now no longer permissible under human rights law and international law.

**27.** The attempt by Republique du Cameroun to blacken the African Union by casting it as abettor of its colonization of the Southern Cameroons is, to say the least, shameful and disgusting.

**28.** Republique du Cameroun, a former French territory, achieved independence on 1 January 1960. Its borders became frozen on that date in virtue of the principle *uti possidetis juris*. It is only within the four walls of its borders as they stood on the date of its achievement of independence that it can assert its territorial integrity, organize itself politically as it sees fit and do whatever it wants, subject of course to international law.

**29.** It is worthy of note that under Article 56 (2) of the African human rights Charter a communication will be considered if it is compatible with *either* the (O)AU treaty *or* the Charter itself. The 'or' is disjunctive not conjunctive; so that it is sufficient to demonstrate compatibility with either and not with both. For, as earlier observed, if a communication is compatible with the one it is necessarily compatible with the other.

## **5. The alleged non-exhaustion of domestic remedies by complainants**

**30.** Republique du Cameroun had also unsuccessfully raised this point under item V of its 'rejoinder'. In that 'rejoinder' and again at the 35<sup>th</sup> session of the Commission in Banjul the State party conceded that under its domestic law "certainly no legal remedies exist in respect of the claim for self determination". It thus concedes that self-determination is cognizable by the Commission consistently with the Charter. This negatives its earlier contention that the present communication is not compatible with the Charter. It is thus estopped from denying that the communication is compatible with either the African Charter or the AU Constitutive Act

**31.** Further, neither before nor now has Republique du Cameroun been able to contend that in respect of the individual human rights violations stated in the communication its domestic law has remedies which are available, effective and sufficient and needing therefore to be exhausted. The onus is on the State party to satisfy the Commission on this point. Republique du Cameroun has not even been able to indicate *in abstracto* such judicial remedies as it claims exist under its domestic law; though even if it had done so it would still have to discharge the onus of relating them to the circumstances of communication 266/2003 and showing how they might provide effective redress in the circumstances of the case.

**32.** Article 56 (5) of the Charter speaks of "exhausting local remedies, *if any*, unless it is obvious that this procedure is unduly prolonged." If remedies are inexistent the question of exhausting them does not arise. If remedies exist but the procedure for accessing them are unduly prolonged it means there is no reasonable prospect for success and so the remedies need not be exhausted. It is the settled jurisprudence of the Commission that remedies must be available, effective and sufficient. "A remedy is considered available if the petitioner can pursue it without impediment; it is deemed effective if it offers a prospect of success; and it is found sufficient if it is capable of redressing the complaint." (Communication 147/95 and 149/96)

**33.** It is a well-established fact that human rights litigation as such is practically inexistent under the domestic law of Republique du Cameroun. It is not uncommon for the Government of that State to frustrate any attempt to proceed against it and to deny due process to litigants. Further, Republique du Cameroun commonly disobeys court orders, obstructs legal process or commands the same to be unduly prolonged. It is a notorious fact that in that country cases can be pending before the courts for several years; and even before the Supreme Court cases have been known to be pending for over twelve years. Effective, as distinguished from theoretical judicial independence is inexistent. Judicial impartiality and fair trial are lacking. The government's control, of and interference with the courts show that the judiciary in Republique du Cameroun is a dependent judiciary. There is no bill of rights. There is no credible system of judicial review or human rights litigation.

**34.** The State party's demonization of every citizen of the Southern Cameroons as '*secessioniste*', '*separatiste*', '*Biafrais*', '*enemie dans la maison*', and '*Anglofous*', has created an atmosphere of fear and terror in their minds (as it would also in the minds of right thinking people) such that seeking remedies, even if there were any, against the State party is risky to life and personal security. This atmosphere of generalized fear *ipso facto* means that local remedies, assuming they even exist, are unavailable to each one of them. Redress for human rights violations is thus infeasible and impracticable domestically, all the more so as the individual victims are natives of

the Southern Cameroons which is a dependent territory under the colonial and alien domination of Republique du Cameroun.

**35.** Being a human rights supervisory body, the Commission construes the Charter in favour of the protection of human rights. The Commission will not suffer individuals to seek remedies in domestic courts whose standards clearly fall short of and in some instances contravene the principles enshrined in the Charter.

**36.** Republique du Cameroun is understandably very unsettled and particularly piqued by the fact that complainants sought and obtained judgment on the point of self-determination from the Abuja High Court in Nigeria. Nigeria has domesticated the African Charter; Republique du Cameroun has not. To say, as Republique du Cameroun does in the preamble to its constitution, that “the Camerounese people affirms its attachment to the fundamental rights inscribed in the ... African Charter on Human and Peoples’ Rights ...” does not amount to domestication.

**37.** It is not the place of the complainants to explain to Republique du Cameroun the Tomlin Order of the Abuja High Court.

## **6. The claimed resolution of the issue of self-determination of the people of the Southern Cameroons**

**38.** Republique du Cameroun’s last point is yet again the same point it had unsuccessfully raised under item V of its ‘rejoinder’ and orally at the 35<sup>th</sup> session of the Commission. The simplistic reasoning of the State party is that because the UN General Assembly by its Resolution 1608 of 1961 terminated the UK trusteeship agreement concerning the Southern Cameroons therefore “the problem of the self-determination of the people of the Southern Cameroons had been resolved once and for all.” This untested and interestedly excited claim is a self-serving piece of political rhetoric indicative of a pipe dream. It betrays yet again a serious misunderstanding of the norm of self-determination as an inalienable continuous exercise of power. There is no known meaningful concept as a ‘once and for all time’ self-determination. Either the State party is unable to comprehend the import of Resolution 1608, and the *ratio* of the Northern Cameroons case (doubtful), or it is deliberately trying to mislead the Commission (plausible). Republique du Cameroun of course conveniently forgets that it voted against Resolution 1608.

**39.** Republique du Cameroun has studiously not said *how* “the problem of the self-determination of the people of the Southern Cameroons had been resolved once and for all” by the UN and *what has become* of the exercise of self-determination by the people of the Southern Cameroons on 11 February 1961. The burden is on it to make these clarifications if it possibly can. The State party is also mute of malice regarding what the current political status of the Southern Cameroons is following that territory’s exercise of the right to self-determination. It lacks the courage and honesty to admit that it is a latter-day colonizer exercising a colonial sovereignty over the people and territory of the Southern Cameroons.

**40.** This shouting silence of the State party is a pathetic attempt to gloss, *sub silentio*, over the colonial domination of the people of the Southern Cameroons by the people of Republique du Cameroun.

**41.** Republique du Cameroun is by necessary implication trying to sustain the absurdity that the people of the Southern Cameroons self-determined themselves out of self-determination. It is also trying to profit from its own turpitude by falsely and fraudulently suggesting that its colonization of the Southern Cameroons was by permission of the UK and the UN (including the ICJ), thereby pathetically attempting to portray the UN as a sponsor of colonialism.

**42.** The UN termination of UK trusteeship over the Southern Cameroons was not an invitation to Republique du Cameroun to occupy the Southern Cameroons *vi et armis* and colonize it. The purpose of communication 266/2003 is not that the UN should reinstate UK trusteeship over the Southern Cameroons, but that Republique du Cameroun should forthwith end its colonial occupation of the Southern Cameroons and vacate the territory for its people to take control of their lives and to exercise their sovereign right over their territory and natural resources.

**43.** In the Northern Cameroons Case Republique du Cameroun found it could not sustain the view that it was claiming people and territory it had lost. It therefore abandoned that line of argument and then requested the ICJ to simply ‘say the law’ by ruling whether or not the British had, as Republique du Cameroun claimed, rigged the plebiscite in the Northern Cameroons. The UN had in April already endorsed the plebiscite results and decided that the trusteeship over the territory was to end in June. Republique du Cameroun itself conceded that the termination was by a valid organ of the UN and definitive. The Court did not therefore see how if it were to ‘say the law’ as requested by Republique du Cameroun the trusteeship was going to be reinstated, the plebiscite retaken and the joinder to Nigeria (consistently with the wishes of the people of that territory “to join Nigeria as a separate province of the Northern Region”) undone. Both the General Assembly and the ICJ are organs of the UN, the former political and the latter judicial; and the decision of the General Assembly on termination of the trusteeship is *res judicata*. For these reasons Republique du Cameroun’s request was rightly considered moot and correctly reject as being without object. The International Court of Justice is not a moot court.

**44.** The Northern Cameroons Case therefore has no relevance at all with communication 266/2003 before the Commission. There is no sameness of parties, no sameness of issue, and no sameness of interest.

**45.** The point here raised by Republique du Cameroun does not even fall within the terms of paragraph 7 of Article 56 of the Charter. That paragraph bars complaints “which have been settled *by the States involved* in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.” It speaks volumes that in reproducing this paragraph Republique du Cameroun cleverly (or so it thought) omitted the words in italics because it knows only too well that communication 266/2003 is not about a matter which has been settled at all or settled ‘*by the States involved*’ or settled in accordance with the named treaties.

**46.** Republique du Cameroun has no illusions that it will be found in violation of the provisions of the Charter. But it expresses its inability to see the ‘practical consequence’ of a finding that it is in violation of the right of the people of the Southern Cameroons to self-determination. Republique du Cameroun is in effect serving notice of its intention to ignore the finding of the Commission and to continue holding the people of the Southern Cameroons in colonial bondage.

**47.** Once more the State party does not appear to understand the mandate of a human rights protective body. If a human right protective body were to declare a complaint inadmissible or to decline to find a violation because the human rights abuser serves advance notice of its intention not to accept and implement the finding of the body then there will be no human rights litigation. The notice by Republique du Cameroun signifying that it will ignore the finding of the Commission is consistent with its internal practice of disobeying court orders and judgments. The people of the Southern Cameroons are however not worried by this advertised attitude, but will definitely cross that bridge when the time comes.

**48.** Republique du Cameroun’s request for admissibility review, a delay manouvre that has become its stock in trade, is manifestly ill founded. It is idle, vexatious, dilatory, an abuse of process and an attempt to knowingly mislead the Commission. All the points raised in its note to the Commission are old points it had unsuccessfully canvassed before. Some of those points relate primarily to the merits of the complainants’ allegations.

**49.** The long catalogue of wrongdoing by Republique du Cameroun against the people and territory of the Southern Cameroons can now no longer be shielded from international scrutiny. Republique du Cameroun's fear of the merit stage is the clearest indication that it has no credible defense whatsoever for its colonial adventure in the Southern Cameroons and other human rights abuses there, and that it is seeking to evade accountability for its many internationally wrongful acts.

**C. Anyangwe, PhD**  
**Professor of International and Human Rights Law**

**13 September 2004**

# COMMUNICATION 266/2003

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**DR. GUMNE & MEMBERS OF THE SCNC AND SCAPO**  
(for themselves and on behalf of the People of the Southern Cameroons)

VS.

**LA REPUBLIQUE DU CAMEROUN**

## HEARING ON THE MERITS

### SUBMISSION BY COMPLAINANTS

**“We are thus faced with a situation in which Third World States, themselves the pre-beneficiaries of resolution 1514 (XV) guaranteeing the principle of self-determination of all peoples, become modern colonizers of less fortunate peoples within their area.”**

[Judge TO Elias, President of the International Court of Justice (as he then was), in ‘The Role of the ICJ in Africa’, 1 RADIC, 1989, p.8]

### INTRODUCTION

**1.** The substance of the complaint of the people of the Southern Cameroons is that the rights recognized to peoples under the African Charter on Human and Peoples' Rights have, for the people of the Southern Cameroons, been suppressed by Republique du Cameroun (the Respondent State) through domination and colonization in violation of the Charter; and that Republique du Cameroun is guilty of a series of gross, massive, continuing and reliably attested human rights violations in respect of named citizens and groups of citizens of the Southern Cameroons.

**2.** The Commission is requested to find Republique du Cameroun (the Respondent State) guilty of these violations; to reaffirm the inherent, unquestionable and inalienable right of the people of

the Southern Cameroons to self-determination, and thus to the enjoyment of all the rights recognized to peoples under the Charter; to reaffirm the right of the people of the Southern Cameroons to live in peace and security as a free people; to call on States parties to the Charter to assist the people of the Southern Cameroons in their liberation struggle against the foreign domination of Republique du Cameroun; to call on Republique du Cameroun (Respondent State) to end its continuing violation of the human rights of individual Southern Cameroons citizens; and to find that victims of human rights violations by Republique du Cameroun are entitled to adequate compensation.

**3.** The facts are recounted in some detail and the law elaborately enunciated. Reasonable minds would immediately observe that the present communication is hugely distinguishable both on the facts and in law from self-determination matters that the Commission has hitherto considered, such as Katanga, Sir Dawda Jawara, and Casamance.

## **PART I.**

### **THE FACTS**

#### **The territory of the Southern Cameroons**

**4.** The Southern Cameroons has a surface area of 43,000 sq. km and a current population of about 6 million people. It is thus demographically bigger than at least 60 UN and 18 AU Member States, and spatially bigger than at least 30 UN and 12 AU Member States. Located in the 'armpit' of Africa, it is sandwiched between Nigeria and Republique du Cameroun like a wedge between West Africa and what in effect is still French Equatorial Africa. It has frontiers to the west and north with Nigeria, to the east with Republique du Cameroun, and to the south with the Equatorial Guinean Island of Bioko. The borders are well attested by international boundary treaties.

**5.** The natural resources of the Southern Cameroons include oil, gas, timber, coffee, cocoa, tea, bananas, oil palm, rubber, wildlife, fish, medicinal plants, waterfalls and a wide variety of fruit and agricultural produce.

#### **80 years of British Connection**

**6.** The territory later identified as the Southern Cameroons was originally British from 1858-1887. It was ceded to Germany and subsequently incorporated into the contiguous German protectorate of Kamerun, which had been acquired earlier in 1884.

**7.** A 1913 Anglo-German Treaty respecting the settlement of the frontier between the British territory of Nigeria and the German territory of Kamerun from Lake Chad to the sea. That territorially grounded treaty has remained the instrument defining the international boundary between Nigeria and the Southern Cameroons. Moreover, a 1954 British Order in Council (Definition of Boundaries Proclamation) defined the boundary between the Eastern Region of Nigeria and the Southern Cameroons.

**8.** The same territory that had been ceded in 1887 by Britain to Germany was captured by British forces in September 1914 soon after the outbreak of World War I. It later became known as the

British Cameroons, consisting of two separate parts, the Southern Cameroons and the Northern Cameroons.

**9.** Germany held on to its original Kamerun protectorate until 1916 when Anglo-French forces captured it. France took possession of the territory and it became known as French Cameroun. In 1916 therefore, Germany ceased to exercise any territorial authority (sovereignty) over Kamerun. The utter defeat of Germany entailed the loss of its colonial territory. Under Articles 118 and 119 of the 1919 Versailles Treaties Germany renounced and relinquished all rights in and title to all its overseas possessions, including her Kamerun territory.

**10.** An Anglo-French treaty of 1916 (the Milner-Simon Declaration) defined the international boundary between the British Cameroons and French Cameroun. This territorial delimitation was confirmed by the League of Nations in 1922 when the two territories were separately placed under the Mandates System. The territorial alignment was further confirmed by the Anglo-French Treaty of 9 January 1931, signed by the Governor-General of Nigeria and the Governor of French Cameroun.

**11.** The Southern Cameroons was thus under British rule from 1858 to 1887, and then from 1915 to 1961, a total period of nearly 80 years. That long British connection left an indelible mark on the territory, bequeathing to it an Anglo-Saxon heritage. The territory's official language is English. Its educational, legal, administrative, political, governance and institutional culture and value systems are all English-derived.

### **International tutelage**

**12.** The Southern Cameroons was under international tutelage with the status of a class 'B' territory, first as a British-Mandated Territory of the League of Nations from 1922-1945, and then as a British-administered United Nations Trust Territory from 1946 to 1961.

**13.** Under Article 22 of the Treaties of Versailles the Mandatory Power accepted and undertook to apply "the principle that the well-being and development of [the inhabitants of the territories concerned] form a sacred trust of civilization." At the end of World War II the international mandates system was transmuted to the international trusteeship system under chapters XII and XIII of the UN Charter.

**14.** By Article 73 of that Charter the Administering Power "recognize the principle that the interests of the inhabitants of [territories whose peoples have not yet attained a measure of self-government] are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of those territories." One of the basic objectives of the international trusteeship system, as stated in Article 76 b of the Charter, is "to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards *self-government or independence* as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement."

**15.** Up to 1960, the Southern Cameroons though under international tutelage was administered by Britain as part of her contiguous colonial territory of Nigeria. But its distinct identity and personality, separate from Nigeria, remained unassailable. UN Resolution 224 (III) of 18 November 1948 protected the Trust Territory from annexation by any colonial-minded neighbour. While acknowledging that the Trusteeship Agreement makes allowance for 'administrative union', the Resolution provides that "Such a union must remain strictly administrative in its nature and scope, and its operation must not have the effect of creating any conditions which will obstruct the separate development of the Trust Territory, in the fields of political, economic, social and educational advancement, as a distinct entity."

## **Self-government**

**16.** In 1954 the Southern Cameroons became a self-governing region within Nigeria and gradually asserted its distinct identity and its aspiration to statehood through increased political and institutional autonomy.

**17.** In 1958 the British Government stated at the UN that the Southern Cameroons was expected to achieve in 1960 the objectives set forth in Article 76 b of the UN Charter. Since the Southern Cameroons had already attained self-government status four years earlier in 1954, the objective to be attained in 1960 could only have been full independence. General Assembly Resolution 1282 (XIII) of 5 December 1958 took note of the British statement. The people of the Southern Cameroons therefore legitimately expected to be granted full independence in 1960 given that their country had been self-governing since 1954.

**18.** Basic self-government institutions were in place: a Government headed by the Premier as Leader of Government business; a bicameral parliament consisting of a House of Assembly and a House of Chiefs; an Official Opposition in parliament; a Judiciary headed by a Chief Justice; a Civil Service; and a police force. The system in place was a democratic and accountable dispensation; a Westminster-type parliamentary democracy. In 1959 when the term of office of the incumbent Premier came to an end peaceful free, fair and transparent elections were organized. The opposition won and there was an orderly transfer of power to the in-coming Premier. Consistently with the parliamentary system of government the out-going Premier became Leader of the Opposition in parliament.

**19.** On 1 October 1960 the Southern Cameroons was separated from Nigeria. The *Southern Cameroons Constitution Order in Council* came into force. By 1960 the Southern Cameroons had attained a full measure of self-government. Indeed, from 1 October 1960 up to 30 September 1961 it was a full self-governing territory fully responsible for all its internal affairs, except for defense over which matter, along with foreign affairs, Britain continued to exercise jurisdiction.

**20.** Quite apart from the fact that the territory had international personality by virtue of its status as an international trust territory, the Southern Cameroons was a state in the process of being born and was known by the sovereign name of Government of the Southern Cameroons. Its sovereignty was in abeyance waiting to emerge at the moment of its expected independence.

## **French Cameroun achieves independence as Republique du Cameroun**

**21.** On 1 January 1960, the contiguous territory of French Cameroun, also a class B trust territory, achieved independence from France, the chronic on-going anarchy and terrorism there notwithstanding. The French had decided that 1960 was to be the year of 'independence' for its African colonies.

**22.** French Cameroun achieved independence under the name and style of Republique du Cameroun with Mr. Ahmadou Ahidjo as its President. It was admitted to membership of the United Nations on 20 September 1960.

**23.** The name 'Republique du Cameroun' is variously translated into English as 'Republic of Cameroun' or 'Republic of Cameroon' or sometimes simply as 'Cameroon'. However; prudence and clarity dictate that one sticks to the official name in the language in which it is expressed. Accordingly, for the avoidance of confusion, that country (the Respondent State in this matter) shall, throughout these proceedings be referred to by its official denomination 'Republique du Cameroun' except where the context dictates otherwise.

## **Plebiscite recommended by UN**

**24.** On 13 March 1959 the General Assembly adopted Resolution 1350 (XIII) recommending a plebiscite in the Southern Cameroons instead of the granting of independence right away. This was followed by another General Assembly resolution, 1352 (XIV) of 16 October 1959, ordering a plebiscite to be held in the Southern Cameroons “not later than March 1961”. The people of the Southern Cameroons were to pronounce themselves on ‘achieving independence’ by the two dead-end alternatives of ‘joining’ Nigeria or Republique du Cameroun.

### **‘We are not annexationists’**

**25.** In 1959 some perceptive minds in the Trusteeship Council expressed concerns that after attaining independence on 1 January 1960 Republique du Cameroun could try to annex the Southern Cameroons. The Premier of French Cameroun, Mr. Ahidjo, denied any such intention or the possibility of any such action on the part of independent Republique du Cameroun. At the 849<sup>th</sup> meeting of the Fourth Committee of the UN, Mr. Ahidjo took the floor and gave the UN the solemn assurance that Republique du Cameroun is not annexationist. He declared: “We are not annexationists. ... If our brothers of the British zone wish to unite with independent Cameroun, we are ready to discuss the matter with them, but we will do so on a footing of equality.”

**26.** In June 1960 he told the ‘Agence Presse Camerounaise’: “I have said and repeated, in the name of the Government [of Republique du Cameroun], that we do not have any annexationist design.”

**27.** In July the same year he again reassured the international community through the same press: “For us, there can be no question of annexation of the Southern Cameroons. We have envisaged a flexible form of union, a federal form.”

**28.** Later events were to show that he took the UN, the international community and the Southern Cameroons for a ride.

## **Plebiscite process set in motion**

**29.** On 31 March 1960 the Trusteeship Council adopted Resolution 2013 (XXVI) requesting the UK Government “to take appropriate steps, in consultation with the authorities concerned, to ensure that the people of the Territory are fully informed, before the plebiscite, of the constitutional arrangements that would have to be made, at the appropriate time, for the implementation of the decisions taken at the plebiscite.”

**30.** Resolution 2013 saddled the UK Government with a duty to ascertain from both Nigeria and Republique du Cameroun the terms and conditions under which the Southern Cameroons might be expected to ‘join’ either of them. After making the ascertainment Britain was duty bound to inform the people of the Southern Cameroons, well before the plebiscite, of the conditions of ‘joining’ offered by each of the two concerned States.

**31.** Given the artful dilatoriness of the UK Government on this issue the Southern Cameroons entered into direct talks with Republique du Cameroun. Several rounds of talks were held between August and December 1960. These talks resulted in an Agreement (expressed in the form of Joint Declarations and Joint Communiqués) signed by Mr. JN Foncha and Mr. Ahmadou Ahidjo, the respective political leaders of the two countries, and published.

**32.** In the meantime also, in early October 1960, the British Secretary of State for the Colonies held talks in London with a delegation of Southern Cameroons Ministers and members of the Opposition. The aims of the talks included elucidating the meaning of the phrase ‘to achieve independence by joining Republique du Cameroun’.

**33.** The Secretary of State put forward the following interpretation as consistent with the plebiscite alternative of ‘joining’ Republique du Cameroun: “the Southern Cameroons and the Cameroun Republic would unite in a Federal United Cameroon Republic. The arrangements [for the union] would be worked out after the plebiscite by a conference consisting of representative delegations of equal status from the Republic and the Southern Cameroons. The United Nations and the United Kingdom would also be associated with this conference.”

**34.** Both the Southern Cameroons and Republique du Cameroun agreed to this interpretation.

### **Pre-Plebiscite Agreement**

**35.** The signed and published Agreement between the Southern Cameroons and Republique du Cameroun provided that in the event of the plebiscite vote going in favour of “achieving independence by joining” Republique du Cameroun, the following would be the broad terms of the ‘joining’:

- The Southern Cameroons and Republique du Cameroun would unite to create a Federal State to be called the ‘Federal United Cameroon Republic’, outside the British Commonwealth and the French Community;
- The component states of the Federation would be the Southern Cameroons and Republique du Cameroun, legally equal in status;
- Each federated state would continue to conduct its affairs consistently with its colonially-inherited state-culture, with only a limited number of subject matters conceded to the Union government;
- Nationals of the federated states would enjoy Federal Cameroon nationality;
- The Federation would have a bicameral Parliament consisting of a Federal Senate and a Federal National Assembly; and
- Federal laws will only be enacted in such a way that no measures contrary to the interests of one state will be imposed upon it by the majority.

The Agreement also stipulated as follows:

- Constitutional arrangements would be worked out after the plebiscite by a post-plebiscite conference comprising representative delegations of equal status from the Southern Cameroons and Republique du Cameroun, in association with the United Kingdom Government and the United Nations;
- The post-plebiscite conference would have as its goal the fixing of time limits and conditions for the transfer of sovereignty powers to an organization representing the future federation;
- Those entrusted with the affairs of the united Cameroon would put the would-be federal constitution to the people of the Southern Cameroons and Republique du Cameroun to pronounce themselves on it; and
- Until constitutional arrangements were worked out, the United Kingdom would continue to fulfill her responsibility under the Trusteeship Agreement regarding the Southern Cameroons.

**36.** On December 24, 1960, Republique du Cameroun sent a *Note Verbale* to the British Government reiterating its commitment to this Agreement and reconfirming its desire for union with the Southern Cameroons “on the basis of a Federation”.

**37.** The Agreement between the Southern Cameroons and Republique du Cameroun was made available to the UN and the UK Government. The representations therein contained were reproduced in *The Two Alternatives*, a booklet prepared by the United Kingdom Government, published and widely circulated in the Southern Cameroons in pursuance of Resolution 2013 with

a view to informing the Southern Cameroons electorate of the constitutional implications of the alternatives offered in the plebiscite. Also reproduced in *'The Two Alternatives'* was the interpretation of the 'alternative' of 'joining' Republique du Cameroun put forward by the British Secretary of State for the Colonies and concurred with by both the Southern Cameroons Government and Republique du Cameroun. The booklet was widely used during the plebiscite enlightenment campaigns.

**38.** The phrase "to achieve independence by joining Republique du Cameroun" was therefore clearly understood by all concerned (the UN, the UK Government, the Southern Cameroons Government, and the Republique du Cameroun Government) to mean that the Southern Cameroons would attain independence and then form, on the footing of legal equality, a federal union with Republique du Cameroun under an agreed federal constitution.

**39.** On 11 February 1961 the UN-supervised limited plebiscite took place in the Southern Cameroons. The vote was a plebiscite on political status to enable the people of the Southern Cameroons progress from full measure of self-government to national independence. The vote went in favour of achieving independence 'by joining' Republique du Cameroun rather than Nigeria.

### **UN Resolution 1608**

**40.** Two months after the plebiscite vote, on 21 April 1961, the UN General Assembly adopted Resolution 1608 (XV) to give effect to the intention expressed by the people of the Southern Cameroons at the plebiscite. Republique du Cameroun, through its Foreign Affairs Minister, Mr. Charles Okala, made a vain vociferous and pathetic protest against the taking of a vote on the independence of the Southern Cameroons and then voted against Resolution 1608. It speaks volumes that the overwhelming UN vote on the independence of the Southern Cameroons did not go down well with Republique du Cameroun.

**41.** In Resolution 1608 (XV) the General Assembly:

- Endorsed the results of the plebiscite that "*the people of the Southern Cameroons ... decided to achieve independence by joining the independent Republic of Cameroun*";
- Considered that "the decision made by them through a democratic process under the supervision of the United Nations should be immediately implemented";
- Decided that "the Trusteeship Agreement of 13 December 1946 concerning the Cameroons under United Kingdom administration ... be terminated, in accordance with Article 76 b of the Charter of the United Nations ... with respect to the Southern Cameroons, on 1 October 1961, *upon its joining the Republic of Cameroun*"; and
- Invited "*the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroun to initiate urgent discussions with a view to finalizing before 1 October 1961 the arrangements by which the agreed and declared policies of the parties concerned will be implemented.*"

**42.** "The agreed and declared policies of the parties concerned" referred to in the Resolution were the contents of the signed and published pre-plebiscite Agreement between the Southern Cameroons and Republique du Cameroun reproduced in the plebiscite enlightenment campaign booklet entitled 'The Two Alternatives'.

**43.** The said 'agreed and declared policies' were not and have never been finalized.

### **Foumban and the de facto federation**

**44.** From the 17<sup>th</sup> to the 21<sup>st</sup> of July 1961 the Southern Cameroons and Republique du Cameroun held talks in the town of Foumban in Republique du Cameroun with a view to fleshing up the outline of the federal constitution (agreed upon before the plebiscite) and to finalize the same.

**45.** The talks ended inconclusively as a result of the duplicitous conduct and manifest bad faith of Republique du Cameroun, aided and abetted in this by the French who would later claim that the Southern Cameroons was “un petit cadeaux de la reine d’Angleterre” (“a little gift from the English Queen”).

**46.** The press in Republique du Cameroun has recently revealed that at Foumban Republique du Cameroun, acting in pursuance of a premeditated plan, fraudulently and corruptly deflected the Southern Cameroons delegation from the serious business at hand and thereby scuttled the Foumban talks.

**47.** Even the agreement to resume talks at a latter date on the would-be federal constitution was ignored by Republique du Cameroun despite repeated reminders by the Southern Cameroons.

**48.** Without the process of negotiating the terms of the agreed federal union having been completed, without any federal constituent assembly having met, without any draft federal constitution having been established, Republique du Cameroun unilaterally drafted a document which that country’s Assembly, meeting without any Southern Cameroons participation, enacted into ‘law’ on 1 September 1961 as ‘the Constitution of the Federal Republic of Cameroon’ to enter into force on 1 October 1961.

**49.** The component states of the federation were identified as Republique du Cameroun (to be called East Cameroun) and the Southern Cameroons (to be called West Cameroon). Strangely, the long title of the ‘constitution’ characterized the document as a revision of the 1960 Constitution of Republique du Cameroun necessitated by the need to facilitate the return of a part of the territory of Republique du Cameroun. The document was thus in the nature of an annexation law thinly disguised as a ‘federal constitution’. For, Republique du Cameroun could not at one and the same breadth be one of two component states of a federation and yet absorb the other component state, the Southern Cameroons. Nor can the legislature of a future component of a yet-to-be federation validly act as the legislature of that merely contemplated federation.

**50.** In September 1961 the Trusteeship regarding the Southern Cameroons had not yet been terminated and Republique du Cameroun has always been a foreign State in regard to the Southern Cameroons. Republique du Cameroun had no jurisdiction whatsoever over the Southern Cameroons and could thus not validly exercise constituent powers over the territory. Neither the legislature nor the executive of Republique du Cameroun could validly legislate for the contemplated federation.

**51.** Republique du Cameroun’s unilateral ‘federal constitution’ was never submitted for endorsement to and was never endorsed by the people or the parliament or the Government of the Southern Cameroons.

### **The Ebubu and Santa slaughters**

**52.** In the same month of September 1961 a platoon of Republique du Cameroon soldiers crossed the border into the Southern Cameroons at Ebubu village near Tombel and massacred thirteen CDC workers in cold blood. No explanation or apology was offered by Republique du Cameroun to the Government of the Southern Cameroons. Further north, in the village of Santa near Bamenda, marauding soldiers from Republique du Cameroun crossed the Southern Cameroons border into the village of Santa near Bamenda, killed a number of people and destroyed property. They were eventually flushed out by a company of British soldiers. But once again Republique du Cameroun offered neither explanation nor apology for yet another armed violation of the territorial integrity of the Southern Cameroons.

**53.** In 1962 Mr. Zachariah Abendong MP in the Southern Cameroons parliament was brutally murdered in the vicinity of Kekem in Republique du Cameroun. In the same year a Camerounese *gendarme* murdered in cold blood two Southern Cameroons youths arbitrarily detained by the very *gendarmes* in the Southern Cameroons town of Bota. There was never any inquiry into the circumstances of these murders and the soldiers who carried out those extra-judicial killings were never brought to book.

### **Onset of the armed occupation of the Southern Cameroons**

**54.** On 25 September 1961 the British Queen issued a proclamation declaring that the British Government “shall as from the first day of October 1961 cease to be responsible for the administration of the Southern Cameroons.” The British Government then began to withdraw its personnel from the territory, culminating in the departure of its troops on September 30<sup>th</sup> 1961. The territory was left defenseless as it had no military force of its own. Republique du Cameroun moved in its military forces without the concurrence of the Government of the Southern Cameroons. Those forces occupied the territory and have remained in occupation since then, a situation indistinguishable from belligerent occupation.

**55.** On 1 October 1961 the British Government and the UN washed their hands off the Southern Cameroons, leaving the political status of the territory and the fate of its people in limbo. The British Government declared that “the Southern Cameroons and its inhabitants were expendable.” (Declassified Secret Files on the Southern Cameroons, P.R.O., London) The attitude of the UN is all the more surprising when it is recalled that the World Body had drafted constitutions for the Ethiopia/Eritrea federation and also for what is now the Democratic Republic of Congo.

**56.** On that same day a *de facto* Cameroon Federation came into existence. Sovereignty over the Southern Cameroons that had supposedly achieved independence on that day was never handed over to the Government of the Southern Cameroons (which would then have handed it to a legitimate federal government) but apparently to Mr. Ahidjo, President of Republique du Cameroun, and the self-declared head of a yet-to-be-formed federal government.

### **Revealing provisions of de facto federal constitution**

**57.** The ‘Federal Constitution’ unilaterally drafted and enacted by Republique du Cameroun contained some revealing provisions. The President of Republique du Cameroun gave himself absolute powers under Article 50 to rule by decree during the first six months of the federation. Article 54 made provision for the composition of federal parliamentarians in proportion to the number of inhabitants of each Federated State in the ratio of one parliamentarian to 80,000 inhabitants. The constitution put the population of the Southern Cameroons at 800, 000 and that of Republique du Cameroun at 3, 200, 000, thus yielding 10 parliamentarians for the Southern Cameroons and 40 for Republique du Cameroun, in the Federal National Assembly. This inconsequential ‘representation’ was designed to ensure that the Southern Cameroons influenced neither legislation nor policy in the federation

**58.** Article 56 enacted that “on 1 October 1961 the Government of the Republic of Southern Cameroon ... and the Government of the Republic of Cameroun shall become the Governments of the two Federated States respectively.” Article 59 stated that the French text of the constitution was the authoritative version.

**59.** These telling provisions were later expunged from the constitution but without in fact changing the factual situation created by them.

**60.** Conspicuously absent from the document were certain key matters the Southern Cameroons had insisted on during pre- and post-plebiscite talks with Republique du Cameroun: robust state autonomy, a constitutional Bill of Rights, a Federal Senate and judicial independence.

**61.** However, there was no provision in the document to the effect that the Southern Cameroons and Republique du Cameroun shall be united in one sovereign Republic; no provision to the effect that the federation was 'one and indivisible'; and no claim that the document represented *consensus ad idem* of the Southern Cameroons and Republique du Cameroun. The political authorities of Republique du Cameroun were and remained in the driver's seat of the *de facto* federation. Aware that the federation lacked a legally valid founding document and that it had a mere *de facto* existence, those authorities never applied for UN membership of the federation and so the federation was never a member of the UN.

### **Onset of reign of terror in the Southern Cameroons**

**62.** In his unilateral Federal Constitution the President of Republique du Cameroun declared himself President of the Federation. In early October 1961 he issued a proclamation placing the Southern Cameroons under a state of emergency for six months renewable *ad infinitum*, a situation that has more or less remained unchanged to this day.

**63.** He also issued a decree extending to the Southern Cameroons the pass system in force in Republique du Cameroun. The system required any person intending to travel from one district to another or from one town to another to obtain a *laissez-passer* from the military or police authorities and to exhibit the same to those authorities on demand at any checkpoint, under pain of arrest and imprisonment.

**64.** Another decree also extended the '*carte d'identite*' system to the Southern Cameroons. The system requires all persons aged eighteen and above to carry on their person at all times a document called '*carte d'identite nationale*' and to produce it at any time and place on demand by the police or military authorities, under pain of arrest and imprisonment. The card contains details about the holder: his names, the names of his father and mother, his date and place of birth, his profession, his place of abode, his thumb print, his signature, and body identification marks.

**65.** Other decrees followed notably the 1962 Subversion Ordinance, the 1966 law on press censorship, and the 1967 law proscribing meetings and associations. This latter law effectively outlawed civil society organizations and the formation of political parties. These laws seriously eroded the civil and political rights the people of the Southern Cameroons were accustomed to enjoying during the period of British colonial rule.

**66.** The activities of the sinister Gestapo-modeled secret police in Republique du Cameroun, deceptively named documentation and research centre (first known by the acronym DIRDOC then later SEDOC and finally CND), were extended to the Southern Cameroons together with infamous torture units called '*Brigade Mobile Mixtes*' (BMM). These structures tortured or disappeared persons who dared to oppose the political status quo. Among the Southern Cameroonian victims of these structures is Mr. Mukong who miraculously survived twelve years of gruesome detention and torture and was able, in his book *Prisoner Without A Crime*, to record in graphic detail for posterity the frightening *modus operandi* of these outfits.

**67.** As early as December 1961 another ordinance extended to the Southern Cameroons the system of civilian-targeted military tribunals existing in Republique du Cameroun, much to the consternation of the people of the territory. A permanent military tribunal was set up in Buea, capital of the Southern Cameroons. Like those in Republique du Cameroun it was composed of a civilian magistrate and two army officers, citizens of Republique du Cameroun. It had jurisdiction to try civilians for an array of ill-defined offences under the subversion ordinance and other decrees, such as subversive activities, offences against state security, possession of fire-arms or

ammunition, contempt of the President, ridiculing public authority, inciting hatred against the Government, dissemination of false news, and any offence of whatever nature in an area subject to a state of emergency or other exceptional circumstances (a state of emergency had early been declared over the Southern Cameroons) committed even by civilians.

**68.** High profile cases of Southern Cameroonians tried in Buea or Yaoundé (in République du Cameroun) include the officer of police, Inspector Ndifor; the 143 Bakossi people arrested in Tombel in 1966; the journalists Martin Yai, JF Gwellem, Martin Che, Peter Etah Oben; and the publisher SN Tita. In a Cameroon Times publication of February 1970 the journalists expressed the general sentiments of the people of the Southern Cameroons when they observed that the Camerounese forces in the Southern Cameroons were by their conduct indistinguishable from colonial forces of occupation.

**69.** The state of emergency provided and continues to provide the 'legal' basis for the military forces of République du Cameroun to subject the people of the Southern Cameroons to all kinds of abuse, terror and harassment. Taken together, the active enforcement of the state of emergency, the ubiquity of the '*force armée et gendarmerie*', the indiscriminate application of the subversion ordinance, and the activities of the military tribunals and the secret police had the effect of unleashing a veritable reign of terror in the Southern Cameroons.

### **The 'ratissage' (cordon and search operation)**

**70.** A typical method of abuse, torture and other inhuman and degrading treatment is the 'ratissage' (or 'caler-calér', in the language of those foreign forces). A method of psychological warfare used by the French to enforce their colonial rule in Vietnam, Algeria and French Cameroun, the 'ratissage' is a cordon and search operation, an encirclement and dragnet manoeuvre, periodically carried out by military forces against the population.

**71.** This subjugation and terrorization strategy is meant to impress on the people of the Southern Cameroons that they are hopeless, powerless and that any contemplated resistance to République du Cameroun occupation would be futile.

**72.** Routinely carried out, the operation followed a fairly standardized pattern. As early as 4 a.m. heavily armed military forces would invade a pre-selected town or village; moving systematically from house to house; breaking in if the occupant hesitated to open at the first command to do so; moving from street to street, from one locale to another; demanding each person to produce their *carte d'identité, ticket d'impôt, reçepisse, reçu, carte du parti, patente, permis de conduire, laissez-passer, carte de séjour*, or other '*pieces*' (documents) the soldiers chose to ask.

**73.** People are forced out of their homes at gunpoint, herded like cattle into an open space, tortured and humiliated. Forms of dehumanization include being forced to sit on wet grass or ground, on mud, on dust, or on dirty water ponds on the roadside, as well as being forced to kneel on sand, gravel, stones or other road surface facing and looking at the sun. The hapless people are ordered to put their hands on their heads like captured prisoners of war and forced to sing insulting and obscene songs about their spouses and parents, or derogatory songs about God, and to dance or run around, sometimes naked, to amuse the soldiers. Anyone who failed to comply with any of these commands received the butt of the gun, kicks in the groin, or slaps in the face. As if all this was not enough it was not uncommon for the soldiers involved in this operation to rape women, steal property, and unlawfully detain people in the '*commissariat de police*' or '*brigade de la gendarmerie*' for days and weeks on end without charge.

### **The confession of a colonialist**

**74.** Addressing his political party in July 1962, Mr. Ahidjo (self-declared federal President) confessed that République du Cameroun had in effect annexed the Southern Cameroons using the

ploy of a pretended federation. He said: “The reunification of the Southern Cameroons and Republique du Cameroun did not necessitate a fundamental change of the constitution of Republique du Cameroun, but only a minor amendment *to allow for part of the territory to rejoin the motherland. ...* It was Republique du Cameroun which had to transform itself into a federation, taking into account *the return to it of a part of its territory*, a part possessing certain special characteristics.”

75. There could be no clearer admission of annexation or colonization of the Southern Cameroons by Republique du Cameroun. For, the claim that the territory of the Southern Cameroons was/is a part of the territory of Republique du Cameroun is an egregious falsehood legally, historically, culturally and politically.

### **Domination of the people of the Southern Cameroons**

76. The de facto Cameroon Federation lasted a mere ten years. During those years the people of Republique du Cameroun systematically increased their domination of the people of Southern Cameroons. This domination manifested itself in several ways:

- The Federal Government was essentially a Republique du Cameroun monopoly. The Southern Cameroons had only a small and token presence in all the three branches of government, executive, legislative, judicial and therefore could not take or influence any policy decision;
- The military and police have always been entirely French in training and language and have always been a Republique du Cameroun institution;
- Mr. Ahidjo, President of Republique du Cameroun and the self-appointed federal President carved the federation into six administrative regions, each headed by an ‘*Inspecteur federal d’administration*’ native of Republique du Cameroun, along the ‘constitutionally’ established two constituent federated states, each headed by a Prime Minister. The Southern Cameroons was decreed an administrative region. Taxonomically this meant it was concurrently a federated state (self-governing) and an administrative region (under Republique du Cameroun tutelage, for the ‘*Inspecteur*’ was always a citizen of Republique du Cameroun appointed by Ahidjo and directly answerable to him; and his office was deemed to be super ordinate to that of the Prime Minister of the Southern Cameroons). Ahidjo thus created an administrative system that basically ignored the underlying principle of federalism. He did this to keep up the fiction that the Southern Cameroons was indeed part of the territory of Republique du Cameroun;
- Ahidjo gnawed into such powers as the Southern Cameroons had and basically deprived it of revenue-raising powers, thus making it dependent on federal subsidies grudgingly and erratically allocated. The Southern Cameroons Prime Minister deplored this system of *ad hoc* subsidies and wondered aloud how a state could develop by itself according to its priorities if it cannot know how much revenue it has at its disposal.
- Ahidjo arrogated to himself the power to appoint and dismiss the Prime Minister and Ministers of the Government of the Southern Cameroons notwithstanding the fact that the state operated a parliamentary system of government.
- The Southern Cameroons was ordered to switch over from left to right hand driving. The unit of money in the Southern Cameroons had all along been the pound. In 1962 it was abolished. The franc CFA in use in Republique du Cameroun was over-valued in relation to the pound and then extended to the Southern Cameroons with disastrous consequences for the Southern Cameroons Government and for individuals who had savings.
- In 1966 Ahidjo, a consummate manipulator, deceitfully manoeuvred the political parties in the Southern Cameroons and decreed a one-party state,

thereby ending multiparty politics in the Southern Cameroons. The stranglehold of Republique du Cameroun over the Southern Cameroons was now virtually complete.

- Republique du Cameroun also set about destroying the economic base of the Southern Cameroons. Bananas, exported to Britain under Commonwealth preference tariffs, were a major source of income for the Southern Cameroons Government. By bringing the Southern Cameroons economy within the customs arrangement of what is in effect still French Equatorial Africa the preferential tariffs were ended. The French preferred to buy bananas from French-owned companies in Republique du Cameroun. The Southern Cameroons could not therefore sell its bananas and suffered a heavy loss of revenue. The Southern Cameroons' main agro-industry, the Cameroons Development Corporation (CDC), and private banana farmers abandoned banana farming.
- Southern Cameroons' seaports, Victoria and Tiko were teeming with activities. Victoria was a vibrant commercial city with thriving firms such as John Holt Ltd, Cadbury and Fry, Unilever, UCTC, CCC, and Britind Company Ltd. Kumba district produces abundant foodstuff of various variety, timber, cocoa and coffee. In order to induce a dependency syndrome in the Southern Cameroons, Republique du Cameroun constructed from Douala, its main and dredging port, a road linking it to Victoria and a narrow gauge rail line linking the same city to Kumba. The Victoria and Tiko seaports were then decreed closed. The commercial companies were then forced to relocate to Douala. People now had to travel 80 km all the way to Douala for shopping. Cash crop and food produce harvested from Kumba were henceforth being taken to Douala. A vivid account of the economic strangulation and ruination of the Southern Cameroons is given in J. Benjamin, *Les Camerounais Occidentaux*.

77. The de facto federation was thus not conceived to operate and did not operate in a manner fully consistent with the aspirations of the people of the Southern Cameroons. Republique du Cameroun frustrated the freely expressed wishes of the people of the Southern Cameroons to independence. It set in motion the process of forcing the people of the Southern Cameroons into Republique du Cameroun mould in a hopeless homogenizing quest designed to result in the complete extinguishment of the separate and distinct identity of the people of the Southern Cameroons.

### **Early protests to no avail**

78. Resistance by the political elite of the Southern Cameroons to absolutism and "*la francisation imposee*" ('imposed Gallic assimilation') was met with high-handed treatment. For standing up to Republique du Cameroun's expansionist agenda Prime Minister AN Jua was labeled '*un autonomiste avant tout*' ('a die-hard autonomist') and dismissed by Ahidjo. Jua would later die in circumstances, which remain suspicious. When Foncha reminded Ahidjo that there was no valid union accord or treaty between the Southern Cameroons and Republique du Cameroun and that it was high time such an accord is concluded between the two parties, he was shabbily treated and dismissed from his decorative office of Vice President.

79. Dr Fonlon called for an equal quota of cabinet ministers in the Federal Government. He called for the establishment of a Federal Senate with equal representation for the Southern Cameroons and Republique du Cameroun. He called for meaningful representation for the Southern Cameroons in the Federal Assembly so as to put the Southern Cameroons in a position to influence policies and law making. He called for Southern Cameroons autonomy to enable it to effectively govern itself. He called for an end to the treatment of the Southern Cameroons as a dependency of Republique du Cameroun. Fonlon was summarily dismissed from his ministerial

job. Nzo Ekhah-Nghaky was also labeled an 'autonomiste' and was also sacked from his ministerial job.

**80.** From the federal period to this day nationals of the Southern Cameroons are appointed, if at all, as a matter of grace, and then to subordinate positions as assistants or deputies to nationals of Republique du Cameroun. Moreover, key ministries (*'ministeres de souverainete'*) and offices are, as a matter of policy, out of bounds to nationals of the Southern Cameroons. These include the republican presidency, secretary general at the presidency, the commander of the armed forces, director-general of the oil industry, the ministry of finance, the ministry of defense, the ministry of the interior, the ministry of foreign affairs, the ministry of education, the ministry of information and culture, the ministry of economic and industrial development, and ambassadorship to Nigeria, France, Britain, United States and the United Nations.

### **Unchecked powers conferred on Camerounese pro-consuls**

**81.** Instead of loosening the stranglehold of Republique du Cameroun over the Southern Cameroons, Ahidjo moved to further strengthen *'l'administration territoriale'* by giving increased powers to the *'Inspecteurs federaux d'administration'* (later renamed *'gouverneurs'*) and to the *'prefets'* in the Napoleon-style prefect system he had imposed in the Southern Cameroons. They were given absolute and unchecked powers within their administrative areas, including the power to torture, to detain indefinitely, to confiscate property, to control the movement of persons and goods, to censor the press, and to disperse any assembly, prohibit any meeting, and disband any association. The *'gouverneur'* and *'prefet'* continue to exercise these arbitrary powers to this day, unchecked by law or morality.

**82.** In 1966 Ahidjo resolved to Balkanize the Southern Cameroons and to fuse the areas thus cut up into contiguous regions in Republique du Cameroun. The objective was to procure the complete extinguishment of the Southern Cameroons both as a political and as a unitary territorial unit. Somehow a Southern Cameroons journalist, Mr. Emmanuel Epie, got wind of the plan and published the story in the 'Cameron Mirror'. The Prime Minister and people of the Southern Cameroons were furious. The Government of the Southern Cameroons issued a press statement stating that such a move would be completely unacceptable. Ahidjo quickly denied any plans to absorb the Southern Cameroons into Republique du Cameroun.

### **The Tombel pogrom**

**83.** In Republique du Cameroun, an insurgency group (variously referred to as *'les maquisards'*, *'les terroristes'* or *'la rebellion'*) operating since the 1950s had been fighting the French colonial authorities and later the Ahidjo government, in that country. In December 1966, shortly before Christmas, some members of the terrorist group, natives of the Bamileke tribe, crossed the border into the Southern Cameroons and killed four Bakossi villagers in Tombel for no apparent reason. The Bakossi vented their anger on resident Bamileke tribesmen. (These were among thousands of refugees fleeing relentless repression in their native Republique du Cameroun, and who had sought asylum in the safety of the Southern Cameroons and were given sanctuary in Bamenda, Kumba, Tiko, Tombel and Victoria as migrants.)

**84.** The Bakossi retaliation resulted in two or three casualties and the destruction of some property. A civilized government would have called for calm, given police protection to the two communities, established a commission of inquiry, and arrested and prosecuted the culprits. The Yaoundé regime chose to act otherwise.

**85.** Ahidjo ordered in his troops and a barbaric act of collective revenge was exacted against the Bakossi people. West Africa Magazine of May 1967 records that 236 Bakossi men, women and children were massacred and Tombel town destroyed. Another 143 Bakossi people were abducted

and transported to Yaoundé under inhuman conditions. They were tried by the Yaoundé military tribunal in a language and under a law they did not comprehend. The charge was subversion. Of the 143 people 17 were sentenced to death and executed by firing squad; 75 were given life sentences in various gendarmerie-run detention camps (in effect to slow death given the cruel conditions of detainees in those camps); two were sentenced to years imprisonment each; 4 were given a two years' jail term each; 1 person died during the trial; and 36 persons were discharged.

**86.** In all about 330 Bakossi people perished at the hands of the Yaoundé authorities. Every Bakossi family either lost a family member or was affected as a result of the pogrom.

### **The pretended 1972 'referendum'**

**87.** Given all these events, between 1966 and 1971 there were persistent rumours of the collapse of the *de facto* Cameroon federation. The 1971 security report from the Southern Cameroons to Ahidjo informed him of the general openly expressed resentment in the Southern Cameroons that the state was being treated as a colony of Republique du Cameroun and that the Southern Cameroons would be justified in proclaiming its separate independence. The security report also informed Ahidjo that leading Southern Cameroons politicians held a four-day meeting in Kumba during which they decided to form an opposition Christian Democratic Party with the blessing of the Catholic Church.

**88.** In early 1972 Ahidjo poured in more troops in the Southern Cameroons to obviate the danger of a generalized revolt. The troops were ordered to systematically terrorize the population as a form of psychological warfare. All movements of key Southern Cameroons politicians were closely monitored round the clock.

**89.** Ahidjo then conspired with Paul Biya (incumbent President of Republique du Cameroun since 1982), Charles Onana Awana, Moussa Yaya Sarkifada and Francois Sengat Kuo, all of them citizens of Republique du Cameroun to end the *de facto* federation and to formally annex the Southern Cameroons to Republique du Cameroun. This was yet another chapter in the game of constant duplicity and scheming by Republique du Cameroun.

**90.** On May 6 1972 Ahidjo mounted the rostrum of the Federal National Assembly and in a periphrastic speech declared to a nonplussed audience: "*J'ai decide de mettre fin a la Federation.*" ('I have decided to end the federation'). Then, incongruously, he said he would 'consult' the 'people' by referendum two weeks later, on May 20th. It was the people of the Southern Cameroons alone who had voted at the plebiscite. It was they who were going to lose their self-government. One would therefore have thought that Ahidjo would confine his 'referendum' to the people of the Southern Cameroons to indicate whether they wished a detrimental change in their political status. But Ahidjo chose to make his 'referendum' a general affair. The ploy was an insurance cover to make sure that even if the people of the Southern Cameroons were to vote 'no' that vote was going to be overwhelmed by the crude majoritarian 'yes' vote of the people of Republique du Cameroun who had all along nursed the ambition to absorb the people of the Southern Cameroons.

**91.** In any event, throughout his despotic rule Ahidjo's word was the law and so even as he spoke on that day no one had any illusions about the result of the so-called referendum. In view of the fact that the result of the so-called referendum was a foregone conclusion and that the formal annexation of the Southern Cameroons would in fact already have been accomplished by the time of the 'referendum', the said 'referendum' could have been no more than a gimmick for the benefit of the international community.

**92.** Ahidjo's speech in effect amounted to a decree sacking the Government of the Southern Cameroons and the overthrow of the federal government. Ministers and MPs simply packed their personal belongings and scampered away in fright. Neither parliament in the Southern Cameroons nor the federal assembly dared to resume sitting in order to debate Ahidjo's speech or

to dispose of any pending business or to formally dissolve. Ahidjo would later boast that he had carried out 'une revolution'. Since the de facto federation was declared ended it was doubtful what entity Ahidjo was President of.

**93.** Ahidjo and his confederates secretly drafted a constitution and had it secretly typed by Ahidjo's tribesman, Ousmane Mey. The French law Professor, Maurice Duverger, was then fetched from Paris to review the document. The political leadership of the Southern Cameroons was not even informed of what was going on. There was not even the pretence of a public debate on that document. Before 'voting' day on May 20<sup>th</sup> the generality of the people had not even seen less still studied the contents of that document. Yet the long-windy referendum question asked people whether they approved of his unitary constitution instituting what he called 'la republique unie du Cameroun'.

**94.** In a well-choreographed exercise, including 'motions of support' usually generated by the Camerounese presidency and ministry of internal affairs (the ministry responsible for organizing 'elections' and fixing their results), Ahidjo claimed a 99.999% approval of his coup. Taken completely unawares, the Southern Cameroons was unable to come up with a response, dismissing the exercise as a charade, saying the choice was between 'oui' and 'yes'.

### **Destruction and plunder of the Southern Cameroons**

**95.** Ahidjo gave himself 'les pleins pouvoirs' (unlimited powers) for six months to rule as he saw fit. He formally instituted the imperial presidentialism that exists in Republique du Cameroun to this day. In his 'constitution' of 2 June 1972 he officially annexed the Southern Cameroons to Republique du Cameroun. He then embarked on a process of systematically dismantling the political and economic institutions of the Southern Cameroons, plundering its natural resources and under-developing the territory.

- The Southern Cameroons was cut up into two provinces, which have since continued to be administered from Republique du Cameroun through a hierarchy of colonial-type district commissioners known as '*sous-prefets*', '*prefets*', '*gouverneurs*', and '*commandants des legions*' from Republique du Cameroun as dependencies of that country. These Republique du Cameroun proconsuls, together with the military exercise the amplest of authority over the territory, operating in a language and apply an administrative system alien to the Southern Cameroons.
- Policing in the territory is essentially carried out by the military. Military road checkpoints were instituted every six or seven kilometers. For instance, today from the border at the Mungo River to Buea, a distance of less than thirty kilometers there are six checkpoints.
- Museum pieces and archival records, including files in the Southern Cameroons Public Service Commission were either vandalized or carted to Yaoundé where they were subsequently burnt.
- The schools calendar in the Southern Cameroons was aligned to that in Republique du Cameroun. Teacher training colleges in the Southern Cameroons were closed down, primary education under-funded and secondary education under constant threat of adulteration. American educational programmes such as ASPAU and AFGRAD provided scholarship to deserving Southern Cameroons students to enable them study in the USA. Republique du Cameroun requested the US to discontinue these programmes. Also requested to be discontinued was aid provided to Southern Cameroons communities through USAID and British Technical Assistance.
- The system of local government and community development in the Southern Cameroons was destroyed.
- The ruthless exploitation of natural resources in the Southern Cameroons such as oil and gas, timber, rubber and palms has continued without any benefit accruing to the Southern Cameroons or its people.

- Since the abolition of the Southern Cameroons Government there has been little development in the territory. Virtually all the public structures and facilities in the Southern Cameroons were built in the days of the Germans, British or the Southern Cameroons Government. There are no modern facilities and not even a single three star hotel in the territory.
- Roads constructed when the British were in charge and also at the time of the Government of the Southern Cameroons have been allowed to dilapidate for lack of maintenance. A few patches of tarred roads exist here and there, all totaling no more than 150 kilometres. These small stretches of tarred roads have however been done to serve the economic, commercial and security interests of Republique du Cameroun. As a general rule the Southern Cameroons is a territory where 'roads' are no more than dusty/muddy dirt tracks. It takes a robust truck a whole day to do a distance of 60 or 100 km. In many places trekking and head load are still the order of the day. Many areas are unreachable by road or air. Oil comes from Ndian district. But it has no roads or other infrastructure.
- In fact the only access to almost all the Southern Cameroons communities along the border with Nigeria are accessible only from Nigeria and many of those communities have access only to Nigerian educational and health facilities, and use the Nigerian currency in commercial activities.
- The Southern Cameroons is purposefully isolated from the rest of the world physically (lack of roads and reliable telecommunication network) and in international relations. The Southern Cameroons cannot enter into any relations of any kind whether with states or non –state entities. It lacks *locus standi* before the ICJ to challenge the colonial status imposed on it by Republique du Cameroun.
- Over the years financial and other establishments set up by the Government of the Southern Cameroons as well as private businesses by Southern Cameroons businessmen have all been purposefully and systematically snuffed out: the Development Agency was destroyed; the Cameroons Bank (CAMBANK) was moved to Republique du Cameroun, looted and then closed down; the Marketing Board was looted and its financial reserves of over 78 billion cfa francs (approx. USD160 million) misappropriated with impunity; the Electricity Corporation (POWERCAM) was closed down, its assets confiscated and the hydro-electricity installations in the territory demolished; the Cameroons Timber Company based in Muyuka was closed down and its assets confiscated; Fomenky's Direct Supplies company, Niba Automobile company, Nangah company, Kilo Brothers company, Union Profess in Kumba, and Che company were ordered to relocate in Republique du Cameroun and then were deliberately starved of credit and squeezed out; agro-industrial establishments such as Santa Coffee Estate, Obang Farm Settlement, and Wum Area Development Authority were maliciously closed down; also maliciously closed down were Cameroons Air Transport (CAT), the Tiko International Airport, the Besongabang Airport, the Bali Airport, the Weh Airstrip, the Victoria deep sea port, the Tiko sea port, the Ndian sea port, and the Mamfe inland port on the Cross River
- Republique du Cameroun has contrived to grab Southern Cameroon's only surviving industry, the Cameroons Development Corporation (CDC), under the thin disguise of privatization. This move has in effect dashed the legitimate expectations of the indigenous owners of the land occupied by the CDC to eventual recover their ancestral lands.
- Although oil and gas come from the Southern Cameroons no oil storage facility has been constructed in the territory. Refined petroleum product is taken from the refinery at Victoria by tankers to Republique du Cameroun and from there a little quantity is then brought back to the Southern Cameroons for retail sale at prices higher than in Republique du Cameroun. All oil revenues go directly to Republique du Cameroun. In fact the oil business is considered a presidential preserve and a secret, and is managed like the private property of the President of Republique du Cameroun. By and large citizens of the Southern Cameroons are not allowed access to this industry, especially access to key and strategic positions.

- Foreign investors intending to invest in the Southern Cameroons have always been coerced to invest in Republique du Cameroun instead. For example, the oil company PECTEN and the breweries, GUINNESS and ISENBECK, wanted to set up shop in the Southern Cameroons but were pressurized to locate in Republique du Cameroun.
- Official speeches, texts and documents are exclusively in French, with occasional translations, if at all; and often later, care being taken to mention that the French text remains the authoritative version. It is thus not possible to argue a case, make a political or other point, or claim a right or privilege on the authority of the English version of any document, be it the 'constitution'.
- The Southern Cameroons has a separate and distinct legal system (Common Law system). But it is denied a legislature or other institutional framework to make laws for the peace order and good government of the territory. Nor is there any framework for amending, reforming or updating the body of laws received from Britain. Republique du Cameroun has always, as in other areas, dominated and controlled the law-making process. It has therefore been applying its invidious policy of systematically repealing the English-derived laws in force in the Southern Cameroons and extending its French-derived laws to the territory. The Justice Ministry of Republique du Cameroun is on record (through its one time Minister Mr. Ngongang Ouandji) as saying the English legal system is no legal system at all.
- The most recent example of the extension of French-derived laws to the Southern Cameroons is the imposition on the Southern Cameroons of the French-law inspired '*Organisation pour l'Harmonisation du Droit des Affaires en Afrique*' (OHANDA) setting the legal framework for the conduct of business in French-speaking African States. The 'OHANDA law' was imposed on the Southern Cameroons even though it is entirely French law derived and even though the official language of the organization is clearly stated to be French. The imposition of that piece of civil law legislation has entailed the repeal of the Companies Act 1948 until now in force in the Southern Cameroons.

**96.** It has not been possible to challenge in court this long train of illegalities because Republique du Cameroun has always been under despotic rule. Moreover, that country has never had any credible legal framework within which to seek and obtain redress. It has no credible system of judicial review. It has not properly incorporated any human rights treaties into its domestic law. It has no constitutional bill of rights. It has never had an independent judiciary.

**97.** Not long after the *de facto* federation was ended in 1972, various Southern Cameroons groups began to emerge at home and abroad challenging what was euphemistically referred to as the 'marginalization' of the Southern Cameroons, meaning the annexation or colonization of the Southern Cameroons. Students' groups, cultural groups and individual politicians addressed petitions to the Yaoundé regime to no avail.

### **The official restoration of the identity of 'Republique du Cameroun' and confirmation of the formal colonization of the Southern Cameroons**

**98.** In February 1984, Mr. Paul Biya (another citizen of Republique du Cameroun who had been picked by Ahidjo and handed the Presidency in 1982) discarded Ahidjo's 'republique unie du Cameroun' contraption. He signed a law formally reverting to the denomination and identity 'Republique du Cameroun'. That denomination had officially not been in use since 1 October 1961. That law by Biya also confirmed the formal colonization of the Southern Cameroons. The Constitution of Republique du Cameroun provides in article 1 that "The united republic of Cameroun shall ... be denominated Republique du Cameroun." The Southern Cameroons is nowhere mentioned throughout the Constitution. English is a language Republique du Cameroun has merely 'adopted' as being of the same value as French its actual official language

## **Notice on the eventual restoration of the independence and statehood of the Southern Cameroons**

**99.** The response from Southern Cameroonians was swift. Fon Gorji Dinka, Barrister-at-Law, of Lincoln's Inn, published a pamphlet called *The New Social Order*. The booklet detailed the illegalities Republique du Cameroun has been guilty of since 1961 and pointed out that no valid constitutional or other legal basis exists either for the association of the two former trust territories or for the assumption by Republique du Cameroun of jurisdiction over the Southern Cameroons. It informed that the Southern Cameroons shall never accept colonial rule, be it Black. It advised the Yaoundé Government that if Republique du Cameroun desired to associate with the Southern Cameroons then the two countries had to fully agree on the terms of such association. It argued that the formal revival of Republique du Cameroun *ipso jure* entailed the formal revival of the Southern Cameroons as well.

**100.** Barrister Dinka cautioned that if Republique du Cameroun continued to turn a deaf ear; the Southern Cameroons shall be left with no other option than to proclaim its separate independence under the name and style of 'Republic of Ambazonia' to avoid any confusion between the former British-administered UN Trust Territory of the Southern Cameroons with the southern province or region of Republic du Cameroun.

**101.** Barrister Dinka was immediately arrested, held in solitary confinement, then transferred to the dreaded BMM, put through the motion of a trial by a military tribunal, and then placed under house arrest from where he managed to escape abroad and still lives in exile in Europe to this day.

### **Continuing revolt**

**102.** Throughout the 1980s the people of the Southern Cameroons, as individuals or as groups, continued to revolt against what was now openly characterized as annexation by Republique du Cameroun.

**103.** The revolts, especially by parents and school children from primary to University level, intensified when Biya decreed the abolition of the General Certificate of Education (GCE) examination and thus the English-based educational system in the Southern Cameroons, and substituted for it the French educational and exam system. This was a recipe for disaster for the future of the children of the Southern Cameroons.

**104.** Republique du Cameroun had already destroyed the Ombe Trade Centre, a leading technical college established in 1954, and imposed the French technical education system in the Southern Cameroons. The result of this imposition continues to be an unmitigated disaster for Southern Cameroons children opting for technical education. The technical colleges in the Southern Cameroons are now a mongrel institution. The contents of the courses and the standard of achievement do not meet the technical education requirements in technical colleges in France or in England. Teachers in technical schools are mainly citizens of Republique du Cameroun. They have no mastery of technical English or of the English language. Examinations are set in French and translated into incomprehensible language. Year in year out the failure rate is in the region of 90%.

**105.** This is the same failure rate experienced by students from the Southern Cameroons studying in Yaoundé University. More often than not they were made to study and write their exams in French. At first they were made to spend a period of time studying French before proceeding to enroll for the discipline of their choice. The policy was developed whereby courses taught in French were made core subjects and those in English mere electives. This was designed to ensure that a student, citizen of Republique du Cameroun could ignore courses taught in English, concentrate only on the courses in French and still pass his exams; while the student who is a citizen of the Southern Cameroons could not possibly pass if he did not concentrate on the subjects in French.

**106.** The situation was compounded for the Southern Cameroons student by the fact that as a matter of policy there was no eagerness on the part of the authorities to recruit Southern Cameroons lecturers. Those that were recruited had to submit their degrees obtained from England, USA, Nigeria or other English-speaking country to the Ministry of Education for an equivalent rating by Camerounese bureaucrats, French educational system degrees being taken as the yardstick. The equivalent rating system applies only in respect of Anglo-Saxon degrees and more often than not those degrees are under-rated. For Southern Cameroons students, studying in Yaoundé University was a big gamble.

**107.** The educational difficulties confronting Southern Cameroons children drove thousands to Nigeria, the US and the UK to pursue their studies. They led to an intense long-drawn struggle with the Yaoundé regime for the establishment of a University in the Southern Cameroons to serve the needs of Southern Cameroons children. A University was eventually established in Buea in 1993 with financial contributions by the people of the Southern Cameroons themselves. The Yaoundé Government has persevered in its policy of under-funding that University.

### **The Lake Nyos mass deaths**

**108.** On 21 August 1986 more than 3,000 people and an untold number of livestock and other animals in the vicinity of Lake Nyos perished from inhaling a gas later identified as a mixture of carbon dioxide and hydrogen sulphide. The official line of the Yaoundé regime is that the gas was a gigantic bubble, which had collected below the bed of the lake and exploded on the night of the fateful day.

**109.** Many discount this official version saying that the gas was in fact a chemical weapon of mass destruction being tested at night by a foreign power with the complicity of the Yaoundé regime; all the more so as on the day in question masked military personnel of the power in question were already at the site with scientific and medical equipment. According to this version the remoteness of Nyos with not even a dirt road or other means of communication and the Government attitude that the hapless villagers were expendable made it an ideal testing site.

**110.** The Nyos gas killed humans and animals instantly on contact but did not affect the vegetation. No commission of inquiry was ever set up to look into what really happened at Nyos. Scientists, local and foreign held a scientific forum in Yaoundé to determine scientifically the nature and origin of the Lake Nyos gas. After days of work the scientists could not agree on a theory and the meeting ended inconclusively.

**111.** Meanwhile, aid (including money) from relief agencies and donors intended for villagers of adjoining villages who had to flee when news of the disaster spread, was plundered in Yaoundé. Only a trickle reached the intended persons. Speaking for the Yaoundé regime, its interior minister Mr. Mengueme said that those unfortunate people were too primitive to make good use of the aid destined for them. To this day the Nyos victims remain abandoned to their fate. No commission of inquiry was ever set up to investigate the widespread diversion of relief aid by government officials.

### **The butchery and maiming in Bamenda**

**112.** By 1989 the choices facing the people of the Southern Cameroons to recover their dignity and self-worth as a sovereign people were limited: a general revolt with the likelihood of a bloody suppression; a war of national liberation entailing a central leadership and a war effort; or defiance of the ban on the formation of political parties and create a political party to unite the people politically and fight for the peaceful decolonization of the land.

**113.** The choice fell on the third option and this led to the emergence of the Social Democratic Front (SDF) political party in Bamenda in May 1990. Republique du Cameroun moved an entire battalion of its troops into the city of Bamenda with a mission to forcibly prevent the launching of the party.

**114.** On the day of the launch the soldiers shot and killed six people and seriously wounded scores of others. In other parts of the Southern Cameroons several arrests were made and at the University of Yaoundé Southern Cameroons students were rounded up, put through the third degree, detained and afterwards released. The Yaoundé regime then went on television and told the world a fat lie that those who died or suffered injuries were trampled upon by the crowd at the launch, that those who took part at the launch were Biafrans and not 'peace loving Camerounians', and that the leader of the political party, Mr. Jon Fru Ndi was himself a Biafran who had since fled to Nigeria.

**115.** The SDF survived the launch and thanks to external pressure the Yaoundé regime was forced to accept the advent of multi-party politics.

In October 1992 the SDF leader contested the presidential elections in Republique du Cameroun and, according to well-informed and dependable sources, won. Mr. Biya stole the victory with the complicity of the Yaoundé Supreme Court. There were angry demonstrations throughout the Southern Cameroons. Mr. Biya responded once more by a show of military force. More troops were again moved into the Southern Cameroons and a state of emergency was once more imposed on the whole Bamenda area.

**116.** From Victoria to Bamenda grenades and live bullets were used against peaceful protesters. Scores of people were killed, maimed or otherwise wounded. John Fru Ndi's compound, with his family and supporters inside was under military siege for two months with the avowed aim of starving the occupants to death. The local population devised various ingenious methods by which they were able to smuggle food to the besieged people. They also worked out an ingenious way by which Fru Ndi was able to communicate with the outside world. The siege was only ended following the intervention of Archbishop Desmond Tutu of South Africa, who traveled to Bamenda to secure Fru Ndi's release.

**117.** Even after the end of the siege the military proceeded to arrest key SDF officials, including Mr. Justice Nyo Wakai, a retired Supreme Court Judge and Chief Justice. He was abused and humiliated in front of his wife and children. The persons arrested, more than a hundred of them, men and women, were first taken to the BMM torture centre. After days of being held *incommunicado* they were abducted under cover of darkness and under inhuman conditions to Yaoundé where they were imprisoned for weeks. Mr. Biya then constituted what was called a 'State Security Tribunal' made up of military officers to try the detainees. As protest intensified in Bamenda the Yaoundé regime announced it was releasing the detainees '*sous caution*' and that it was lifting the state of emergency in Bamenda.

### **The SCNC mandate**

**118.** In 1993 and 1994, against the backdrop of terrorization and disruptions by the Camerounese military, the people of the Southern Cameroons, assembled for the first time as a people since early 1972. They created the Southern Cameroons National Council (SCNC) and mandated it to seek and secure constitutional talks with Republique du Cameroun on the basis of an agreed federal constitution. The SCNC was further mandated, if the Yaoundé regime refused to engage in meaningful constitutional talks or if it failed to engage in such talks within a reasonable time, to so inform the people of the Southern Cameroons by all suitable means and thereupon proclaim the revival of the independence and sovereignty of the Southern Cameroons and take all measures necessary to secure, defend and preserve the independence, sovereignty and integrity of the Southern Cameroons.

**119.** Six years afterwards, in 1999, Republique du Cameroun had not as much as indicated a willingness to talk with the Southern Cameroons. The SCNC so informed the people of the Southern Cameroons, served notice that ‘reasonable time’ had expired and declared that it intended to fulfill its mandate of proclaiming the revival of the independence and sovereignty of the Southern Cameroons.

**120.** The SCNC made that proclamation on 30 December 1999 over Radio Buea.

**121.** Mr. Justice Ebong who read the proclamation was arrested together with key SCNC leaders. They were taken to Yaoundé under cover of darkness, severely tortured and held in solitary confinement at a military facility for 14 months before being released in the face of sustained pressure from especially the Southern Cameroons Diaspora as well as from the international community.

### **Biya’s attempt at brainwashing the people of the Southern Cameroons**

**122.** Acutely aware of the separate identity of the Southern Cameroons and that Republique du Cameroun remains a foreign land in relation to the Southern Cameroons, Mr. Biya went to Buea, capital of the Southern Cameroons and attempted to get the people to identify themselves with the people of Republique du Cameroun. He told the rented crowd to repeat after him: “I am a Camerounian, I was born a Camerounian and I will die a Camerounian.”

**123.** This was an attempt to redefine the identity of the people of the Southern Cameroons and to re-write their history.

**124.** It speaks volumes that Mr. Biya never repeated this same exercise anywhere in Republique du Cameroun. He did not because the people of that country are Camerounians. Reminding them that they are would have been redundant, if not nonsensical.

### **No let-up in killing, maiming and torture**

**125.** Meanwhile the abuse, abduction, detention, torture, maiming and killing of citizens of the Southern Cameroons continued without respite. For example, in November 1992 Republique du Cameroun gendarme officers for days on end tortured a young business executive Che Ngwa Ghandi until he died; on Thursday 25 March 1993 Republique du Cameroun soldiers opened automatic machine gun fire on a group of peaceful demonstrators in Bamenda killing three and wounding twenty. On the 18<sup>th</sup> and 25<sup>th</sup> of March the same year, in the course of peaceful political demonstrations 46 citizens of the Southern Cameroons were abducted, tortured and left with severe injuries. Around the same time Mr. Umaru’s three children were disappeared in Bamenda.

**126.** On Monday 23 December 1992, the Bamenda High Court ordered in Ruling No. HCB/CRM/92 that 173 persons detained and tortured at the secret police torture unit known as BMM be released. In contempt of the court’s decision the Yaoundé Government disobeyed the court order. It ordered the detainees to be moved to Yaoundé. On December 27 the 173 men and women were moved under the most inhumane and degrading conditions of transportation imaginable to Yaoundé to stand trial before a Republique du Cameroun military tribunal in a language they did not understand and under a law to which they were a complete stranger.

**127.** In 1995, Paddy Mbawa, a well-known Southern Cameroons journalist was abducted, taken to the city of Douala in Republique du Cameroun where he was severely tortured and subsequently put through the motion of a ‘trial’ before being jailed for a year.

**128.** In 2001 there were at least 2 Southern Cameroons citizens among the nine people who were disappeared by the military in Douala in what became known as the ‘Bepanda Nine’. In the same

year Republique du Cameroun soldiers murdered 4 youths in the Southern Cameroons town of Kumbo during a peaceful celebration marking the 40<sup>th</sup> anniversary of Southern Cameroons independence. In the same year Matthew Titiahonjo was arbitrarily arrested in the Southern Cameroons town of Ndop in May, severely tortured and then taken to Bafoussam in Republique du Cameroun where he was held captive under atrocious conditions before being murdered on 14 September 2002.

**129.** There are scores of Southern Cameroons citizens held in captivity in Republique du Cameroun for their belief in the self-determination and independence of their land, the Southern Cameroons. Detained under atrocious conditions they are in effect being subjected to a slow and painful death.

### **Signature referendum on independence**

**139.** In May the same year, against a backdrop of intensified violent repression in the Southern Cameroons the SCNC organized a signature referendum to ascertain the wishes of the people of the Southern Cameroons whether they wished to be independent or to be a part of Republique du Cameroun. Between September and November 1995 300,000 voters indicated their choice by signing the appropriate ballot paper. Of this number, which accurately reflects the voting population of the Southern Cameroons, 99% voted for independence. During the signature referendum exercise a number of individuals were either arrested and well tortured or disappeared. Among them are Abel Apong and Chrispus Keenebie who were taken to Douala and tortured for weeks on end; and John Kudi and Paul Chiajioy Juangwa who were taken to Yaounde and disappeared.

### **Attempt by Republique du Cameroun to decapitate the Youth League**

**140.** In April 1997, there were 400 arrests in Bamenda following what the Yaounde Government unconvincingly called 'terrorist' attacks on symbols of the authority of Republique du Cameroun in the Southern Cameroons. The arrestees, members of the Southern Cameroons Youth League (SCYL), were detained and put through the third degree (what the Camerounese press itself calls '*interrogation muslee*'). Eighty-seven were eventually moved to Yaounde where they were tortured and held in solitary confinement for two years before being put through the motion of a nocturnal trial by a military tribunal composed of Camerounese military officers and in a language and under a law alien to the accused. The SCNC dared the Yaounde regime to charge the accused with attempted secession. Instead, the accused were charged with theft, murder of a '*prefet*', and possession of explosives allegedly stolen from the work site of a French road construction company.

**141.** During the two years of detention without trial letters from all corners of the world poured into the office of the Camerounese President urging the trial of the detainees if there was a case against them or else their immediate release. Observers declared the 'trial' unfair and as a parody of justice. Amnesty International adopted the detainees as prisoners of conscience.

**142.** Many of the accused died of torture before the pretended trial was over. The others received pre-determined long sentences. The continuing torture of these persons and the very deplorable conditions under which they are deliberately subjected is indistinguishable from extrajudicial execution. Nearly half of those sentenced have already died. The most recent victim is Martin Che who died in August 2004. Others who died before him include Emmanuel Konsek, Mathias Ngum, Joseph Ndifon, Richard Ngwa, Julius Ngwa, Samuel Tita, Mathias Gwei, Daniel Tita, Lawrence Fai, and Patrick Timbu.

### **Attempt by Republique du Cameroun to decapitate the SCNC leadership**

**143.** In 2002 the entire home-based SCNC leadership was arrested for organizing and leading celebrations to mark 1 October as the independence day of the Southern Cameroons. They were detained, tortured and humiliated and subsequently charged with disobeying the orders of the 'prefet' and the 'gouverneur'. The Bamenda Magistrates' Court found that the accused were guilty of no wrongdoing and acquitted them. But, acting on orders from the Yaounde regime they were promptly re-arrested within the court premises and taken back to prison. Following a successful application for *habeas corpus*, the Bamenda High Court ordered the release of the applicants. Once again the Yaounde Government refused to obey the court order.

**144.** This sparked a wave of popular revolts in the territory prompting the release of the detainees. But not before the detainees had been so severely tortured that the elderly ones had to seek medical treatment abroad. A few months later, the highly respected and loved SCNC leader, Dr Martin Luma, succumbed to the ill-treatment inflicted on him and that had aggravated his frail condition as an elderly person. He expired a few months later.

**145.** In Kumbo and Bamenda the military opened fire at peaceful marchers and killed three and wounding several others. The SCNC leadership continues to suffer arrests and detentions, harassment, humiliation and various forms of ill treatment.

**146.** As recently as August 2004 the press in Republique du Cameroun reported a conspiracy by top military and government officials from President Biya's tribe to assassinate His Eminence Christian Cardinal Tumi. The report indicated that Biya was aware of the plot. It speaks volumes that there has been no reaction from Mr. Biya or his government either denying the press reports or instituting an inquiry to investigate the claim. The well-respected Cardinal is from the Southern Cameroons and is a known critic of the Yaounde regime.

### **Forty years of unremitting bloody repression**

**147.** More than forty years of patient deputation and petitioning by the people of the Southern Cameroons to the colonial Government of Republique du Cameroun seeking a consensual decolonization of the Southern Cameroons has met with more and intensified militarization of the territory, abductions, arbitrary arrests and detentions, torture, disappearance, maiming, killings and plunder.

**148.** From the 1960s down to this day petitions have been made by Southern Cameroons political leaders (among them Dr Fonlon, respected academic and politician, and two ex-Prime Ministers of the Southern Cameroons, Foncha and Muna), school and university students, parents, elites (individually, such as Barrister Dinka, or collectively), traditional leaders, and church leaders, all to no avail.

**149.** The Southern Cameroons National Council (SCNC) has since 1993 sent countless memoranda to the colonial Government of Republique du Cameroun but again to no avail. The only reaction from that imperious Government has been the ruthless enforcement of its policy of terrorization of the people, exactions and cruel depredations in the land, institutionalized torture of arrestees and abductees, and unchecked violence against the persons, properties and land of the people of the Southern Cameroons.

**150.** *The people of the Southern Cameroons are under a colonialism of the most depraved type, far worse than anything experienced either under German or English colonial rule.*

**151.** They have only obligations and no reciprocal rights whatsoever. They have nothing in return for the unlawful and brutal confiscation and suppression of their self-determination. They do not even have the basic rights that would, by international law, be granted to a people defeated in war. They are not allowed to speak and act as a people in any matter whatsoever.

**152.** There is no limit, not even moral, as to what Republique du Cameroun can do within the territory of the Southern Cameroons. In fact that country has the power of life and death over the people and territory of the Southern Cameroons.

**153.** For the people of the Southern Cameroons the francophonity imposed on them and the ubiquity in their territory of the *gendarme, sous prefet, prefet, gouverneur, commandant de legion, brigade de gendarmerie, camp militaire* and *commissariat de police* are living symbols of alien domination and daily reminders of their shameful status as a subjugated people, all the more shameful because the colonizing State is a third rate third world country.

**154.** Pacific protests have, as a matter of policy, been routinely drowned in blood. The systematic domination and oppression of the people of the Southern Cameroons has known no mitigation. Persecution is extreme and unremitting. There are now no reasonable prospects whatsoever for consensual decolonization.

## **PART II**

### **THE HUMAN RIGHTS VIOLATED BY THE RESPONDENT STATE**

**155.** International law proscribes colonialism “*in all its forms and manifestations*”. UN Resolution 1514 (XV) “solemnly proclaims the necessity of putting a rapid and unconditional end to colonialism in all its forms and manifestations” based on the conviction that “all peoples have an inalienable right to absolute freedom, to the exercise of their sovereignty and to the integrity of their national territory.”

**156.** In the preamble to the African Charter on Human and Peoples’ Rights States parties reaffirm their commitment “to eradicate all forms of colonialism from Africa” and their conviction that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.”

**157.** The ban on colonialism is thus not only on White rule over colonized lands that exist across the oceans overseas, but includes Black on Black colonization. The Southern Cameroons case shows how an African colonially minded State has colonized its less fortunate neighbour, notwithstanding the fact that the colonizing State was itself yesterday a colonial territory and had achieved independence by asserting the right to self-determination.

**158.** The facts set out in detail in Part I show a violation of the following human rights under the African Charter on Human and Peoples’ Rights:

(a) *peoples’ rights*: equality of all peoples and freedom from domination (art. 19), the right to existence and to self determination (art.20 (1)), the right to freely dispose of wealth and natural resources (art.21 (1)), the right to economic, social and cultural development (art.22 (1)), the right to peace and security (art. 23 (1)), and the right to a general satisfactory environment (art. 24);

(b) *individual rights*: the right to enjoy guaranteed rights without discrimination (art.2), the right to equality before and of equal protection of the law (art.3 (1)(2)), the right to life and to integrity of the person (art.4), the right to dignity and to freedom from torture (art.5), the right to personal liberty and security (art.6), the right to procedural fairness (art.7 (1)), the right to receive information and to express and disseminate opinions (art.9(1)(2)), the right to freedom of association (art.10 (1)), the right to freedom of assembly (art.11), the right to freedom of movement (art.12 (1)(2)), and the right to education (art.17(1)).

## **Peoples' Rights Violated**

**159.** The people of the former United Nations Trust Territory of the Southern Cameroons under British administration constitute *a people* within the meaning of international and human rights law. They are so referred in relevant UN resolutions and other various documents regarding the territory. A self-determination plebiscite mandated and supervised by the United Nations was held in the Southern Cameroons. The UN in its decolonization labours resorts to that process only when it is satisfied that the inhabitants of a dependent territory constitute a people in the international law sense of the word.

**160.** The Southern Cameroons had international personality by virtue of its status as a territory under international tutelage. Following its independence and *de facto* federal association with Republique du Cameroun, the Southern Cameroons became a half-sovereign state and a qualified subject of international law. It has a distinct and separate identity. Its international borders are well defined by the following territorially grounded treaties: the Anglo-German Treaty of 1913, the Anglo-French (Milne-Simon) Declaration of 1919, and the Anglo-French Treaty of 9 January 1931.

**161.** Given the territory's international personality and its separate and distinct identity, the national status of its people has always been citizens of the Southern Cameroons.

**162.** During the mandate and trusteeship periods, the absence of citizenship *qua* the internal law of England and the absence of citizenship *eo nomine* conferred by some other source did not render the people of the Southern Cameroons stateless. Their nationality was for various purposes of the law attributable to the territory itself. That national status lay in abeyance. It surfaced by operation of law at the precise moment the Southern Cameroons attained independence on 1 October 1961.

**163.** The present communication exposes the camouflaged annexation and colonial domination of the Southern Cameroons by Republique du Cameroun in violation of the United Nations Charter and the African Charter on Human and Peoples' Rights. The institution of these proceedings before the Commission represents an aspect of the anti-colonial struggle of the people of the Southern Cameroons began over thirty years ago.

**164.** The issue here is one of colonialism. It is not a claim to participate in the government and administration of Republique du Cameroun, the colonizing State. It is not a claim for good governance or for decentralization by that imperial country. It is a claim by the people to freedom; a claim by the people to be left alone to manage their own affairs and territory; a claim by a politically subordinate people for decolonization.

**165.** The people of the Southern Cameroons are a captive people in the Republique du Cameroun house of bondage. They are prisoners held *in terrorem*. Prisoners crave to be set free, not to be given better prison food. Slaves crave for manumission, not for a place at the master's table. A subjugated people demand independence as the appropriate remedy for colonialism.

### ***1. The domination of the people of the Southern Cameroons by the people of Republique du Cameroun in violation of Article 19 of the ACHPR***

**166.** A people dominated by another people are necessarily a colonized people. Domination means control, power or authority over somebody or something. The people of Republique du Cameroun have never denied that they assumed in October 1961 an unwarranted control, power and authority over the territory and people of the Southern Cameroons, a people who, immediately prior to October 1961, had attained a full measure of self-government status and voted in a UN-supervised plebiscite to achieve independence.

**167.** This domination of the people of the Southern Cameroons by the people of Republique du Cameroun violates Art.19 of the Charter. It is not the untold and continuing suffering due to domination that the people of the Southern Cameroons complain about under Article 19, but the domination itself by reason of which the rights recognized to all peoples under the Charter, have, in the case of the Southern Cameroons, been wrongfully and fraudulently suppressed.

**168.** Evidence of that domination of the people of the Southern Cameroons includes the armed occupation of the territory for over forty years already; the total control of its economy and resources; the imposition of a foreign administration; the imposition of foreign administrators; the imposition of an alien law and legal system; the imposition of an alien language in the schools and public administration; the abolition of the Southern Cameroons parliament and government; the confiscation of all means of expression from the people; and the imposition of direct rule by the colonizing State.

**169.** One consequence of this domination is that the people of the Southern Cameroons have suffered retrogression in status. Previously self-governing and on the same footing of legal equality with the people of Republique du Cameroun, the people of the Southern Cameroons have become a dependent people; a ward of Republique du Cameroun, an inferior and detrimental status.

**170.** It is well to recall that the British Cameroons and French Cameroun had the same status of a class 'B' trust territory; that British Southern Cameroons became self-governing in 1954 and French Cameroun in 1958; that French Cameroun achieved independence on 1 January 1960 under the name and style of 'Republique du Cameroun' and British Southern Cameroons achieved independence on 1 October 1961 as the Southern Cameroons; that the separate identities of the two countries is well defined by international treaties; and that the Southern Cameroons and Republique du Cameroun were the component federated states in the *de facto* Cameroon federation. By contriving to exercise colonial sovereignty over the Southern Cameroons, Republique du Cameroun presumed to alter the juridical equality of the two peoples and territories.

**171.** Article 19 declares the legal 'equality of all peoples'. It places an absolute ban on the domination of a people by another. In view of the principle of equality of all peoples under the Charter, all rights recognized to the people of Republique du Cameroun necessarily have to be recognized to the people of the Southern Cameroons, both of them having remained equal until Republique du Cameroun forcibly annexed and assumed a colonial sovereignty over the Southern Cameroons.

**172.** The present imposed *de facto* political inequality between the people of the Southern Cameroons and the people of Republique du Cameroun is the result of domination of the former by the latter. Republique du Cameroun cannot then set up the effects of its colonial domination of the Southern Cameroons as the basis for the conclusion either that the Southern Cameroons is part of its territory or that the Southern Cameroons does not exist as a political unit or otherwise. The maxim of the law is *ex turpi causa non oritur actio*.

**173.** The domination by the people of Republique du Cameroon violates the collective right of the people of the Southern Cameroons to govern them selves, as they see fit, to run their own affairs, to enjoy the same respect as any other people, and to control their own destiny. It violates their collective and individual rights to maintain and develop their distinct identity and characteristic, including the right to identify themselves as a sovereign people.

**174.** By placing an absolute ban on the domination of a people by another, Article 19 emphatically declares that "*Nothing* shall justify the domination of a people by another." The term 'nothing' means 'nothing whatsoever'; not even a so-called brotherhood, not even a period of shared colonial past, not even territorial contiguity, not even a declared intention to associate, not even consent.

**175.** A people cannot consent to being dominated by another people because there can be nothing to gain in exchange. Any purported consent to such an inferior and detrimental status would be ineffectual. The prohibition against domination is meant to prevent inter-people slavery. In law a person or a people cannot consent to slavery. Hence, in contemplation of the Charter, the domination of a people by another is not justifiable at all.

**176.** That is why it is not competent for the people of Republique du Cameroun to seek to justify their domination of the people of the Southern Cameroons by pleading mistake or a gift of territory by the UN and Britain; by pleading consent or acquiescence by the latter people; by pleading some political grounds; or by pleading effluxion of time. That is why it is farcical to talk of 'colonialism by consent' or 'slavery by consent'. There is no such thing in law.

**177.** The Charter declares that all peoples struggling against foreign domination (be it political, economic or cultural) have the right to the assistance of the States parties to the Charter (art. 20(3)). It also proclaims that "colonized or oppressed peoples [have] the right to free themselves from the bonds of *domination* by resorting to any means recognized by the international community" (art. 20(2)).

**178.** The international community recognizes two methods of achieving self-determination. Self-determination can legitimately be achieved by force through a war of national liberation in exercise of the eternal law of self-defense. Self-determination can also be achieved by peaceful means such as through consensual decolonization or through adjudication.

**179.** Without prejudice to an appeal to force, the people of the Southern Cameroons have resorted to adjudication. They have done so to once more demonstrate their abiding faith in the rule of law and their conviction that an eminently just cause such as theirs is, always eventually prevails.

**180.** They have done so to demonstrate their belief that African continental institutions, such as the African Commission, are intellectually and morally well equipped and can be trusted to right great historical injustice committed on this long-suffering continent, such as the great injustice that is the object of this communication.

**181.** The people of the Southern Cameroons are under the domination of the people of Republique du Cameroun by the fact that they are under the colonial rule of that country. The people of the Southern Cameroons, their territory, economy, resources, education, law, language, and the administration of the territory are all under the effective and total control and authority of Republique du Cameroun.

**182.** Moreover, that country has made and continues to make heroic attempts to procure the extinguishment of the people of the Southern Cameroons as a *people*, their separate and distinct identity as a people with their distinctive world-view and state-culture inherited from the British, and their territory as an independent country.

**183.** It has plotted to fuse into contiguous regions of Republique du Cameroun the territories of the Southern Cameroons it has dismembered. It has also contemplated population transfer from Republique du Cameroun to the Southern Cameroons so as to overwhelm the latter's population. It has initiated and encouraged land grabbing in the Southern Cameroons by citizens of Republique du Cameroun.

**184.** These designs are aimed at making the people of the Southern Cameroons a linguistic or cultural minority within Republique du Cameroun so as to provide some substance to the remarkable falsehood being peddled by Republique du Cameroun that the Southern Cameroons issue is a domestic problem of a minority within Republique du Cameroun seeking to secede.

**185.** The unremitting and total domination by the people of Republique du Cameroun partakes of political and cultural genocide. It is one thing for a people to dominate another. It is quite another

thing altogether not only to dominate them but also to seek to ensure their complete extinguishment as a people.

**186.** Today the Southern Cameroons lies in ruins, fragmented, underdeveloped, and under the complete political, economic and military control of Republique du Cameroun. Its people are physically and psychologically bruised, traumatized and banned from holding any meeting to discuss matters that affect them as a people. Abduction, torture, disappearance, arbitrary detentions and extrajudicial killings are their daily lot merely for complaining.

**187.** Republique du Cameroun has imposed in the Southern Cameroons foreign administrators, a foreign administrative system, an alien language, and an alien legal system. Since 1972 the Southern Cameroons has no government, no parliament and not judiciary. All means of expression have been confiscated from the people and they are not permitted to meet as a people and express themselves as such.

**188.** This colonial condition is the Southern Cameroons reality.

## **2. The colonization of the people of the Southern Cameroons by Republique du Cameroun in violation of the right of the people of the Southern Cameroons to existence as a people and of their right to self determination (Article 20 (1))**

**189.** Peoples' rights are a condition *sine qua non* for the realization of individual human rights and freedoms. In the words of the preamble to the Charter, the reality and respect of peoples' rights should necessarily guarantee human rights. Self-determination is thus to a people what freedom is to the individual.

**190.** The self-determination of dependent peoples is a pre-condition for the respect of human rights. There can be no question of individual human rights when it comes to a people under subjugation, domination and exploitation. Colonialism, be it White or Black, attests to this.

**191.** Article 20 (1) guarantees to *all peoples*: (i) the right to existence as a people, (ii) the *unquestionable and inalienable* right to self-determination, and (iii) the right freely to determine their political status and pursue their economic and social development according to the policy they have freely chosen.

**192.** The right to existence refers not only to physical existence as a people, but also to legal, political, cultural and territorial existence as a people. Republique du Cameroun as a matter of policy periodically indulges in an orgy of killing and maiming in the Southern Cameroons. Since September 1961 the occupation forces of Republique du Cameroun have continued to kill citizens of the Southern Cameroons with impunity. The fact that the killers are never arrested and prosecuted is the clearest of evidence that the killings are sanctioned by Republique du Cameroun political authorities as a matter of policy. These routinized killings violate the right of the people to physical existence.

**193.** Furthermore, Republique du Cameroun, acting without any color of right whatsoever, forcibly ended the Southern Cameroons as a legal and political entity and impaired its territorial integrity by Balkanizing it. It has imposed an alien language, legal system, law and educational system on the people. That violates the right of the people of the Southern Cameroons to existence as a people.

**194.** The people of the Southern Cameroons are a people within the meaning of international and human rights law. They therefore have the unquestionable and inalienable right to self-determination and independence. They further have the right freely to determine their political status and to pursue their economic and social development. The variant of self-determination

that the people of the Southern Cameroons seek is the restoration of their independence and statehood forcibly suppressed by Republique du Cameroun.

**195.** At all times prior to the colonization of the Southern Cameroons by Republique du Cameroun the former was never subordinate to the latter; nor had there been any ties of sovereignty or otherwise between the two. There have been, and there are, no valid legal ties of any kind that could affect the principle of self-determination contained in Article 20 of the African Charter or in UN Resolution 1514 (XV) in respect of the Southern Cameroons.

**196.** At no time prior to 1 October 1961 were there in existence any political ties, legal ties, cultural or economic ties, or ties of territorial sovereignty between the Southern Cameroons and Republique du Cameroun.

**197.** The Southern Cameroons and Republique du Cameroun have always been two separate countries with firmly established international boundaries. Each has always had a separate State culture (law, language, education, administrative system); a separate colonial history (except for the 20-odd years of a common German colonial experience); a separate Mandate/Trusteeship Agreement; a separate independence day; a separate people with no substantial ethnic connection; a separate people with a separate vision; a separate people with a separate way of life; a separate people with no common or similar cultural heritage; and a separate people with a separate aspiration.

**198.** The Southern Cameroons is legally not a part of Republique du Cameroun. That country did not attain independence with the Southern Cameroons comprised within its territories. Nor did the two countries become conjoint and then achieve independence as a single State. The international tutelage agreements did not require the two countries to be joined. And Republique du Cameroun was not granted independence on condition that it colonized the Southern Cameroons.

**199.** The averment by Republique du Cameroun that the Southern Cameroons is part of its territory is no more than a figment of its very fertile imagination and a futile attempt to profit from its own wrongdoing. The maxim of the law is that no one may take advantage of his own base conduct. The restoration of the unlawfully suppressed self-determination of the Southern Cameroons impinges on no legal right of Republique du Cameroun

**200.** The Southern Cameroons is currently under the colonial sovereignty of Republique du Cameroun. The assumption of that jurisdiction is impermissible under international law. There is not one single instrument of international law or valid instrument of its own municipal law that Republique du Cameroun can plead in justification of its colonization and domination of the Southern Cameroons. There is absolutely no count on which Republique du Cameroun can show why it has assumed colonial sovereignty over the Southern Cameroons and is forcibly preventing the people of the territory from exercising sovereignty over their God-given land.

**201.** It would be pathetic and absurd to suggest that the people of the Southern Cameroons surrendered their self-determination to Republique du Cameroun. First, self-determination is inalienable. Secondly, since to surrender self-determination is in effect to cease to exist, no advantage could possibly be enjoyed by ceasing to exist! There is nothing in exchange for which a people, acting as a people, can decide to cease to exist, that is to say, to lose their self-determination. Self-determination is a continuous exercise of power.

**202.** It is thus contradictory to argue that a people can self-determine themselves out of self-determination. Yet this is precisely the absurdity Republique du Cameroun is trying to sustain. The issue before the Commission is therefore one of decolonization of the Southern Cameroons from the foreign and colonial domination of Republique du Cameroun.

**203.** The facts narrated in Part I show that the Southern Cameroons was under international tutelage and, like the French Cameroun, a class B Trust Territory. By 1960 it was fully self-governing, except for matters of defense and foreign affairs which still rested with the British

Government. It had a national constitution and state political and economic institutions. It was called by the sovereign name of *Government of the Southern Cameroons*. It voted to achieve independence and, subsidiarily, to form with Republique du Cameroun a federal union of two states, legally equal in status, operating within the framework of a mutually agreed federal constitution.

**204.** But the Southern Cameroons soon fell prey to Republique du Cameroun expansionist ambitions and is today a dependent territory under the forcible colonial sovereignty of Republique du Cameroun.

**205.** The Southern Cameroons is now within a structure, which technically and juridically is colonialism.

**206.** The restoration of the forcibly suppressed independence and statehood of the Southern Cameroons therefore has nothing to do with the secession rhetoric of misinformed or biased commentators, or commentators accustomed to the ease of resorting to sweeping generalizations rather than to the challenging task of thoughtful analysis.

**207.** It is germane to examine in this connection two competing thesis, one holding that the Southern Cameroons did not achieve independence, the other maintaining that it did. It should be said from the outset that given the current status of the Southern Cameroons as a territory under the colonial sovereignty of Republique du Cameroun the right of the people of the territory to self-determination is unaffected by the question whether or not the territory achieved independence from Britain. This does not however mean that an inquiry, albeit brief, into the two theses is unimportant.

**208.** The starting point is the UN-supervised plebiscite held on 11 February 1961. The UN-framed plebiscite question was: do you wish “to achieve independence by joining” Nigeria or Republique du Cameroon? The people voted “to achieve independence” by ‘joining’ Republique du Cameroun in the sense of forming a federal union with that country. UN Resolution 1608 of April 1961 endorsed the results of the plebiscite and decided that the Trusteeship over the Southern Cameroons shall be terminated, in accordance with Article 76 b of the UN Charter, on 1 October 1961, ‘upon’ (not *by*) joining Republique du Cameroun.

**209.** Either the termination of the trusteeship signified that independence had been achieved or that it had not. In either case the unwarranted jurisdiction since assumed over the people and territory of the Southern Cameroons by Republique du Cameroun amounts to a nullification of the plebiscite vote for independence and to an unlawful suppression of self-determination. This is a violation of the inalienable right of the people of the Southern Cameroons to self-determination.

#### *The thesis that the Southern Cameroons never achieved independence*

**210.** There is some evidence that the Southern Cameroons, despite the overwhelming UN vote in favour of its independence, may not actually have achieved independence. First, the UN failed to ensure that the process of the decolonization of the Southern Cameroons was brought to a successful completion. Resolution 1608 required Britain, the Government of the Southern Cameroons and Republique du Cameroun to finalize, before 1 October 1961, the terms of the agreed federal union between the Southern Cameroons and Republique du Cameroun. The UN-ordered finalization never took place.

**211.** On 1 September 1961 while the Southern Cameroons was yet a UN Trust Territory under UK administration, Republique du Cameroun presumed to exercise jurisdiction over the Southern Cameroons by assuming constituent powers over the territory and permitting its forces to cross the border and kill, violating the territorial integrity of the Southern Cameroons in gross breach of international law. This was a case of the forcible grabbing of foreign territory impermissible under international law and not even authorized by Republique du Cameroun’s own constitution. Neither Britain nor the UN lifted a finger. This nonfeasance emboldened Republique du

Cameroun to order its army on 30 September 1961 to march into the Southern Cameroons and occupy it. That army is still in occupation of the Southern Cameroons today.

**212.** Secondly, a couple of months before the plebiscite the British Secretary of State for the Colonies, Mr. Iain Macleod stated at a meeting that the termination of the Trusteeship over the Southern Cameroons would be followed by “*the transfer of sovereignty to the Republic of Cameroun.*” In a brief dated 7 March 1961 for Commonwealth Prime Ministers, the British Colonial Office indicated that Nigeria was fully informed of “every move in the discussion of *the hand-over of the Southern Cameroons to the Cameroun Republic.*” On 30 September 1961 the British invited Mr. Ahidjo, President of Republique du Cameroun, to Buea, capital of the Southern Cameroons, and at mid-night purported to have handed to him sovereignty over the Southern Cameroons. Mr. Hugh Fraser, the British Under-Secretary of State for the Colonies then informed the House of Commons on 1 October 1961 that the UK Government had already “*transferred the Southern Cameroons to Mr. Ahidjo.*” (*Declassified Secret Files on the Southern Cameroons*, Public Records Office, London)

**213.** Thirdly, in its policy statements and state practice Republique du Cameroun has consistently maintained that no union, less still a federal union, took place between the Southern Cameroons and Republique du Cameroun on 1 October 1961. It has consistently maintained that on 1 October 1961 there was a mere adjustment of the southwestern borders of its territory, an adjustment, it claims, that enabled it to recover a hitherto lost part of its territory and population. (*Recueils des Discours Presidentiels 1958-1968; Anthologie des Discours 1968-1978*) As recently as this year the Respondent State informed this Commission during the admissibility stage of this communication that sovereignty over the Southern Cameroons was never handed to the Government of the Southern Cameroons but to Republique du Cameroun.

**214.** Fourthly, informed commentators are unanimous that the conduct of Republique du Cameroun vis-à-vis the Southern Cameroons from September 1961 onwards amounted to a disguised annexation/colonization of the latter.

**215.** In the *Northern Cameroons Case* the ICJ remarked obiter that on 1 October 1961 “the Southern Cameroons joined the Republic of Cameroun *within which it then became incorporated.*” Gaillard (*Ahmadou Ahidjo: Patriote et Despote*, 1994) states that there was in fact no union and that what took place on 1 October 1961 was a mere border adjustment. Stark (*Federalism in Cameroon: The Shadow and the Reality* 1976) casts serious doubts on whether a federation in the sense of a voluntary relationship between political units ever existed. He implies that there was no true and genuine federation and that the Southern Cameroons was in reality incorporated into Republique du Cameroun.

**216.** Vanderlinden (in *L'Etat Moderne Horizon 2000*, 1985) maintains that the federation was merely a smokes-screen (*un pis-aller*) “designed to enable the Southern Cameroons to swallow the bitter pill of its annexation by Republique du Cameroun, as in the case of Eritrea annexed by Ethiopia.” Professor J Crawford (*State Practice and International Law in Relation to Unilateral Secession* 1997) cites the Southern Cameroons as an example of a former colonial territory ‘integrated in a state’. Benjamin (*Les Camerounais Occidentaux*, 1972) canvasses the thesis of a creeping annexation. Pierre Messmer (*Les Blancs s'en vont*, 2000), the last colonial governor of French Cameroun is in no doubt that Republique du Cameroun did annex the Southern Cameroons in 1961.

**217.** Sindjoun (*L'Etat Ailleurs*, 2002), a national of Republique du Cameroun, honestly observes that the federation was a mere make-belief policy (*la politique du faire croire*) designed to hoodwink the UN and the Southern Cameroons. In his words, the federation was “un federalisme d'absorption du Southern Cameroons par la Republique du Cameroun “ and “une strategie d'extension de la Republique du Cameroun”, “une strategie de phagocytose.” He then characterizes the relation between the two political units as one of guardian and ward: the Southern Cameroons is “le Cameroun eleve, le Cameroun disciple” while Republique du Cameroun is “le Cameroun maitre, le Cameroun modele.”

**218.** Mr. Ahidjo, President of Republique du Cameroun, addressing his country's National Assembly on 10 August 1961 stated that "conformement a la resolution de l'ONU, le Cameroun reunifie n'apparait pas en droit international comme un nouvel Etat souverain" and that "juridiquement, la reunification n'est analysee que comme une modification de frontiere." ("In conformity with the UN resolution [1608], reunited Cameroon does not appear to be a new state under international law. Legally, the reunification is analytically a mere modification of the border.").

**219.** Ahidjo may have been alluding to the customary rule of international law that no territorial changes can affect the identity and continuity of a state. Assuming this rule is applicable to the case at hand, it would mean the *de facto* situation on 1 October 1961 represented a simple expansion of the territorial sphere of validity of Republique du Cameroun, and the *de facto* federation was no more than a continuation of Republique du Cameroun on an enlarged territory and under a new name.

**220.** Yet, such an expansion could not have been anything but expansion by clear-cut annexation given the obfuscation of the plebiscitary formula 'independence by joining' and the arguable view that the Southern Cameroons was not a subject of international law. The plebiscite question was not 'Do you want to form a part of Republique du Cameroun?' The 'federal constitution' solely drafted and enacted into 'law' by Republique du Cameroun partook of an incorporation law.

**221.** Republique du Cameroun's obsession with the term 'reunification' was indicative of that country's imperialistic ambitions regarding the Southern Cameroons. If the Southern Cameroons was annexed, arguably with the complicity of the UN, then the territory was never decolonized; it remains a non-self-governing territory, but now under the colonial sovereignty of Republique du Cameroun. The Southern Cameroons situation is therefore a straightforward case of decolonization and the principle of self-determination apply.

**222.** Fifthly, the UN itself appears to have adopted the attitude that Republique du Cameroun simply continued notwithstanding the termination of the Trusteeship over the Southern Cameroons and the *de facto* Cameroon federation. If Republique du Cameroun simply continued it means that the *de facto* situation that obtained on 1 October 1961 amounted to the absorption of the Southern Cameroons by Republique du Cameroun.

**223.** And if the absorption theory is accepted the inescapable legal inference would be that the UN never in fact decolonized the Southern Cameroons but merely facilitated its transfer from a predecessor colonialist to a successor colonialist in violation of its own Charter and its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV)). The UN would then have acted as an agency perpetuating rather than eliminating colonialism. The plebiscite in the Southern Cameroons mandated and supervised by the World Body would then have been an exercise in international fraud.

**224.** The international trusteeship system was established not to facilitate the perpetuation of colonialism but to ensure its progressive elimination. The obligation of the UK Government was to lead the Southern Cameroons to self-government or independence and not to transfer it to a successor colonialist. Self-determination is aimed at removing colonial powers, not at creating new ones.

**225.** The UN has also maintained a conspiratorial silence on the Southern Cameroons situation, unable or unwilling to state the political status into which the Southern Cameroons emerged upon 'joining' Republique du Cameroun. In the official UN publication, *Basic Facts About the United Nations*, 'Cameroons under British Administration' is listed as one of nine "dependent territories that have become integrated or associated with independent states since the adoption of the 1960 Declaration." In respect of eight of the nine listed dependent territories there is a clear indication as to which of the following five political status categories each emerged into: 'free association', 'returned', 'joined to form a federation', 'nationally united', or 'integrated'. But in the case of the

Southern Cameroons, there is no indication whatsoever as to the political status into which it emerged upon 'joining' Republique du Cameroun.

**226.** The Southern Cameroons also appears on the list of 'Trust Territories that have achieved self-determination'. But once again, and unlike in the case of the other Trust Territories on the list, the UN is non-committal, saying only that the Southern Cameroons "joined the Republic of Cameroon."

**227.** But was there ever a 'joining'? The UN appears to suggest there was. Yet it has been unwilling or unable to say the modalities and nature of that 'joining' and what valid legal instrument there is that attests to the 'joining'.

**228.** Even if there was a joining (the point is not being conceded), such a joining could not have been a dead-end; but rather a moratorium on the ultimate political goal of the Southern Cameroons. The British Government in fact spoke of Republique du Cameroun acting 'foster parent' to the Southern Cameroons and commentators from Republique du Cameroun sometimes refer to the Southern Cameroons as a ward or pupil of Republique du Cameroun.

**229.** From that perspective the act of self-determination of 11 February 1961 by the Southern Cameroons was not a once and for all irrevocable act. Resolution 1608 was not *res judicata* and could be revisited by the UN General Assembly. The international community cannot divest itself permanently of the right to concern itself with the status of a territory under international tutelage so long as that territory has not achieved full independence as declared by the 1960 Declaration on Colonial Countries and Peoples. In the instant case of the Southern Cameroons the UN retained such a right until achievement of full independence by the territory.

**230.** Be that as it may, as a successor colonialist in armed occupation of the Southern Cameroons, Republique du Cameroun is in violation of the right of the people of the Southern Cameroons to self-determination under Article 20 (1) of the African Charter. It is also in violation of the UN Charter, UNGA Resolution 1514 of 12 December 1960, and UNGA Resolution 2625 (XXV) of 24 October 1970.

**231.** Republique du Cameroun is a Member of the UN. It is under an international obligation flowing from the UN Charter to refrain from impeding the Southern Cameroons from asserting its independence. On the contrary it must take affirmative steps to immediately transfer all authority and sovereignty to the people of the Southern Cameroons without conditions or reservations in order that they may enjoy absolute freedom and independence.

**232.** Republique du Cameroun is also under international obligation flowing from Article 1 of the African Charter on Human and Peoples' Rights "to recognize the rights, duties and freedoms enshrined in [the] Charter." By becoming a State party to that treaty Republique du Cameroun undertook to adopt legislative and other measures to give effect to the rights and freedoms in the Charter.

#### *The thesis that the Southern Cameroons achieved independence*

**233.** The international trusteeship system was built on the principles of justice and peace consistently with Article 1 of the UN Charter. The UK Government assumed an obligation, as a 'sacred trust', under Articles 73 and 76 of the UN Charter and Article 7 of the Trusteeship Agreement for the British Cameroons, to lead the Southern Cameroons to self-government or independence, depending on the circumstances of the Territory.

**234.** As a self-governing Territory between 1954 and 1961 with a solid foundation for statehood and steeped in the democratic tradition, the Southern Cameroons was a state in *statu nascendi*.

**235.** It follows that the circumstances of the Southern Cameroons in 1961 dictated only independence as the political status into which the territory was to emerge upon termination of the trusteeship. The British had themselves stated in 1958 that the Southern Cameroons would be ripe for independence in 1960 after six years of self-government.

**236.** The plebiscite was an international matter, not an internal affair of Republique du Cameroun. The plebiscite question itself promised independence as the end-result of trusteeship. The people of the Southern Cameroons therefore achieved independence and did achieve independence by that vote. Resolution 1608 endorsed the independence vote and set 1 October as the effective date of independence consequent upon the termination of the trusteeship on that same date.

**237.** Given the plebiscitary formula ‘to achieve independence by joining’, the plebiscite vote decided two matters at the same time, the ‘independence’ of the Southern Cameroons and ‘joining’ Republique du Cameroun. However, the issue of ‘joining’ was subsidiary and conditional; for, in terms of Resolution 1608 the trusteeship agreement was to be terminated with respect to the Southern Cameroons *upon*, and not by, it joining the Republic of Cameroun. Moreover, the plebiscite question as framed did not suggest that independence and joining had to take place simultaneously.

**238.** A *de facto* federation did come into existence in October 1961, the component states of which were the Southern Cameroons and Republique du Cameroun. The federation is itself evidence that the Southern Cameroons did achieve independence since legally a dependent territory and an independent state cannot form a federation given that a federation is founded upon the principle of juridical equality in status as between the component states.

**239.** Moreover, although the Cameroon federation was a mere *de facto* situation, that factual situation nevertheless produced certain legal effects: the emergence of a new state and subject of international law; the existence of a basic norm, a new constitution (different in form, nature and content) that was neither the 1960 Constitution of the Southern Cameroons nor the 1960 Constitution of Republique du Cameroun; the creation of new state institutions; the extinction of Republique du Cameroun as a subject of international law; the simultaneous birth and extinction of the Southern Cameroons as a full international person; the adoption of a new name for the Southern Cameroons as ‘West Cameroon’ and for Republique du Cameroun as ‘East Cameroun’.

**240.** Significantly, following the coming into existence of the *de facto* federation, diplomatic missions in Yaounde were re-accredited to the new State. Republique du Cameroun had already been collectively recognized by its admission to membership of the UN. If the *de facto* federation was merely the continuation of Republique du Cameroun, enlarged and under a new name, there would have been no reason whatsoever for a renewed recognition of that state on the part of the international community. The idea of that state being unnecessarily recognized a second time in less than two years is completely unconvincing.

**241.** Nor is it convincing to argue that it was not the federal State, but territorial changes in Republique du Cameroun or the changes in the internal political organization of Republique du Cameroun, which were recognized. The argument is unconvincing because such changes leave the personality of the state unaffected, and so do not call for recognition. Even if specific political conditions rendered such recognition necessary, the recognition would be accorded to the new government emerging out of an internal transformation, and not to a new State.

**242.** The intention and conviction of the Southern Cameroons and Republique du Cameroun to create a new state is clearly attested by the published pre-plebiscite documents signed by the two sides, the *Note Verbale* by Republique du Cameroun confirming the same, the ‘constitution’ of the *de facto* federation, and representations made at the UN. It would be indeed a veritable *tour de force* to interpret all these documents as speaking merely of fusing the Southern Cameroons into Republique du Cameroun.

**243.** The Southern Cameroons was not a non-descript territory whether legally, geographically, historically or politically. There was no extension of the legal order of Republique du Cameroun to the Southern Cameroons. The two states maintained their respective legal orders, subject, of course to an overarching federal legal order. A federal society involves a dovetailing rather than a super cession of legal orders.

**244.** The *de facto* federation, described as a bilingual bi-jural State, was a *de facto* new State, which was not identical with either of the two component states thereof. All the information available goes to show that the Southern Cameroons would never have allowed itself to be annexed and that it contemplated nothing short of a union of legal equality. The federation, albeit *de facto*, was therefore remote from annexation, although that is what Republique du Cameroun wanted and hoped to achieve. Annexation by Republique du Cameroun came in 1972 through a Germano-Austrian-type Anschluss.

**245.** If then the Southern Cameroons did achieve independence that independence has since been unlawfully suppressed by Republique du Cameroun in violation of the two principles of self-determination and of the equality of all peoples. Independence entails at the minimum self-government. Even the 'independence' within '*la communaute francaise*' offered by France in 1958/59 to its African colonial territories entailed at least a modicum of self-government. There is today not even a vestige of the self-government enjoyed by the Southern Cameroons from 1954-1961 and nothing that evidences the independence the Southern Cameroons achieved on 1 October 1961.

**246.** Moreover, the territorial integrity of the Southern Cameroons as a political unit has been impaired. In 1972 the Southern Cameroons was officially annexed by Republique du Cameroun. Its independence and statehood have been totally suppressed. It is today under the forcible colonial sovereignty of Republique du Cameroun and the two parts into which it has been cut up are administered as dependent provinces of that country.

**247.** The Southern Cameroons has thus suffered retrogression in political status; from a self-governing and independent country to a non-self-governing territory. It enjoys not even a modicum of local self-government.

**248.** The situation that obtains in the Southern Cameroons is indubitably one of colonization and the struggle of the people of the Southern Cameroons is patently an anti-colonial struggle.

**249.** It follows from the above that in whatever way one chooses to look at the Southern Cameroons situation the unyielding conclusion is that the inalienable right to self-determination of the people of the Southern Cameroons has been violated by Republique du Cameroun either on the sufficient ground that it is exercising colonial sovereignty over the Southern Cameroons as successor colonialist or on the sufficient ground that it has unlawfully suppressed the self determination and independence of the Southern Cameroons.

**250.** Republique du Cameroun has always been a foreign land in relation to the Southern Cameroons. The fact that it exercises colonial sovereignty over the Southern Cameroons changes nothing in this respect. Being a country under the forcible colonial sovereignty of Republique du Cameroun and therefore *ipso facto* a colonial territory, the Southern Cameroons has a separate and distinct territory and identity from that of the State under the colonial yoke of which it is languishing. For, under contemporary international law the territory of a colonizing state is distinct and different from that of the colonized territory. The people of the Southern Cameroons thus have the right to the assistance of States parties to the African Charter in their liberation struggle against foreign domination, the domination by Republique du Cameroun (Art. 20 (3)).

**251.** Too clever by half, Republique du Cameroun has thought up a couple of ruse for deflecting international scrutiny of its colonization of the Southern Cameroons.

**252.** First, it always uses ‘Cameroun’ in a polysemous sense so as to obfuscate the identity of the separate territory of ex-British Southern Cameroons and thus to give the uninformed observer the impression of a unitary territory known as ‘Cameroun’ translatable as ‘Cameroon’ and variously styled ‘Republique du Cameroun’ or ‘l’Etat du Cameroun’; and, moreover, suggesting that the Southern Cameroons is the southern part of Republique du Cameroun.

**253.** In order not to allow a perpetuation of this fraud and the continuing deception of the world, there shall be adopted in the coming months a new name for the territory of the Southern Cameroons. There will be full consultation among all the anti-colonial forces in the Southern Cameroons and the new name will be adopted with the concurrence of the people of the Southern Cameroons.

**254.** Secondly, Republique du Cameroun habitually conjures the secession bogey. It does so in a hopeless effort to demonize a meta-juridical phenomenon, aware of the misinformed view in some quarters that international law prohibits secession. Whenever it conjures the secession bogey Republique du Cameroun is in fact trying to psychologically prey on the reader’s mind. In that way, the cursory inquirer is put off from ascertaining what the true state of affairs is in this matter.

**255.** The informed inquirer knows that contemporary international law neither concedes nor denies a right to secession. Secession is a mere meta-juridical phenomenon, which eventually international law and States, including African States, merely acknowledge as a matter of realism. Historically, state formation and transformation have occurred, and will continue to occur, through a process of fusion or fission. International law is therefore not that silly as to posit that secession is absolutely impermissible.

**256.** The secession rhetoric of Republic du Cameroun proceeds from its fraudulent misrepresentation of the plebiscite in the Southern Cameroons as ‘*un plebiscite de rattachement*’, that is to say, a plebiscite that sanctioned the incorporation or fusion of the Southern Cameroons into Republique du Cameroun. ‘Incorporation’ is of course mere camouflage for the colonial status of the Southern Cameroons.

**257.** Republique du Cameroun would want the world to believe that at the plebiscite the people of the Southern Cameroons voted, after seven years of full self-government, not to achieve independence but to commit mass suicide by becoming a captive or slave people under the colonial yoke of Republique du Cameroun. History does not provide a single instance of such a case.

**258.** If the plebiscite vote was a vote for fusion into Republique du Cameroun and the consequent extinguishment of the Southern Cameroons there would be no credible explanation for the federation (albeit de facto) and its subsequent overthrow followed by the proclamation of a ‘republique unie du Cameroun’ and the later reversion to ‘Republique du Cameroun’.

**259.** If the ‘*plebiscite de rattachement*’ rhetoric were to be believed it would mean Republique du Cameroun is not only a two-faced Janus, capable of being identical and non-identical at the same time, but also a phoenix, capable of a number of births and deaths. The rhetoric borders on absurdity.

**260.** The truth of the matter is that the people of the Southern Cameroons never voted for incorporation into Republique du Cameroun. They could not have since the plebiscite question was not, “Do you wish to be a part of Republique du Cameroun?” And, unlike the pre-plebiscite undertaking given by Nigeria that a vote to ‘join’ Nigeria would mean integration into Nigeria, the undertaking given by Republique du Cameroun stipulated that a vote to ‘join’ Republique du Cameroun would mean that the Southern Cameroons and Republique du Cameroun would federate to form a United Federal Cameroon Republic of two states, legally equal.

**261.** Given these two different undertakings, Resolution 1608 took care to specify that the British Northern Cameroons voted to achieve independence “as a separate province of the Northern Region of Nigeria”. In the case of the Southern Cameroons and mindful of the pre-plebiscite undertaking given by République du Cameroun, Resolution 1608 did not say and could not have said that the Southern Cameroons voted to achieve independence as part of République du Cameroun. Quite the contrary, it ordered the finalization of the declared policy to form a federal union, which finalization never of course took place.

**262.** The plebiscite vote was primarily a vote on independence and secondarily a vote on joining. By common agreement in writing, the two sides understood the word ‘join’ to mean ‘federate’ and also stipulated federalism as the condition *sine qua non* of the future union. Incorporation may have been what République du Cameroun had wished. But wishes are not horses.

**263.** The Southern Cameroons therefore never fused into République du Cameroun. The so-called ‘joining’ notwithstanding, the Southern Cameroons’ legal personality as a qualified subject of international law and as a juridical person under municipal law, as well as its identity as a self-governing political, legal, cultural, historical, and unitary territory, all remained intact.

**264.** What is more, the frontier line between the Southern Cameroons and République du Cameroun has always been a *de jure* international boundary: Since there was merely a *de facto* federation the inherited colonial boundary between the two federated states was a mere *de facto* internal boundary.

**265.** Further, since ‘Federal Republic of Cameroon’ and ‘United Republic of Cameroon’ were not *bona fide* and enduring constitutional state structures enjoying, as distinct from République du Cameroun, international personality, but merely contraptions designed to whitewash the colonization of the Southern Cameroons, the international boundary between the two countries never legally acquired an internal character. The revival in 1984 of ‘République du Cameroun’ *ipso jure* confirmed as an international frontier the hitherto *de facto* internal boundary between the Southern Cameroons and République du Cameroun.

**266.** The confirmation of the international character of that boundary line is further evidenced by the maintenance of the pre-independence military, police and customs barriers along the frontier line.

**267.** Furthermore, by voting against UN Resolution 1608 approving the plebiscite results and terminating the trusteeship over the Southern Cameroons, République du Cameroun thereby continued the international boundary between the two countries as unchanged in character.

**268.** The Southern Cameroons has thus never been part of République du Cameroun, historically or legally, and whether before or after 1 October 1961. The Southern Cameroons is not legally a part of République du Cameroun just as legally Eritrea was not a part of Ethiopia, Algeria not a part of France, Portugal’s African territories not parts of Portugal, East Timor was not a part of Indonesia, and Mauritania and the Western Sahara not parts of Morocco. Colonial rule does not change the legal position.

**269.** The exercise of the right to self-determination entailing the restoration of the suppressed statehood and independence of the Southern Cameroons operates within the inherited colonial boundaries of the Southern Cameroons as they stood on the date of its achievement of independence on 1 October 1961, consistently with the principle *uti possidetis juris*.

**270.** Independence of the Southern Cameroons from the colonial domination of République du Cameroun does not impinge on any proper interest, legal or political, of the latter. The inherited colonially defined frontiers of that State, as they stood on the date of its independence on 1 January 1960 are in no way affected. The territorial integrity of that country, consistently with the principle *uti possidetis juris* and the 1964 OAU Resolution on Border Disputes, is in no way infringed.

**271.** There is no claim by the Southern Cameroons to any of the peoples who make up the tribal mix of Republique du Cameroun. There is no claim to an inch of the territory of that country or to a single one of its citizens. The spatial configuration of that State remains exactly as it was on the date of its attainment of national independence. The independence of the Southern Cameroons entails no loss or dismemberment of territory, impairment of national unity or territorial integrity, or loss of population or diminution of territory in respect of Republique du Cameroun. There is thus no secession of territory from Republique du Cameroun.

**272.** Previously under British rule, the people of the Southern Cameroons obtained independence (however that term is construed) in exercise of the right to self-determination. Republique du Cameroun cannot therefore assert the principle of territorial integrity in answer to that exercise of self-determination and independence. It could not, in 1961, obtain sovereignty over the Southern Cameroons by cession. It could not, in 1972, obtain sovereignty by conquest.

**273.** Without any colour of right, without any valid instrument or authorizing act, Republique du Cameroun has assumed an unwarranted jurisdiction over the people and territory of the Southern Cameroons, exacting obedience. The people yield obedience, for the time being, because of the forcible occupation of the land and the maintenance therein of an administration of paramount force, which compels obedience as a matter of necessity. The people have the inherent right, under international and human rights law, to free themselves from the foreign and colonial domination of Republique du Cameroun.

**274.** It is now well-settled that self-determination is a right in international law, a norm of *jus cogens*. It is no longer just a process of decolonization but also a human right, a right of peoples, and is thus a continuing right exercisable even within post-colonial independent states. To interpret self-determination as applying only within the context of 'salt water' colonialism will make nonsense of Article 20 of the Charter. It will amount to a significant let down to the promise of the preamble of the Charter, which does not even allude to territorial integrity. It will belie what is in truth a solemn commitment by the international community proscribing for all time colonialism and inter-people slavery.

**275.** Republique du Cameroun's colonial sovereignty over the Southern Cameroons is absolutely impermissible under international law.

**276.** As has been shown from Part I, the Southern Cameroons situation is the case of a captive people struggling, like slaves fighting to be manumitted. They are struggling to conquer relentless oppression and repression, domination and colonization by Republique du Cameroun in order to gather God's harvest of freedom, dignity, justice and peace. The struggle is distinguishable both on the facts and in law, from the case of a sub-national unit seeking to break away.

**277.** Of course, since Republique du Cameroun exercises colonial sovereignty over the Southern Cameroons, the latter is part of its territory only as a colonial territory. But in contemporary international law a colonial territory has a separate and distinct status from that of the colonizing State and is entitled to independence without any conditions or reservations. All dependent territories achieved statehood by 'seceding' from their respective colonizing States.

**278.** Apart from the fact that the Southern Cameroons is under the colonial bondage of Republique du Cameroun, the exceptional situation of the territory (as eloquently borne out by the facts in Part I) makes reasons for its independence particularly compelling.

**279.** First, the UN self-determination procedure in the territory not only misfired but also was unlawfully suppressed by Republique du Cameroun. That resulted in a serious miscarriage of justice and the commission of a great historical injustice against the people of the Southern Cameroons.

**280.** Secondly, the people of the Southern Cameroons are legitimately claiming their territory, which has been annexed by Republique du Cameroun. Thirdly, there is in the Southern Cameroons, since October 1961, extreme and unremitting persecution by Republique du Cameroun with no reasonable prospects for peaceful change. There is continuing systematic oppression and domination as well as a series of gross and consistent violations of human rights by that State.

**281.** Fourthly, the federation, albeit a *de facto* one, was unilaterally ended by Republique du Cameroun. Fifthly, internal self-determination is absolutely beyond reach for the people of the Southern Cameroons as they are powerless to freely determine their internal political status.

**282.** Sixth, the independence of the people of the Southern Cameroons was unlawfully suppressed by Republique du Cameroun. Seven, the people of the Southern Cameroons came under the colonial domination of Republique du Cameroun by way of an unjustifiable historical event, to wit, annexation. Eight, the assumption of sovereignty over the Southern Cameroons by Republique du Cameroun is, to say the least, legally suspect.

**283.** Nine, even if there was a ‘marriage’ between the Southern Cameroons and Republique du Cameroun, it was a shotgun ‘marriage’ in which the Southern Cameroons has continued to be raped and thoroughly abused in other ways. The ‘marriage’ is a putative marriage and therefore null and void *ab initio*.

**284.** Ten, individual human rights abuses committed by Republique du Cameroun in the territory of the Southern Cameroons are gross, massive, extensive and unremitting. This is reliably attested by victims; the press; local human rights NGOs; reputable international human rights NGOs such as Amnesty International, Human Rights Watch and Article XIX; US State Department reports, and Documentation of the UN Commission on Human Rights, especially Reports of the Special Rapporteur on Torture, Reports of the Working Group on Enforced or Involuntary Disappearances, and Reports of the Special Rapporteur on Summary Executions.

**285.** As a matter of state policy Republique du Cameroun practices, encourages and condones killings and torture and other gross violations of human rights.

### **3. Violation by Republique du Cameroun of the right of the people of the Southern Cameroons to freely dispose of their wealth and natural resources (Art 21 (1))**

**286.** Article 21 (1) vests in the people (not in the state) the right freely to dispose of their wealth and natural resources, and ordains that the right shall be exercised in the exclusive interest of the people. This right is inherent in a people and is inextinguishable. Consequently, in no circumstance may a people be deprived of it. In the case of spoliation the dispossessed people have the right to the lawful recovery of its property as well as to an adequate compensation (art. 21 (2)).

**287.** The right guaranteed under Article 21 (1) represents the economic dimension of the political right to self-determination. Political self-determination is meaningless without economic, social and cultural self-determination.

**288.** Article 21 (1) speaks of ‘all peoples’. It thus refers to both dependent and independent peoples. The right guaranteed under that provision vests in independent as well as in dependent peoples.

**289.** An independent people are a sovereign people. Normally they would exercise that right through their democratically elected government and in their exclusive interest. Practically, this

means that while the right is held by the sovereign people it is the state that exercises it on account of the fact that the state has exclusive competence within its territory.

**290.** The right to free disposal of wealth and natural resources also vests in dependent peoples. However, given their status as a colonized people the exercise of that right will necessarily be by the controlling State. But the colonizing State cannot deprive the colonized people of that right. Moreover, in exercising the said right the colonial authority must do so in the exclusive interest of the colonized people.

**291.** The people of the Southern Cameroons have been dispossessed of their wealth and natural resources. They do not freely dispose of their wealth and natural resources. As stated in Part I, Southern Cameroons archival material and museum pieces have either been vandalized or looted by Republique du Cameroun. Further, natural resources from the Southern Cameroons such as oil, gas, rubber, tea, oil palm etc are exploited by Republique du Cameroun for its exclusive benefit, without any significant benefit accruing to the Southern Cameroons or its people.

**292.** As the state that has assumed a colonial sovereignty over the Southern Cameroons, Republique du Cameroun is duty bound to exercise the right guaranteed by Article 21 (1) in the exclusive interest of the people of the Southern Cameroons. But the right is not so exercised.

**293.** A telling example of the violation of Article 21 (1) by Republique du Cameroun is the fact that the Southern Cameroons does not even have basic road and other infrastructure and hardly any industry. The oil refinery in Victoria is staffed almost exclusively by citizens of Republique du Cameroun ensconced in an exclusive area built purposely for them, complete with schools for their children and teachers from France.

**294.** The debilitating poverty and underdevelopment in the Southern Cameroons is such that it is as if the territory stood still when it was officially annexed by Republique du Cameroun in 1972.

#### **4. Violation of the right of the people of the Southern Cameroons to economic, social and cultural development (Article 22 (1))**

**295.** There are many ways in which Republique du Cameroun has violated the right of the people of the Southern Cameroons to economic, social and cultural development guaranteed by Article 22 (1) of the Charter. Republique du Cameroun has unlawfully suppressed the self-determination and independence of the people of the Southern Cameroons. It has assumed a colonial sovereignty over the Southern Cameroons. The people are thus deprived of their self-worth, pride and identity.

**296.** Moreover, the colonial domination of the people of the Southern Cameroons not only violates their right to existence as a people but also undermines the enjoyment of other rights such as the right to dignity inherent in a human being, the right to freedom of association and the right to freedom of expression. For, the people of the Southern Cameroons are not allowed to meet as a people or to express themselves as a people. They are denied any means by and through which to meaningfully express and develop their social and cultural identity and distinctiveness.

**297.** The people of the Southern Cameroons are under the colonial oppression and domination of Republique du Cameroun. They suffer discrimination by that very fact because inherent in colonial domination is the assumption that the people dominated are not on the same footing of legal equality with the people dominating. The factual subordinate status imposed on the people of the Southern Cameroons as a dependent people deprives them of their self-worth and of their

ability to improve upon and give expression to their talents. Access to basic resources such as food, health, housing, employment and good education is dangerously compromised.

**298.** The systematic plunder of the resources of the Southern Cameroons, the destruction of its economic and social infrastructure, the abolition of its state institutions, the bastardization of its laws and legal system, and the adulteration of its educational system are other ways in which Republique du Cameroun has violated the right of the people of the Southern Cameroons to economic, social and cultural development.

**299.** These various actions taken by Republique du Cameroun against the people of the Southern Cameroons are inimical to the exercise of the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

**300.** Additionally Republique du Cameroun is in violation of Article 22 (1) because it has failed 'to ensure the exercise' of the right of the people of the Southern Cameroons to economic, social and cultural development. Having assumed a colonial sovereignty over the Southern Cameroons and thereby subjected it to the inferior status of a non-self-governing territory, Republique du Cameroun is in international law under an obligation to promote to the utmost the well-being of the people of the Southern Cameroons. Republique du Cameroun has failed to do so and is thus in breach of its international obligation.

**301.** Any activity or measure by the Republique du Cameroun that impedes the exercise by the people of the Southern Cameroons of the right to their economic, social and cultural development constitutes a violation of Article 22 (1). Because of the colonial rule imposed on them by Republique du Cameroun the people of the Southern Cameroons cannot, like people everywhere, make authoritative decisions over their own lives; enjoy a reasonable level of economic, social, cultural, physical and health security; have reasonable and effective access to educational opportunities and enjoy respect and self-esteem.

## **5. Violation of the right of the people of the Southern Cameroons to peace and security violated (Article 23 (1))**

**302.** The unremitting repression in the Southern Cameroons for over forty years, the routinized and wide scale arbitrary arrests and detentions, and the daily violence inflicted on the people by the armed forces of Republique du Cameroun violate the right of the people of the Southern Cameroons to peace and security. Colonization is itself violence and amounts to a violation of the right to peace and security.

## **6. Violation of the right of the people of the Southern Cameroons to a general satisfactory environment favourable to their development violated (Article 24)**

**303.** Article 24 is concerned with freedom from pollution and the corresponding right to pure air and clean water. States must therefore refrain from activities that are harmful to the environment and must adopt measures to promote conservation and improvement of the environment.

**304.** A polluted environment infringes upon the enjoyment of human rights such as the right to life and the right to enjoyment of physical and mental health. The deliberate refusal by

Republique du Cameroun to tar the streets in the Southern Cameroons has led to a situation where the level of dust in the towns has become a serious health hazard. The air is polluted, making breathing very difficult. Food and drinking water are contaminated, increasing the risk of disease. There is an unusually high level of respiratory track diseases and meningitis among urban dwellers in the Southern Cameroons and the condition of asthmatic patients is made worse by the very high level of dust in the air.

**305.** Republique du Cameroun has created a moon-like landscape in Bamenda by felling all the eucalyptus and cypress trees and taking them to Bafoussam in that country for use as electricity polls. In Victoria the oil refinery, run and controlled entirely by Republique du Cameroun regularly discharges oil sleek directly unto the territorial sea killing aquatic life, compromising the livelihood of local fishermen, and rendering the beaches unusable for recreational purposes.

**306.** Republique du Cameroun has thus violated the right of the people of the Southern Cameroons to a general satisfactory environment favourable to their development.

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# COMMUNICATION 266/2003

38<sup>th</sup> Session, Banjul 28 April to 8 May 2005

**DR. GUMNE & MEMBERS OF THE SCNC AND SCAPO**  
(for themselves and on behalf of the People of the Southern Cameroons)

VS.

**LA REPUBLIQUE DU CAMEROUN**

**COMPLAINANTS' REPLY TO THE  
'MEMORY IN DEFENCE' OF RESPONDENT STATE**

## Introduction

1. What Respondent State calls its 'Memory in Defence' is a curious document in more ways than one. It is replete with political and polemical rhetoric. It contains assertions that are dubious, evasive, selective, self-serving, and denuded of any legal basis. In fact the 'Memory' is important for what it studiously does not say rather than for what it tries to say. For example, there is, significantly, no answer to the charge of violating Articles 19 (domination of a people by another), 20 (self-determination of peoples), 23 (1) (right to peace and security), 24 (right to a general satisfactory environment), as well as Articles 1, 2, 4, 5, 6, 7, 10, and 12 of the African Charter.

2. We reiterate that Republique du Cameroun, the Respondent State, is in flagrant violation of all the provisions of the African Charter on Human and Peoples' Rights covered in our Submissions on the Merits. Respondent State's barefaced denial that it is in violation of Article 22(1) must be to no avail.

3. Respondent State violated and continues to violate the unquestionable right of the people of the Southern Cameroons to freedom from colonial domination and subjugation. It continues to violate the unquestionable right of the people of the Southern Cameroons to economic, social and cultural development with due regard to their liberty and identity. It continues to violate numerous rights of individual Southern Cameroons nationals.

Respondent State's colonial occupation of the Southern Cameroons

4. We have never accepted or recognised, and we do not and cannot possibly accept or recognise Respondent State's expansionist and illegal claim to the Southern Cameroons as "legally part and parcel" of its territory. By desperately trying to manufacture a tenuous link between the people of

the Southern Cameroons and some tribe in its territory Respondent State is attempting to conflate the national diversity and nationhood of the people of the Southern Cameroons, to confuse and to manipulate them, so as to create, interpret, and enforce a paradigm that attempts to render them a part of the Respondent State's population. The worlds of the people of the Southern Cameroons are subordinated by the normative narrative of Respondent State thereby depriving the people of the Southern Cameroons of their normativities and their identity. This violates the norm of equality of all peoples and the right to self-determination, and flies in the face of humanitarian conceptions of personhood and human dignity.

5. Respondent State is and has always been a foreign State in relation to the Southern Cameroons whose international status goes as far back as 1922 when it became a British-administered Mandated Territory of the League of Nations.

6. By contrast, the spatial configuration of Respondent State and its evolution as a polity, from mandate/trusteeship to independence, began with the inception of French colonial rule in that territory. The francophonity of that country and its French-inherited culture are founded on French colonial rule, and France is still very much in charge in that country. On 1 January 1960 Respondent State achieved independence as a sovereign state within an internationally defined territorial framework. At no time prior to the independence of Respondent State was the Southern Cameroons ever a part of that country.

7. On 1 October 1961 the British untidily departed from the Southern Cameroons after almost half a century of colonial rule. Following that departure Respondent State, a neighbour relatively larger spatially and demographically, forcibly occupied the Southern Cameroons and assumed a colonial sovereignty over it in virtue of an annexation law of the Respondent State enacted a month earlier by which Respondent State, afflicted by delusions of grandeur, asserted claim, without any colour of right whatsoever, over the Southern Cameroons 'as a part of its territory'.

8. The Southern Cameroons thus passed, on 1 October 1961, from British colonial rule to colonial rule by Respondent State. Respondent State has since been ingeniously trying to use its dubious understanding of the principle of territorial integrity to rationalise its colonisation of the Southern Cameroons. It has since, without any scruples, been setting up its colonisation of the Southern Cameroons as the basis of its fantastic claim to that land. But even a colonising state has under international law obligations in respect of a people over whose territory it has assumed a colonial sovereignty. Besides, the territory of a colonial dependency remains in law separate and distinct from that of the colonising state.

9. In our Submissions on the Merits we adduced overwhelming, compelling and conclusive evidence of colonial rule by Respondent State; of continuing colonial domination, oppression and repression by that country; and of massive and reliably attested violations of individual human rights since 1961. That evidence has not been challenged in any material particular.

### **Natives of the Southern Cameroons are emphatically a *people***

10. In contemporary human rights discourse the word 'people' is a term of art, which enjoys a fairly good consensus among international lawyers. A UNESCO meeting of experts in international law held in Paris in February 1990 concluded that a group of individuals constitute a 'people' if it enjoys some or all of the following common features: a common historical tradition, ethnic group identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, common economic life; and has the will to be identified as a people or the consciousness of being a people.

11. These common features apply fully in the case of the people of the Southern Cameroons. The people of the Southern Cameroons are, in terms of statehood, a people and a people separate from the people of Republique du Cameroun. They have a separate state-culture, a separate administrative system, a separate legal system, a separate language in public administration, a

separate colonial heritage, a separate aspiration, a separate way of life, and a separate educational system, a separate territory internationally delimited, and a separate mentality.

12. These facts are beyond any meaningful dispute, such that relevant UN instruments and documents on the Southern Cameroons consistently denote the human component of the territory as 'the people of the Southern Cameroons'. In fact, the UN plebiscite in the Southern Cameroons and the separation of the Southern Cameroons from Nigeria were predicated on the fact that natives of the Southern Cameroons indeed constitute a people and thus entitled to decide collectively on their own destiny.

13. The people of the Southern Cameroons are a people in the very sense in which the inhabitants of Republique du Cameroun regard themselves as a people, and also in the sense in which the population in every African State is regarded as a people. Going by the Respondent State's warped understanding of the term 'people' and its selective reading of the communications it cites, not even the inhabitants of Republique du Cameroun would be dignified with the appellation 'people'. The absurd reasoning of Respondent State is in effect that because the Southern Cameroons is under its colonial rule the native population of the territory have ceased to be a people. Respondent State is thus insolently attempting to avail itself of the crime of colonisation it is patently guilty of.

### **Respondent State's counterfeit 'referendum'**

14. Alluding to a so-called '20 May referendum', Respondent State claims, in its continuing chasing after the wind, that the people of the Southern Cameroons "approved the institutional evolution of Cameroun". But Respondent State is unable to say what informed debate took place before the claimed approval of the so-called 'institutional evolution'. Respondent State is unable to state the circumstances and legality of that bogus 'referendum' and where the reality of power has always been located.

15. The fact of the matter is that the Respondent, a one-party tyrannous State, determined alone and in its own exclusive interest, the expediency and time of the pretended 'referendum'. It organised and carried out the so-called 'referendum', pre-determined its outcome and proclaimed the results based on evidently pre-arranged figures. No independent body supervised the so-called 'referendum' or verified the counting and the results. The so-called "20 May referendum approval of the institutional evolution of Cameroun" is a chimera. It is part of Respondent State's self-inflicted system of illusory beliefs and false consciousness intended to create a false illusion of consent and submission to colonial rule and to mask the horse-and-rider relationship between the Southern Cameroons and Republique du Cameroun.

16. The point cannot escape notice that in September 1961, while the Southern Cameroons was yet a UN Trust Territory and under British Administration, Respondent State, in defiance of international law, passed an annexation law by which it laid an unsubstantiated claim to the Southern Cameroons as part of its territory and, a month later, effectively occupied and established colonial rule over the territory. Thus, at the time of the so-called 'referendum' the Southern Cameroons had, for ten long years, already been chaffing under the colonial bondage of Respondent State.

17. The so-called 'approval' of the so-called 'institutional evolution of Cameroun' was a hoax and a gigantic fraud; a charade organised and presided over by Respondent State itself. The reasoning of Respondent State amounts to saying, incredibly, that the people of the Southern Cameroons validated, ten years after its inception, the colonisation of the Southern Cameroons by Republique du Cameroun. There is no such thing as colonisation by consent any more than there is such a thing as slavery by consent.

### **Colonialism is a crime and a gross human rights violation**

18. Respondent State concedes that self-determination for the people of the Southern Cameroons “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 Cameroons to take part in the management of public affairs of the State of Cameroun.” That there are massive, ongoing and reliably attested gross violations of human rights by Respondent State in the Southern Cameroons is beyond dispute. This was eloquently brought out in our Submissions on the Merits. Amongst the most egregious of massive and on-going human rights violations in the Southern Cameroons, is the very fact of colonial occupation and rule by Republique du Cameroun.

19. In international human rights law the concept of participation in public affairs does not mean tokenism or decorative presence; it means effective participation. Besides, it cannot be the aspiration of a colonised people to participate in the public affairs of the colonising state. By dint of their subordinate status, a colonised people cannot, even if they have such a dream, effectively participate in the public affairs of the colonising state. The mere fact of dependent status negates that possibility.

20. A slave master does not involve his slave in the decision-making process of his affairs. But even if the slave master wanted to so involve his slave that can hardly be the desire and wish of the slave. The slave legitimately seeks his manumission, not a place at the table of the slave master. The people of the Southern Cameroons legitimately seek their liberation from colonial subjugation by Respondent State, not participation in that State’s public affairs.

### **Similar fact evidence of massive human rights violations**

21. Respondent State invites the Commission to turn a blind eye to the human rights violations it committed between 1961-1989, on the reasoning that the African Charter entered into force for Respondent State only on 18 December 1989. The Commission is bound to decline this strange invitation. There are at least two reasons why the Commission cannot possibly ignore the massive human rights violations by Respondent State in the Southern Cameroons between 1961 and the end of 1989. In the first place, the series of violations commenced since then have not ceased; they are continuing. Secondly, the violations evidence a systematic and consistent pattern of gross and numerous abuses committed as a matter of policy; they constitute similar fact evidence that go to establish a premeditated system of conduct, the *modus operandi* of gross abuses that the Respondent State continues to carry out in the Southern Cameroons.

### **The territory of the Southern Cameroons exists as a tangible reality**

22. Respondent State makes the outlandish assertion that the territory of the Southern Cameroons does not exist. If that territory does not exist then the people of the Southern Cameroons do not exist, for no such people exist elsewhere. The Respondent State’s assertion is therefore an absurdity, a system of logic characteristic of a colonising state. There is a geographical area, a spatial configuration, to which the appellation Southern Cameroons has been applicable since 1924. That spatial configuration is well attested by international boundary treaties. That portion of the earth’s surface has a population native to it. It exists and will always exist, however it is denominated as a result of the vagaries of its history.

23. Of course, the Southern Cameroons as a political community organised and controlled by a government instituted by the people of the Southern Cameroons themselves, as distinct from a territorial framework, is no longer such. It was a political community as from 1924. By 1954 it had an established government and in 1960 was at the brink of emergence into sovereign statehood.

The fact that it is not today a state is due to colonial occupation and Balkanisation by Respondent State. Having annexed the Southern Cameroons as its colonial dependency and having forcibly disbanded its government and state institutions, Respondent State then turns round and claims that the Southern Cameroons does not exist and in effect pleads its criminal act of annexation as a defence against the very annexation the people of the Southern Cameroons are legitimately fighting against!

### **National liberation movements**

24. Respondent State claims that the Southern Cameroons National Council (SCNC) and the Southern Cameroons People's Organisation (SCAPO) are secessionist movements. Secession is a pathological fantasy of Respondent State. Not surprising therefore, Respondent State confers the label 'secession' too promiscuously on the Southern Cameroons National Council and the Southern Cameroons People's Organisation. These, and other Southern Cameroons national liberation movements, are no more secessionist than other national liberation movements in Africa and elsewhere that valiantly fought for the liberation of their several countries from colonial subjugation.

### **Colonial repression on a wide and massive scale**

25. The cases of human rights abuse admitted by Respondent State as "cases regularly documented from 1990 to 2002" in fact represent only a very small fraction of the on-going systematic and wide scale of sadistic human rights abuses by Respondent State in the Southern Cameroons for nearly half a century already. These cases, which Respondent State concedes it is unable to sweep under the carpet, corroborate in material particulars the facts about massive and on-going colonial repression and oppression in the Southern Cameroons. This generalised colonial repression has known no respite.

26. It is a measure of the objectification of the people of the Southern Cameroons and the cheapening of human life in that land that abusers are never prosecuted and sentenced. Not once has the Respondent State addressed its mind to this issue. It is as if the gross human rights violations in the Southern Cameroons are not happening. Even a wholly rhetorical denunciation of named perpetrators has always been beyond the will of the Respondent State precisely because such violations are carried out as a matter of policy.

27. As recently as September 20, 2004 Kenneth Johnny Ndeh was shot dead in Bamenda. On the 22<sup>nd</sup> James Sabum, Mathias Fuh, Louis Akiy Kum, John Mbong, Tuma Sabum and Emmanuel Doh Fongoh were arbitrarily arrested and detained in Tiko and their homes ransacked. On the 23<sup>rd</sup> Abel Ndop was abducted in Victoria. On the 30<sup>th</sup> raids were carried in Mamfe, Kumba and Bamenda. Chief Ayamba Ette Otun, Raphael Ngwa, Emmanuel Yembe, Ngabe, Hannah Bessem, Julius Ngufor, Namata, Cyprian Asong Nken, Constance Ngufor and John Tanyu and five others were arbitrarily arrested, detained and subjected to torture and other cruel, inhuman and degrading treatment, including severe and repeated beating, sexual humiliation and assault, starvation, refusal of medical attention, death threats, and restraint in cramped, contorted and excruciating positions.

28. On the 6<sup>th</sup> of October 2004 the home of Shey Yufenyuy in Kumba was raided in his absence. His wife, Winifred Kinyuy, his 11 months old son, George Yufenyuy, his 8 years old son Biszebi Yufenyuy, his daughter Emmanuella Kinyuy and her one year daughter Doris Yufenyuy were all abducted and held in detention for weeks and denied access to relatives and lawyers. It is a measure of the profundity of the depravity of colonial repression in the Southern Cameroons that even babies and infants are liable to detention.

29. On the 5<sup>th</sup> February 2005, Grace Mambo, Thomas Ngu, Julius Teneng, Ignatius Fru Mbumah and Francis Forsuh were shot in Bamenda and are still receiving medical attention in hospital for

their bullet wounds. A week later, the home of retired Ambassador Henry Fossung in Buea was raided at night and he together with fifty others who were at his residence, including his wife and children were seized, brutalized, detained and tortured for days.

30. On February 22 five members of the SCNC leadership (Chief Ayamba, James Sabum, Sylvester Taku, Ahmadu Ndam and Nfor Nfor) were arbitrarily arrested in Menji and detained. For three days all five were locked in a wet and cold cell that was so small that there was room only to stand. They were denied food and water and the light in their cell was switched on day and night. Their release came only when UNPO strongly protested to the Respondent State and seized the European Union President of the matter.

31. On February 23, 2005 the spokesperson of the Southern Cameroons Youth League, Christopher Bah Tangoh was extra-judicially executed in Mbengwi and his body thrown down the Abi Waterfall in a grotesque attempt to give the impression that the victim had committed suicide.

32. Respondent State labours under the terrible misconception that breach of its 'laws' entitles it to launch out on an orgy of human rights violations. The human rights abuses eloquently articulated in our Submissions on the Merits and in this Reply include abuses relating to extra-judicial killings, torture, disappearances, arbitrary arrests, abductions, arbitrary detentions, terrorization of the population and sham trials. Assuming that the colonizer's 'law' has been broken (the point not being conceded), the Respondent State, is not entitled to disappear, torture, arbitrarily arrest and detain, execute extra-judicially, or organise sham trials. Such conduct is impermissible under human rights law and amounts to gross human rights violations.

### **Torture techniques by Respondent State**

33. Well known and documented forms of torture commonly used by agents of the Respondent State and with its full sanction, include beating (euphemistically referred to as '*café*') every morning and evening; suspension of victim (locally known as '*balançoire*'), often combined with beating and/or electric shocks; positional torture, which consists in detaining many people in a very small cell space so that they are unable to lie down simultaneously; electric shock torture ('*le courant*'); cigarette burns; starvation; denial of medical attention; and *falanga*, which consists in beating on foot sole with stick or steel cable.

### **Holy duty to resist and demolish colonialism**

34. Respondent State's familiar line of excuse for committing these gross and massive human rights abuses is that the victims "defied republican institutions, especially the forces of law and order." But a colonised people necessarily have a right of resistance. A people struggling against colonial subjugation must necessarily defy the institutions of the colonising state, including its colonial administrators and its colonial forces of occupation. The holy duty of the colonised is to challenge and destroy the colonial order imposed on them. Given that colonialism is iniquitous and intolerable and has universally been proscribed, every colonised people have a plain obligation, in law and nature, to resist by every available means, disobey and demolish, the colonial order to which they are subjected.

35. Respondent State's so-called 'law' is gross coercion. It seeks to promote a colonial ideology. It is basically a reflection of Respondent State's colonial hegemony in the Southern Cameroons. That 'law' is first and foremost a means of exercising political, economic, social and cultural control over the people of the Southern Cameroons. It is the weapon of the colonial authorities in ensuring dependency, pauperisation and underdevelopment in the Southern Cameroons. Its role is to conserve and perpetuate Respondent State's hegemony in and colonisation of the Southern Cameroons. Respondent State makes these 'laws' in its image, shapes them, defines them, interprets them and gives them meaning consistently with its French-derived world-view and its

colonial agenda in the Southern Cameroons. Respondent State is unquestionably the colonial authority in the Southern Cameroons. It is the ruling material force in that land. It monopolises the means of material production there and daily seeks to control the means of mental production. It is the abiding right of the colonised people of the Southern Cameroons to end that colonial condition.

### **Victims denied due process of law and subjected to sham trials by Kangaroo courts**

36. The Commission would no doubt take judicial notice of the fact that the treatment of the detainees in all the cases mentioned by Respondent State itself does not meet international standards of justice and fair trial procedures. There is an egregious lack of due process of law. That itself is a human rights violation. In all those cases the individuals were:

- arbitrarily arrested and detained (often *incommunicado*) by the military for periods ranging from a few months to five years, while some were simply disappeared or extra-judicially executed;
- systematically tortured, resulting in deaths in some cases;
- abducted under cover of darkness to the territory of the Respondent State;
- denied due process of law until challenged by the international community to either charge and try the detainees or release them;
- put through the motion of a ‘trial’ by a military tribunal in the territory of the Respondent State, under a legal system and in a language foreign to the detainees.

37. Respondent State would want the world to believe that those it executes extra-judicially or torture to death die of what it calls ‘malaise’ (whatever that might mean). It wants the world to believe that the holding of detainees without charge for up to five years is due to what it calls “administrative bottlenecks”. It is significant that whenever surviving detainees have been released it has been due to pressure from the international community.

### **Military tribunals as instruments of colonial repression in the Southern Cameroons**

38. The military of the Respondent State notoriously terrorises the people of the Southern Cameroons and unhesitatingly uses live bullets against them. The same military abducts and detains. It drafts the accusation. It acts prosecutor and judge at the same time. It then convicts and sentences without allowing those convicted a right to appeal. And yet the ‘trial’ in every one of these cases has always been for ordinary alleged crimes such as theft, murder, and disobeying the repressive decrees of the colonial administrator of the locality. The ‘trial’ has always been conducted in the territory of Respondent State and under a legal system and in a language the victims do not understand.

39. Respondent State notoriously uses the military tribunal as one of its instruments of repression in the furtherance of its policy of terrorization and colonial oppression in the Southern Cameroons. It is well to call attention to the fact that the military tribunal in the Respondent State is a service in that country’s Ministry of Armed Forces, which ministry is physically and operationally under the President. This practically means the organisation, the operation, and the decisions of the military tribunal depend entirely on the discretion of the Executive. The tribunal is a mere rubber stamp for decisions taken in advance by the Executive. The judges of that tribunal are not judicial officers and are of doubtful judicial competence. They are appointed *ad hoc* by decree of the President of the Respondent State.

40. The African Commission, well alive to the fact that the existence of military tribunals often gives rise to the violation of the right to due process of law, has resolved that, “military courts should not, in any circumstances whatsoever, have jurisdiction over civilians” (Activity Report

2003). In Communication No. 218/98 the Commission observed that the jurisdiction of military tribunals must be confined to the trial of soldiers. The Human Rights Committee has also taken a similar stand. In its Concluding Observation on the Respondent State it expressed serious concern about the jurisdiction of military courts over civilians and about the extension of that jurisdiction to offences that are not *per se* of a military nature. The Committee consequently recommended that Respondent State “should ensure that the jurisdiction of military tribunals is limited to military offences committed by military personnel.” (UN Doc CCPR/C/79 Add. 166; UN Doc GAOR, A/55/40 (vol.1)) Characteristically, Respondent State has studiously ignored these pertinent observations, determined, as it is, to continue using the military tribunal as a tool in its colonial repression in the Southern Cameroons.

### **No judicial independence in Respondent State**

41. It is also a notorious fact that the Respondent State’s magistracy is a dependent judiciary; it is under the boot of the President who hires, fires, demotes, promotes and transfers as he sees fit. The so-called Higher Judicial Council in that country is a body whose members the President appoints by decree as he sees fit; a body the President convenes and presides at his pleasure. It is in way comparable to an independent judicial service commission.

42. Respondent State commonly takes punitive measures against judges who show some measure of independence, for example, by demoting them, by withholding their promotion, or by transferring them to remote areas considered as local Siberia. Further, it is not uncommon for that State to defy court orders or judgments that are perceived to be ‘anti-government’. The fact of the matter is that the courts in the Respondent State fail the three tests of independence, impartiality and autonomy. This much was admitted as recently as December 2004 by the Prime Minister of the Respondent State when, in an effort to assuage calls for justice for Kohtem, a political activist murdered in Ndop, declared that this time “the judiciary would be *given* a free hand to administer justice.” Respondent State thus lacks an independent judiciary. Its courts attach high priority to suppressing dissent, perceived or real. They attach high priority to suppressing opposition to Respondent State’s colonial rule in the Southern Cameroons. They attach high priority to maintaining so-called ‘public order and republican institutions’. They are little concerned with enforcing legal norms and protecting human rights. Facing particularly harsh treatment are leaders of the SCNC and, in a general way, the people of the Southern Cameroons.

43. Having assumed a colonial sovereignty over the Southern Cameroons and thus a colonising state in relation to the Southern Cameroons, Respondent State has incurred an obligation under international law and international human rights law to ensure, *inter alia*, respect for the rule of law in the territory under its colonial occupation.

### **Respondent State lying with statistics**

44. Respondent State asserts, to no avail, that its colonisation of the Southern Cameroons is of some benefit to the territory. That claim proceeds from Respondent State’s self-inflicted delusion that the people of the Southern Cameroons accept the condition of colonial servitude that has been imposed on them and are merely seeking ameliorative emendations that would improve their physical environment and socio-economic situation. Respondent State has thus laboured to shore up its empty assertion with doubtful data. But the statistical data it has produced suffer from two sources of infirmities: they are contrived, self-serving and therefore unreliable; the conclusions drawn there from are thus necessarily faulty. Anyone can generate statistics and lie with them as Respondent State has bravely tried to do.

### **Decolonisation of the Southern Cameroons, a categorical imperative**

45. The right to self-determination is a pre-condition to the full enjoyment of political, civil, cultural, economic and social rights. This right is often read in the light of the UN 1960 Declaration on the Granting of Independence to Colonial Countries and which equates “the subjection of peoples to alien subjugation, domination and exploitation” to a denial of human rights and a violation of the Charter of the United Nations.

46. By becoming a Party to the African Charter, Respondent State undertook to “recognise the rights, duties and freedoms” enshrined therein. Among the rights enshrined in the Charter is the right to self-determination. Respondent State cannot refuse to recognise that right. It *must* recognise it. It has no choice in the matter. It cannot pick and choose which rights to recognise which not. It entered no reservations when ratifying the Charter. Further, by becoming a Party to the Charter, Respondent State also undertook “to adopt legislative or other measures to give effect” to the rights in the Charter, including the right to self-determination. This means it should and must take measures to end its colonial subjugation, domination and exploitation in the Southern Cameroons. By failing to do so it is in flagrant violation of the Charter.

### **Conclusion**

47. This case is one of classic decolonisation, the decolonisation of the Southern Cameroons from the predatory colonial occupation of the contiguous State of Republique du Cameroun. Decolonisation will *ipso facto* put an end to other gross human rights violations in the Southern Cameroons by Republique du Cameroun. That country is exercising, *vi et armis*, a colonial sovereignty over the Southern Cameroons, in defiance of the universal proscription of colonialism and in violation of the unquestionable right of the people of the Southern Cameroons to self-determination and freedom from alien domination. Human rights law and international law demand that Respondent State ends forthwith its colonial subjugation, domination and exploitation of the Southern Cameroons and vacate the territory.

# COMMUNICATION 266/2003

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37<sup>th</sup> SESSION – Banjul, The Gambia      26<sup>th</sup> April to 12<sup>th</sup> May 2005

**DR. GUMNE & MEMBERS OF THE SCNC AND SCAPO**  
(for themselves and on behalf of the People of the Southern Cameroons)

VS.

**LA REPUBLIQUE DU CAMEROUN**

**ORAL SUBMISSION BY COMPLAINANTS – FRIDAY 6<sup>TH</sup> MAY 2005**

Madame la Presidente,  
Honorables Commissaires de la Commission Africaine

Je vous remercie pour le privilege que vous m'accordez de prendre la parole, une fois de plus, devant cette auguste Commission sur laquelle les victimes des violations de droits de l'homme en Afrique fondent un espoir legitime.

Je prend la parole devant vous dans une affaire tres douloureuse; douloureuse parce qu'il s'agit des violations graves et systematiques perpetrees de facon continue, depuis a peu pres un demi siecle deja, par l'Etat Repondeur contre le peuple, et plusieurs individus, du Southern Cameroons; douloureuse aussi parce qu'il s'agit de la domination, de l'oppression, et de la colonization d'un peuple africain par un Etat africain; a l'instar de l'Ethiopie imperiale a propos de l'Erithre, et l'instar du Maroc a propos du Sahara Occidental. Nous assistons donc a un spectacle inedit: certains pays africains, eux-memes beneficiares du droit a l'autodtermination deviennent colonisateurs de leurs voisins infortunes. On comprend alors le tout recent rappel du Secetaire General de l'ONU: le colonialisme n'est pas encore vaincu.

Honourable Commissioners, this case is about one of the most egregious and impudent violations of human rights on this long-suffering continent. It is a case in which an African State has assumed and is exercising a colonial sovereignty over another African country in defiance of international and human rights law and the universal outlawry of colonialism.

**As to individual human rights violations**

Complainants have in their Submissions on Admissibility and on the Merits adduced compelling and conclusive evidence of a continuing and consistent patter of gross and reliably attested violations by the Respondent State of individual human rights in the Southern Cameroons.

The delinquent conduct of Respondent State violates Articles 1, 2, 3(1), 4, 5, 6, 7, 9, 10, 11, and 14 of the African Charter on Human and Peoples' Rights. Today, let me be permitted to call attention to Article 4 which protects the right to life and to the physical integrity of the person; and to Article 5 which outlaws torture and other cruel, inhuman and degrading treatment and punishment.

Honourable Commissioners, just last week alone and in its continuing policy of genocide-like killings in the Southern Cameroons the repressive apparatus of the Respondent State executed six people extra-judicially in Victoria and Buea, seriously inflicted gun wounds and systematically tortured scores of other persons. Five of the six killed were among striking students of the University of Buea, some cowardly shot from behind. In Victoria a taxi driver was shot dead at point blank range and decapitated because, in the words of Respondent State, 'he was a gambler'. It speaks volumes that in the Respondent State's own territory, where University students have been on strike for weeks, not a single student there has been hurt. The extent, nature and consistency of individual human rights violations by Respondent State in the Southern Cameroons have known no respite all these years.

### **As to violation of peoples' rights**

Forty-five years ago in 1961, Respondent State forcibly occupied the Southern Cameroons and 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 Cameroons. Respondent State continues to exercise a colonial sovereignty over the territory to this day. The Southern Cameroons descended into hell and is still held captive under Camerounese bondage and darkness.

According to the fantastic claim of Respondent State the Southern Cameroons is part of its territory that was transferred back to it by the UN and the UK Government. The stubborn fact of the matter is that Respondent State is a latter-day colonizer. It has grabbed and is trying to steal territory it has no rightful claim to at all. Its conduct is in violation of international law and a breach of its obligations under the African Charter.

Complainants have always argued and adduced conclusive evidence in support, that the occupation and assumption of a colonial sovereignty over the Southern Cameroons by Respondent State amounts to a violation of Articles 19 and 20 of the African Charter on Human and Peoples' Rights, 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 recognized means of resistance.

Complainants' Submissions at the Admissibility and Merit stages of this case establish conclusively the elements of 'people', 'domination', 'colonialism' and 'oppression': the people of the Southern Cameroons are without any shadow of a doubt a *people*, a people under the domination of the people of Respondent State, a people under the colonial rule of Respondent State, and a people oppressed by Respondent State.

Respondent State's invocation of the bogey of 'secession' may fool only a very naïve inquirer. That is a ploy resorted to by Respondent State in the misplaced belief that it can declare its annexation and colonial occupation of the Southern Cameroons off limits to external scrutiny and internal challenge.

It is trite law that the territory of a colonized people remains separate and distinct from that of the colonizing State. Respondent State will not lose a blade of grass of its own territory when it is assisted by the Commission to respect international law by retreating to its rightful borders. Its

clinging convulsively to the territory of the people of the Southern Cameroons when its own is safely under its control has no rational explanation besides the vainglory of expansionism.

For, it is also trite international law that the borders of a newly independent state ossify on the date of attainment of its independence. Any claim to territory outside its borders as they stood at the time of its achievement of independence would be expansionist and bound to fail. The attempt by imperial Ethiopia to grab Eritrea failed; that of Indonesia to grab East Timor failed; and that of Morocco to grab the Western Sahara also failed; that of Republique du Cameroun to grab the Southern Cameroons must similarly fail. Just a few weeks ago the UN Secretary General reminded the world that colonialism was not yet ended and that there was need to ensure that the several peoples of the world were free.

While the Southern Cameroons might appear *de facto* as part of Republique du Cameroun, *de jure* it has always remained and will always remain distinct and separate from that of the colonizing Authority. The situation is on all fours with that which obtained when the Southern Cameroons was administered, for over forty years, by Britain as an integral part of Nigeria. Maps of the time showed the Southern Cameroons as part of Nigeria and the people of the Southern Cameroons were considered and referred to as Nigerians (even today Respondent State is wont to refer to the people of the Southern Cameroons as Nigerians or 'Biafrans'). The nearly half a century of cohabitation with Nigeria engendered the perception that the people of the Southern Cameroons were Nigerians, so much so that when the Southern Cameroons political leadership left and established a Government in Buea the move was regarded as 'secession' from Nigeria. It took the ICJ in the *Land and Maritime Dispute (Cameroon v. Nigeria)* to recall the legal position that at international law the Southern Cameroons had all along remained a separate and distinct territory from Nigeria and that the Southern Cameroons-Nigerian border had all along remained an international boundary. By parity of reasoning the Southern Cameroons/Republique du Cameroun boundary has **de jure** always remained and will always remain an international boundary, notwithstanding Republique du Cameroun's occupation and specious sovereignty claim over the territory.

The people and territory of the Southern Cameroons are thus under captivity in the land of their birth! The solution to captivity is freedom. The solution to colonization is de-colonization. The solution to alien domination is self-determination. Nothing else will do. At stake here are the fate and the humanity of the people of the Southern Cameroons. The categorical words of Article 19 of the African Charter are: "**Nothing** shall justify the domination of one people by another." And, the arresting words of Article 20 are: "**All peoples** have the right to existence ... [and] ... to self-determination. ... Colonized or oppressed peoples ... have the right to free themselves from the bonds of domination."

There is not a single instrument of International Law that Respondent State is able to point to that gives it title to the Southern Cameroons.

Respondent State's claim to the Southern Cameroons, asserted in its annexation law of 1 September 1961 and several of its policy statements, apparently arises from a pretended entitlement to that territory as its own; territory which it claims it is entitled to take and keep; a supposed part of its territory that simply reverted to it on 1 October 1961. No credible basis is advanced for this claim, which can only be expansionist. **The Southern Cameroons has never been part of the territory of Respondent State whether prior to or at the latter's independence from France on 1 January 1960 or at the time of its admission to membership of the UN in September 1960.**

In support of its annexation doctrine, Respondent State has variously advanced the following claims, claims that can possibly exist only in the realm of fantasy: (i) that the Queen of England handed the Southern Cameroons as 'a little gift' to French President Charles de Gaulle who in turn made a gift of it to Republique du Cameroun; (ii) that the 1961 UN-sponsored Plebiscite in the Southern Cameroons was "un referendum de rattachement", that is, a 'referendum' by which

the Southern Cameroons voted for incorporation, and was incorporated, into Republique du Cameroun; (iii) that UN Resolution 1608 endorsed that fusion; (iv) that the UK Government handed sovereignty over the Southern Cameroons not to the Southern Cameroons political leadership but to that of the Respondent State in recognition of the fact that the Southern Cameroons was an estranged part of its territory it was entitled to receive back. In the view of Respondent State, therefore, the Southern Cameroons was never de-colonized but simply transferred back to the Respondent State as part of its territory.

Complainants have always stated the following incontrovertible facts:

- (i) that the Southern Cameroons and Republique du Cameroun were two separate Class B UN Trust Territories under two separate colonial Authorities with well-defined international boundaries (see 1958 Map showing the Southern Cameroons as a UN Trust Territory under UK Administration; Nigeria is to the west and the Trust Territory of French Cameroun is to the east) ;
- (ii) that the Plebiscite Questions as framed by the UN invited the people of the Southern Cameroons to pronounce themselves on the achievement of independence by 'joining' either Nigeria or Republique du Cameroun;
- (iii) that the pre-plebiscite Agreements between the Southern Cameroons and Respondent State and the voting at the UN in April 1961 leading to the adoption of Resolution 1608 clearly envisaged three concomitant events to happen on 1 October 1961, namely, achievement of independence by the Southern Cameroons, entry into a federal association with Republique du Cameroun and the consequential termination of the trusteeship over the Southern Cameroons;
- (iv) that operative paragraph 5 of Resolution 1608 called on the Government of the Southern Cameroons, the UK and Republique du Cameroun **to finalize before 1 October 1961** the arrangements by which the agreed and published policies on a federal association would be implemented;
- (v) that said paragraph 5 was not and has never been implemented;
- (vi) that on 1 September 1961 Respondent State passed an annexation law asserting sovereignty over the Southern Cameroons; and
- (vii) that on 1 October 1961 Respondent State sent its troops into the Southern Cameroons, grabbed it as part of its territory, and has since been exercising a colonial sovereignty over it, the fierce protest of the people notwithstanding.

These facts show that the Southern Cameroons still remains a territory under colonial occupation. The British departure and the UN termination of trusteeship did not result in independence, which the people of the Southern Cameroons were entitled to by International Law, and which the people were promised and legitimately expected. Instead, there has been continuing colonial subjugation, this time by Respondent State. The status of trust territory was superseded by another colonial status, that of a Non-Self-Governing Territory under the colonial Authority of Respondent State.

Lost in its self-mystifying mystification and in its inconsistent consistency, Respondent State may try, as it has done before, to bully the Commission, to make a political speech and to resort to dilatory tactics by pleading for yet more time. In the manner of all colonizers it may, without any compunction, even tell the Commission that that the people it has colonized are very happy with their unfortunate lot and that it has brought along with it in its briefcase persons who speak for the people of the Southern Cameroons. Respondent State will then in effect invite the Commission to endorse its colonial appetite, to put the Commission's imprimatur on its colonial occupation and plunder of the Southern Cameroons, and to massage its egocentricity. The Commission cannot possibly do that. The appetite in question is gluttonous, illegitimate and illegal. Further, the job of the Commission is to decide according to law and not politics, to decide without fear or favour.

This case is a litmus test for the Commission's independence and operational integrity; a litmus test for the ability of this continent to demonstrate that indeed it places a high premium on the peaceful resolution of even disputes such as the present case. The standing of a judicial or quasi-

judicial body is enhanced not by its decisions in the ordinary run of cases, however good those decisions might in themselves be. It is enhanced by the just and bold decisions it makes in critical cases such as this one.

A few examples will illustrate the point. When the SADR met the stipulated conditions for admission to OAU membership, Mr. Edem Kodjo the Organisation's Secretary General at the time did not quibble over the issue. He did not look across his shoulder. He did the legally right thing by signifying SADR admission to membership, the whining by some States notwithstanding. When the US Supreme Court was invited in *Brown v. Board of Education* (1954) to pronounce itself on the issue of racial segregation it did not cavil at being invited to sit in judgment over a practice that was then very much in vogue (de jure and de facto) in a large part of America. It rose to the challenge and did the legally right thing by rejecting the 'separate but equal' doctrine and thereby outlawed racial segregation in America.

In the UK, at an époque during which slave trade and slavery were permissible, commonly practiced and justified, Chief Justice Mansfield sitting in 1772 in the case of James Summerset, a case about a runaway slave brought to court by Granville Sharp, did the legally right thing by boldly ruling that whatever the factual situation, English law did not recognize slavery and that as soon as a slave set foot on English soil he automatically became free. In *Roach & Pinkerton v. US* (1987) the Inter-American Human Rights Commission did the legally right thing by boldly declaring the US execution of child murderers as a human rights violation, the Commission being unimpressed by the argument based on absence of a US Federal prohibition within US domestic law on the execution of persons under 18 years of age who commit serious crimes. When at last Eritrea secured its liberation from imperial Ethiopia after a long war of national liberation the OAU did not hesitate for one moment to welcome Eritrea into the family of free African States.

The self-determination process of the people of the Southern Cameroons is irreversible. Respondent States is grossly mistaken in its blind faith in the use of force, in the use of corrupted chiefs and other reactionary forces in the Southern Cameroons as fifth columnists so as to maintain its colonial subjugation of the Southern Cameroons. The lesson of history, ancient and modern, shows how unsustainable and unrealistic such expedients always have been.

And the Lord said to Moses, go to Pharaoh and tell him: **LET MY PEOPLE GO!** Complainants rest their case, trusting in the Almighty and fully confident that alas the long-suffering and traumatized people of the Southern Cameroons will be uncaged!

**Professor C Anyangwe**  
Counsel for Complainants

# COMMUNICATION 266/2003

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## DECISION ON ADMISSIBILITY & RECOMMENDATION

38<sup>th</sup> Session, Banjul 28 April to 8 May 2005

**DR. GUMNE & MEMBERS OF THE SCNC AND SCAPO**  
(for themselves and on behalf of the People of the Southern Cameroons)

VS.

**LA REPUBLIQUE DU CAMEROUN**

**Rapporteur:**

**33<sup>rd</sup> Session: Commissioner Dankwa**  
**34<sup>th</sup> Session: Commissioner Dankwa**  
**35<sup>th</sup> Session: Commissioner Dankwa**  
**36<sup>th</sup> Session: Commissioner Dankwa**  
**37<sup>th</sup> Session: Commissioner Dankwa**

1. The Complainants are individuals bringing the communication against Cameroon on their behalf and on behalf of the people of Southern Cameroon.
2. The complaint was received at the Secretariat of the African Commission on 9<sup>th</sup> January 2003 and is against the Republic of Cameroon, which is a party to the African Charter on Human and Peoples' Rights.
3. The Complainants allege that Cameroon uses false demographic data to deny the people of Southern Cameroon equal rights within the territory especially with respect to representation within government. That the people of Southern Cameroon have been denied powerful positions within the government.
4. It further alleged that there is no basic infrastructure in several towns in Southern Cameroon to enable the people participate in the economy and improve their well being thus denying them the right to development. It is argued that through various actions on part of the Respondent State, the people of Southern Cameroon have been economically marginalised.
5. The Complainants also state that the Francophones have monopolistic control of the Ministry of National Education and that the Respondent State has ensured that primary education in Southern Cameroon is under funded through failure to build new schools or by understaffing

primary schools. This has resulted in persistent high levels of illiteracy in many areas in Southern Cameroon.

6. It further stated by the Complainants that there is a lack of judicial independence in Cameroon. That the transfer and trial of Anglophones from common law jurisdictions to the zone of the Napoleonic Code adversely affects the rights of the people from Southern Cameroon. Furthermore, that the rulings by courts in Southern Cameroon are ignored by the Respondent State.
7. It is alleged that the Respondent State has discriminated against the people of Southern Cameroon on the basis of language by signing the Organisation pour l'Harmonisation des Droits d'Affaires en Afrique (OHADA). The OHADA treaty harmonises business legislation amongst Francophone countries in Africa. It stipulates that the language of interpretation of the treaty as well as the settlement of the disputes arising out of civil conflicts shall be French. The Complainants argue that the Constitution of the country provides that English and French are the official languages of Cameroon and therefore by signing the OHADA treaty, Cameroon had violated the language rights of the English speaking people of Cameroon.
8. The Complainants aver that from 1<sup>st</sup> to 30<sup>th</sup> September 1995 the Southern Cameroons National Council (SCNC) conducted a signature referendum whose outcome revealed that 99% of Southern Cameroonians are in favour of Southern Cameroons achieving full independence by peaceful separation from the Respondent.
9. The Complainants provide a list compiled by SCNC and SCAPO of eye witness accounts and field investigations relating to arbitrary arrests, detention, torture, punishment, maiming and killings of persons who have called for the self determination of Southern Cameroon.

## COMPLAINT

10. The complainants allege that the following Articles of the African Charter have been violated in respect of Southern Cameroonians:-  
Articles 19, 20, 21, 22, 23(1), 24
11. The Complainants also allege that the following Articles of the African Charter have been violated in respect of individual Southern Cameroonians:-  
Articles 2, 3, 4, 5, 6, 7(1), 9, 10, 11, 12, 13, 17(1)
12. The Complainants further allege that the Republic of Cameroon has violated its general duty as enshrined in **Article 26** of the African Charter.

## PROCEDURE

13. On 10<sup>th</sup> January 2003, the Secretariat of the African Commission wrote to the Complainant acknowledging receipt of the complaint.
14. On 19<sup>th</sup> January 2003, the Secretariat wrote another letter to the Complainant requesting for further information relating to the communication.
15. On 21<sup>st</sup> April 2003, a reminder was sent to the Complainants requesting them to forward to respond to the clarifications sought by the Secretariat of the African Commission with respect to the communication.

16. By a letter dated 8<sup>th</sup> May 2003, Counsel for the Complainants responded to the clarifications sought by the Secretariat of the African Commission.
17. At its 33<sup>rd</sup> Ordinary Session held from 15<sup>th</sup> to 29<sup>th</sup> May 2003 in Niamey, Niger, the African Commission considered the communication and decided to be seized of the matter.
18. On 9<sup>th</sup> June 2003, the Secretariat wrote informing the parties to the communication that the African Commission had been seized with the matter and requested them to forward their submissions on admissibility within 3 months.
19. On 9<sup>th</sup> September 2003, the Complainants wrote informing the Secretariat of the African Commission that they would be forwarding their submissions on admissibility and also requested to make oral submissions at 34<sup>th</sup> session of the African Commission.
20. On 22<sup>nd</sup> September 2003, the Secretariat received the Complainant's submissions on admissibility along with supplemental evidence. The Secretariat acknowledged receipt thereof on the same day.
21. On 3<sup>rd</sup> October 2003, the Respondent State by Note Verbale informed the Secretariat of the African Commission that they had not received a copy of the communication that was forwarded to it by DHL on 9<sup>th</sup> June 2003.
22. On 6<sup>th</sup> October 2003, the Secretariat wrote to the Complainant requesting for another copy of the supplement evidence to be forwarded to the Respondent State.
23. On 27<sup>th</sup> 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 submissions to the delegation of Cameroon attending the 34<sup>th</sup> Ordinary Session. The Secretariat also informed the Respondent State that the DHL office in Cameroon had confirmed delivery of the communication, which was received and signed for by TATSAKENG.
24. On 27<sup>th</sup> 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.
25. At its 34<sup>th</sup> Ordinary Session held from 6<sup>th</sup> to 20<sup>th</sup> November 2003 in Banjul, The Gambia, the African Commission examined the matter and decided to defer consideration on admissibility of the matter to the 35<sup>th</sup> Ordinary Session because the Respondent State claimed that they were unaware of communication 266/2003.
26. On 14<sup>th</sup> November 2003, the Secretariat of the African Commission furnished the delegates representing the Respondent State at the 34<sup>th</sup> Ordinary Session with the following documents:-
  - A copy of communication 266/2003
  - A copy of the Complainants' submissions on admissibility and the accompanying documents
27. On 4<sup>th</sup> 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 34<sup>th</sup> Ordinary Session. The Respondent State was reminded to forward its submissions on admissibility to the Secretariat of the African Commission within 3 months.

28. On 5<sup>th</sup> March 2004, the Secretariat of the African Commission received the Respondent State's submissions on admissibility and acknowledged receipt of the same on 9<sup>th</sup> March 2004.
29. Attempts to forward a copy of the Respondent State's submissions to the Complainant by email or fax were unsuccessful.

## LAW

### ADMISSIBILITY

30. 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 generally must be fulfilled by a Complainant for a communication to be declared admissible.
31. 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.
32. The Respondent State submits that contrary to Article 56(1) of the African Charter, the victims of the human rights violations indicated in the communication have not been identified.
33. Article 56(1) of the African Charter provides:-

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

34. 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 address 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' Organisation (SCAPO), organisations that were established principally to protect and advance the Human and Peoples' Rights of Southern Cameroonians including their right to self-determination. Article 56(1) of the African Charter requires the communication to indicate the authors of the communication and not the victims of the violations. Thus the present communication cannot be declared inadmissible on the basis of Article 56(1) and in coming to this decision, the African Commission would like to refer to its decision in **consolidated communication – Malawi African Association et al/ Maritania**<sup>1</sup> 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".
35. 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 violations 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".

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<sup>1</sup> Consolidated Communications 54/91, 61/98, 98/93, 164/97 & 196/97, 210/98 – Malawi African Association, Amnesty International, Ms Sarr Diop, Union Interafricaine des Droits de l'Homme and RADDHO, Collectif des Veuves et Ayants Droit, Association Mauritanienne des Droits de l'Homme/Maritania

The Respondent State further submits 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”.

36. 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.

37. Article 56(2) provides -: Communications ... received by the African Commission shall be considered if they

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

38. 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<sup>1</sup>;
- The communication must allege *prima facie* violations of rights protected by the African Charter<sup>2</sup>;
- The communication should be brought in respect of violations that occurred after ratification of the African Charter or where violations that began before the State Party ratified the African Charter have continued even after such ratification<sup>3</sup>.

39. From the communication, it is apparent to the African Commission that the communication meets all the above requirements. The communication has been brought against Cameroon, which is party to the African Charter and 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.

40. The Respondent State also disputes the Complainants’ submission that the communication has not been written in disparaging or insulting language. The Respondent State argues that the Complainants use of the phrase “**forceful annexation**” in paragraph 24 of Appendix I of the communication to describe the decolonisation process that led to the reunification. The Complainants also refer to a report titled “Let My People Go Part II” to show how the Respondent State is in violation of the African Charter. In that report, there are references to “**State sponsored terrorism**” at page 2 and 3 committed by the government of Cameroon against the people of Southern Cameroons from 1961 to 2002. The Respondent State submits that the uses of these phrases by the Complainants amount to disparaging or insulting language within the context of Article 56(3) of the African Charter.

41. Article 56(3) of the African Charter provides-:

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.*

42. 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. Nonetheless Complainants should endeavour to be respectful in the phrases they choose to use when presenting their communications.

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<sup>1</sup> Communication 2/88 – Iheanyichukwu A. Ihebereme/United States of America.

<sup>2</sup> Communication 1/88 – Frederick Korvah/Liberia.

<sup>3</sup> Communication 97/93 (2) – John K. Modise/Botswana.

43. The phrases found offensive by the Respondent State specifically the one making references to “State sponsored terrorism” is in fact drawn from a publication appended to the communication which the complainants did not author but instead rely on to buttress their allegations and for which they can not be held responsible. Furthermore, the African Commission believes that there are serious issues that the Complainants raise in this communication upon which it should pronounce itself and would therefore prefer to expunge from the record of the communication the offensive statements rather than dismiss the matter altogether. It is the view of the African Commission that it would be abdicating its duty of promoting and protecting human rights if after acknowledging that there is sufficient information before it to reveal *prima facie* violations of the African Charter to then turn around and dismiss the matter on the basis of Article 56(3) of the African Charter.
44. The Respondent State also alleges that the communication relies on documents of which the Complainants are not the sole authors and additionally states that many of the facts have been distorted.
45. In their submissions, the Complainants argue that the communication is not based exclusively on news disseminated through the media. They state that the evidence used to support their allegations are based on eye- witness accounts and documents prepared by those who have personal knowledge of the events and from official Records. These are contained at Appendices II, IV and Exhibit SC
46. Article 56(4) of the African Charter provides:-  
Communications ... received by the Commission shall be considered if they-: (4) *are not based exclusively on news disseminated through the mass media.*
47. The African Commission has perused the appendices to the communication and has observed that they contain the following documents:-
- Appendix II is a publication by SCNC/SCAPO – Let my People Go!
  - 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.
  - Exhibit SC contains among other numerous documents, delegations, 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.
48. 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 in order to support their claims, the Complainants do not base their case on mass media news but on official records and documents as well as international statutes and this clearly falls outside the ambit of Article 56(4).
49. 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. The reason being that the variant of self-determination sought in this communication is a request for determination as to whether or not the “union” of La Republique du Cameroun and Southern Cameroons was effected in accordance with UN Resolutions, International Treaty obligations and indeed International law. This is clearly not a matter that can be determined a domestic court.
50. The Respondent State concedes that no legal remedies exist with respect to the claim for self determination. The Respondent State however argues further that the issue raised by the Complainants had already been discussed within the United Nations where the problem of

self determination of the people of Southern Cameroons was solved when the British Trusteeship over British Cameroon ended following the plebiscites of 11<sup>th</sup> and 12<sup>th</sup> February 1961. Furthermore, the International Court of Justice (ICJ) in its decision of 1963 with respect to the case of Northern Cameroon ruled as baseless the declaratory decision requested by Cameroon on the alleged behaviour of Britain which was against the trusteeship agreement. The Respondent State believes that the Complainants are seeking a similar declaratory decision which should not be entertained by the African Commission.

51. The African Commission believes that this argument is an inference by the Respondent State that the Complainants have not met the conditions laid out in Article 56(7) of the African Charter which 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.*

52. In order to investigate whether the requirements listed under Article 56(7) of the African Charter have been met, the African Commission needs to set out the issues before it and they are:-

- a) Whether or not the people of Southern Cameroons are entitled to self determination as guaranteed by **Article 20(1)** of the African Charter;
- b) Whether or not the human rights of the Southern Cameroonians have been violated contrary to **Articles 19, 20, 21, 22, 23(1) and 24** of the African Charter;
- c) Whether or not Articles **2, 3, 4, 5, 6, 7(1), 9, 10, 11, 12, 12, 17(1)** of the African Charter have been violated in respect of individual Southern Cameroonians; and
- d) Whether or not the Republic of Cameroon has violated its general duty as enshrined in **Article 26** of the African Charter.

53. Article 56(7) of the African Charter bars the African Commission from entertaining cases that have been settled by another international settlement procedure. As such, the issue that the African Commission needs to examine presently is whether or not the abovementioned issues have been settled by some other international settlement procedure.

54. The African Commission has had the opportunity to read the judgement of the ICJ in the Northern Cameroons case<sup>1</sup>. In that case the Government of the Republic of Cameroon asked the Court to declare that, “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.”<sup>2</sup>

55. It is the view of the African Commission that the matter that was brought before the ICJ is unrelated to that which is before the African Commission today. The African Commission has established that in order for a matter to fall within the scope of Article 56(7) of the African Charter, it should be the same case, with the same parties and alleging the same facts as that before the African Commission<sup>3</sup>. The case before the ICJ was between the Republic of

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<sup>1</sup> Cameroon v United Kingdom – judgement of 2<sup>nd</sup> December 1963.

<sup>2</sup> Ibid.

<sup>3</sup> Communication 15/88 – Mpaka – Nsusu Andre Alphonse/Zaire.

Cameroon and the United Kingdom and the facts related to interpretation and application of a treaty. These facts are clearly different from those brought before the African Commission and as such fall outside the scope of Article 56(7) of the African Charter.

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

## MERITS

57. At its 35<sup>th</sup> Ordinary Session held in Banjul, The Gambia from 21<sup>st</sup> May to 4<sup>th</sup> June 2004, the African Commission heard the oral submissions of the parties to the communication. It further considered the communication and decided to declare it admissible.
58. By letter dated 15<sup>th</sup> June 2004, the parties to the communication were informed of the African Commission's decision and requested to submit their written submissions on the merits within 3 months.
59. On 13<sup>th</sup> August 2004, the Secretariat of the African Commission received a correspondence from the Respondent State, which was forwarded to the complainant on 26<sup>th</sup> August 2004.
60. On 20<sup>th</sup> September 2004, the Secretariat of the African Commission received the written submissions of Respondent State on merits, which was transmitted to the complainant on 12<sup>th</sup> November 2004.
61. On 23<sup>rd</sup> and 28<sup>th</sup> September 2004, the Secretariat at the African Commission received the written submissions of the complainant on the merits, which was transmitted to the Respondent State on 12<sup>th</sup> November 2004.
62. At its 36<sup>th</sup> Ordinary Session, the African Commission decided to defer its consideration to stay the proceedings by third parties purporting to represent the applicants claiming to have entered into negotiation with the Respondent State.
63. The Commission also decided to forward the decision on admissibility of the communication to the Respondent State.
64. On 23<sup>rd</sup> December 2004, the Secretariat wrote to the said third parties informing them of this decision.
65. On 30<sup>th</sup> March 2005, the Secretariat of the African Commission received further submissions from the complainant who was also asked for an oral presentation by an email of 11<sup>th</sup> April 2005.
66. On 31<sup>st</sup> March 2005, the Secretariat of the African Commission handed over copies of the decision on admissibility and the various submissions from the complainant to the delegation of the Respondent State that visited the office of the Secretariat on the same date.

## RECOMMENDATION BY SECRETARIAT

Although the complainants were given audience at the last session, they did not make presentations on the merits due to the Respondent State's refusal to do so before obtaining a copy of the Commission's decision on admissibility. The Secretariat of the African Commission

recommends that the Commission grants the parties the audience being sought for their presentations on the merit of the case.