The African Commission on Human and Peoples' Rights

Communication 650/17 – Kum Bezeng & 75 Others v The Republic of Cameroun

Complainants' submissions on the Admissibility of Communication 650/17

I.Introduction

1. The Complainants filed a communication before the African Commission on Human and Peoples' Rights against *République du Cameroun* (often translated in English as Republic of Cameroon) pursuant to Article 55 of the African Charter. The communication was received at the Secretariat of the Commission on the 20th of February 2017. It was registered as *Communication 650/17 – Kum Bezeng & 75 Others v The Republic of Cameroon*. The Communication relates to recent and ongoing months-old series of serious and massive violations of human rights perpetrated by authorities and agents of *République du Cameroun* against innocent, defenceless and peaceful citizens of the former United Nations Trust Territory of the British Southern Cameroon and in that territory (hereinafter *the Southern Cameroons*).

2. The violations evidence an attempt to suppress the rightful claim by the people of the Southern Cameroons to the full enjoyment of fundamental human rights, including the right to freedom from colonial oppression and subjugation. The assertion of that claim is considered by the people of the Southern Cameroons as the only way of ending nearly 60 years of violent oppression, violent persecution en masse, violent mistreatment, violent repression, as well as discrimination, victimization, domination, spoliation, and subjugation perpetrated by the government of *République du Cameroun* against the people, and in their territory, of the Southern Cameroons.

3. At its 21st Extra-Ordinary Session held in Banjul, Republic of The Gambia, the African Commission on Human and Peoples' Rights considered the Communication and decided to be seized of it. The Commission further considered the Complainants'

request for Provisional Measures and decided to grant the request as indicated in the Decision on Provisional Measures.

4. On the 19th of June 2017 the Secretary to the Commission wrote to Counsel for the Complainants, Professor Carlson Anyangwe, requesting him, in accordance with Rule 105(1) of the Rules of Procedure of the Commission, “to present evidence and arguments on the Admissibility of the Communication within two (2) months of this notification, to enable the Commission proceed with a determination on the Admissibility of the Communication.”

5. The Arguments on Admissibility of the Communication are articulated in the paragraphs that follow. At the end of the Arguments, Complainants make a humble request to the Commission for a hearing to enable Complainants to adduce documentary evidence (official records, international statutes, and written statements) as well as real evidence (photographs, video and audio recordings, and other electronic evidence) to support their arguments on admissibility.

6. Complainants also urge the Commission as a matter of mercy and urgency to accelerate consideration of this Communication and provide adequate and effective remedy. This will arrest the deteriorating situation and avert a looming humanitarian disaster in the Southern Cameroons. This plea is prompted by the grave deterioration of the human rights situation in the Southern Cameroons. The massive human rights violations by the Respondent State has witnessed a sharp and continuing aggravation in terms of scope and intensity. The result is increased physical and psychological trauma and pain thereby inflicted on the entire population of the Southern Cameroons. The human rights situation is deeply deplorable and the humanitarian situation dire.

II. Augments on admissibility

7. Article 56 of the African Charter on Human and Peoples’ Rights stipulates seven conditions that a Communication submitted to the Commission pursuant to Article 55 must fulfil for it to be admissible. Article 56 enacts that “Communications relating to

Human and Peoples' rights referred to in Article 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter requests anonymity;
2. Are compatible with the [Constitutive Act of the African Union] or with the present Charter;
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the [African Union];
4. Are not based exclusively on news disseminated through the mass media;
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter; and
7. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the [Constitutive Act of the African Union] or the provisions of the present Charter.

8. Relying on the rich and progressive jurisprudence of the Commission, Complainants will now marshal arguments to show that this Communication passes all the admissibility tests set out in Articles 56 of the African Charter.

Admissibility condition 1 - Compliance with Article 56(1) which provides that Communications shall be considered if they "indicate their authors even if the latter requests anonymity": Identity of the Complainants.

9. There is good reason for the admissibility condition stipulated under sub-article (1). The *raison d'être* for that requirement was supplied by the Commission itself in *Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others* [Communication 409/12]. There, the Commission explained that it:

> …must receive communications with adequate information with a certain degree of specificity concerning the victims [so that it is in a position to enter into] communication with the author, to

know his identity and status, to be assured of his continued interest in the communication and to request supplementary information if the case requires it.

[See, Communications 104/94, 109/94, and 126/94: *Centre for the Independence of Judges and Lawyers v. Algeria* (1995), para. 3; Communication 108/93: *Monja Joan v. Madagascar* (1997), para. 6; Communication 62/91: *Centre for the Defence of Human Rights (in respect of Ms Jennifer Madike) v. Nigeria* (case closed by the Commission "because of loss of contact with the complainant."); Communication 70/92 : *Ibrahim Dioumessi, Sekou Kande & Ousmane Kaba v. Guinea (declared inadmissible due to lack of the complainant's address*).]

10. The present Communication is submitted by Mr Kum Bezeng & 75 Others (on behalf of themselves and the people of the Southern Cameroons). The authors of the Communication, though requesting anonymity for evident reasons which the Commission no doubt appreciates, are clearly identified (kindly see list of complainants attached). They are also represented by their Counsel, Professor Carlson Anyangwe (kindly see letter of authorization attached). Additionally, in *Consolidated Communication – Malawi African Association et al vs. Mauritania* [Consolidated Communications 54/91, 61/91, 98/93, 164/97 & 196/97, 210/98 – Malawi African Association, Amnesty International, Ms Saar Diop, Union Interafricaine des Droits de l'Homme and RADDHO, Collectif des Veuves et Ayants Droit, Association Mauritanienne des Droits de l' Homme vs. Mauritania] the Commission held that "Article 56(1) demands simply that communications should indicate the names of those submitting it and not those of the victims of the alleged violations. Consistent with this jurisprudence, the Commission declined to declare *Kevin Mgwanga Gumne et al vs. Cameroon* [Communication 266/03] inadmissible on the basis of Article 56(1), reiterating that Article 56(1) requires the communication to indicate the authors of the communication and not the victims of the violations.

11. As shown in the present Communication, the scale of the human rights violations is serious and massive, involving many victims. In many of its decisions, the Commission has clarified the relation between the complainant(s) before it and the victim(s) of the alleged human rights violations. For example, in its landmark decision in *Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana* [Communication 277/03] the Commission made the pertinent observation that

…neither the African Charter nor its [the Commission's] Rules of Procedure makes provisions on the *locus standi* of parties before it. In fact, the only Charter provision that could bear any

relevance to the issue of *locus standi* is Article 56(1) of the African Charter. …It is very clear that Article 56(1) simply requires that the Communication indicate its author(s)... This provision does not specify which parties have standing before the African Commission. Indeed, nowhere is it stated within the African Charter or African Commission's Rules that there should be a link between the author of a Communication and the victim of a human rights violation.

12. The Commission went further to make the following important amplification:

> Article 56(1) of the Charter demands that anyone submitting Communications to the Commission relating to human and peoples' rights must reveal their identity. They do not necessarily have to be victims of such violations or members of their families. This characteristic of the African Charter reflects sensitivity to the practical difficulties that individuals can face in countries where human rights are violated. The national or international channels of remedy may not be accessible to the victims themselves or may be dangerous to pursue.

13. Complainants submit that accessing domestic remedies to litigate human rights violations committed by *République du Cameroun* is completely out of reach for victims in the Southern Cameroons. Such is the intensity of *République du Cameroun's* persecution and terror in the Southern Cameroons that many native inhabitants of the territory are constantly on the run or are in hiding or in enforced exile in other countries. Families of persons killed, tortured, kidnapped, disappeared, maimed or raped are afraid to act or even to denounce perpetrators. A three-month long Internet blackout was imposed throughout the Southern Cameroons territory by Yaoundé. More egregious human rights violations were perpetrated under cover of that blackout. Furthermore, the blackout made it impossible to communicate by Internet with the outside world or even within the Southern Cameroons. Hundreds of persons have been abducted and ferried to an unfamiliar jurisdiction, the language of which is different from theirs, some locked up in unknown places. Some other abductees are made to appear before a court-martial under a legal system and a language they do not understand, with the threat of execution being dangled over their heads like the sword of Damocles even though no formal charge has been preferred against them.

14. For very compelling reasons, the African Commission has adopted the *actio popularis* doctrine, the purpose of which is to ensure the effective protection of human

rights on the continent. In *Spilg and Mack,* the Commission indicated the desirability of this approach as enabling

> non-victim individuals, groups and NGOs to constantly submit Communications to the African Commission. More so, the African Commission, has, through its Guidelines on the Submission of Communications, encouraged the submission of Communications on behalf of victims of human rights violations, especially those who are unable to represent themselves.

15. In the welcome view of the Commission,

> the *actio popularis* doctrine allows persons interested in the protection of human rights in Africa to seize the African Commission on behalf of persons who for one reason or the other, cannot do so on their own. The rationale for this broad approach to *locus standi* is in view of the fact that the African Commission, mandated to promote and protect human and peoples' rights in Africa, bears in mind the fact that in some instances, individuals in Africa whose rights are violated, may be faced with practical difficulties that may preclude them from pursuing national or international legal remedies on their own behalf. The African Commission has therefore adopted the practice of entertaining Communications from persons who are interested in protecting human rights on the continent. These may be the victims themselves or civil society organizations acting on behalf of victims of the alleged violations.

16. It follows that

> as long as the conditions under Article 56 of the African Charter are met by the person standing before it, the African Commission will [entertain] the Communication. The rationale for the Commission's comparative broader approach to the issue of *locus standi* has been associated with the peculiarity of the African situation, and the perceived generous intent of the African Charter.

17. On the authority of the above statements of law by the Commission, the Complainants submit that the present Communication fulfils the requirement under Article 56(1) of the Charter.

Admissibility condition 2 - Compliance with Article 56(2) which provides that Communications shall be considered if they are "compatible with the [Constitutive Act of the African Union or with the present Charter,": Compatibility of the communication.

18. In *Luke Munyandu Tembani*, the Commission clarified that the compatibility requirement under Article 56(2) relates to:

> (i) the rights-holders by whom and duty-bearers against which Communications may be brought, (ii) the substantive issues that may be invoked, (iii) the time period within which, and (iv) the place where the violation must have occurred.

19. The Commission was more explicit in *Kevin Mgwanga Gunme et al vs. Cameroon* when it pointed out that

> the condition relating to compatibility with the African Charter basically requires that the Communication should be brought against a State Party to the Charter; the Communication must allege *prima facie* violations of rights protected by the African Charter; the Communication should be brought in respect of violations that occurred after [the] State's ratification of the African Charter; or where the violations began before the State Party ratified the African Charter, have continued after such ratification.

20. In the instant Communication, the complaint is against *Republique du Cameroun*, a State party to the Charter. The Communication alleges serious and massive violations of fundamental human rights and freedoms guaranteed by the African Charter. These gross and reliably attested violations include the violation of the right to life; the right to liberty and to the security of the person; the right to dignity; the right to freedom from torture and other cruel, inhuman and degrading treatment; the right to freedom of information and of expression; the right to freedom of movement; the right to freedom of assembly; the right to fair trial; the right to existence; and the right to freedom from oppression, domination and subjugation. Some of the violations occurred before ratification of the Charter but are continuing, while the massive violations that began in October 2016, decades after ratification of the Charter, are still ongoing.

21. Complainants therefore submit that the condition under Article 56(2) of the Charter is duly satisfied.

Admissibility condition 3 - Compliance with Article 56(3) which enacts that the Communications should not be "written in disparaging or insulting language directed against the State concerned and its institutions or to the [African Union]": Language of the communication.

22. Article 56(3) of the Charter requires that Communications be presented with a certain degree of decorum. The Commission has developed a rich jurisprudence on this requirement, setting the test whether or not language used in a communication is disparaging or insulting.

23. In *Ilesanmi v. Nigeria* [Communication 268/03] the Commission held, *inter alia*, that

> to be insulting [or disparaging], the language must be aimed at undermining the integrity and status of the institution (Respondent State) and bring it into disrepute.

24. It appears from the jurisprudence of the Commission that the above test is applied on a case-by-case basis, and that each case is treated on its own merits. In *Ilessanmi,* the communication contained the following averments:

> The police and customs officials are corrupt … they deal with drug smugglers … they extort money from motorists and … the President himself was corrupt and had been bribed by the drug smugglers.

The Commission had no difficulty in holding that the phraseology constituted insulting language and accordingly declared the Communication inadmissible for having failed the admissibility test set out in Article 56(3) of the Charter. In *Ligue Camerounaise des*

Droits de l'Homme v. Cameroon [Communication 65/92] the communication contained, inter alia, the following statements:

> 'Paul Biya must respond to crimes against humanity', '30 years of the criminal neo-colonial regime incarnated by the duo Ahidjo/Biya', 'regime of torturers', and 'government barbarisms'.

Here too, the Commission while of the view that the allegations by the *Ligue Camerounaise* "are of a series of serious and massive violations of the Charter", nevertheless found the above language to be insulting and consequently declared the Communication inadmissible for non-compliance with the requirement under Article 56(3).

25. However, in *Kevin Mgwanga Gunme et al / Cameroon* the Commission pointed out the subjective character of the admissibility hurdle under Article 56(3) saying that this was the case

> because statements that could be disparaging or insulting to one person may not be seen in the same light by another person. Matters relating to human rights violations normally elicit strong language from the victims of the said violations.

But having said so, the Commission went on to advise complainants to "endeavour to be respectful in the phrases they choose to use when presenting their communications". In *Gumne*, the Complainants referred to a document written by someone else and in which the government of the Respondent State is described as guilty of 'State sponsored terrorism' against the people of the Southern Cameroons. The Respondent State argued that the phrase 'State sponsored terrorism' was insulting and that the communication should therefore be declared inadmissible on that account. This is the *ratio decidendi* of the Commission's decision declining to declare the Communication inadmissible on the allegation of insulting language:

> The phrase … is in fact drawn from a publication appended by the communication which the Complainants did not author but instead rely on to buttress their allegations and for which they cannot 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.

In the light of the above *ratio* in *Gumne,* the Commission held in *Bakweri Land Claims Committee v. Cameroon*, that the sentence “No judge... will risk his/her career, not to mention his/her life, to handle this politically sensitive matter” while a piece of strong language, nevertheless, does not *per se* amount to disparaging and insulting language.

26. The instant Communication has been written in clear, simple and respectful language, in spite of the massive human rights violations, the physical and psychological suffering inflicted on the victims, and the justifiable anger and bitterness elicited by those violations.

27. Complainants thus submit that the requirement under Article 56(3) of the Charter is fulfilled.

Admissibility condition 4 - Compliance with Article 56(4) which provides that the Communications should not be “based exclusively on news disseminated through the mass media”

28. In *Luke Munyandu Tembani,* the Commission clarified the content of sub-article (4). It held that “this [provision] requires that the Complainants must prove that the evidence of the facts constituting the alleged violations are not based *exclusively* on information from the mass media”. The operative word in Article 56(4) is ‘exclusively’. A communication would fail the Article 56(4) admissibility test only where it is based exclusively, that is, entirely, on news disseminated through the mass media. A communication would satisfy the test set out in that sub-article if it is partly based on

news disseminated through the mass media. Accordingly, the Commission has had no difficulty admitting communications which draw from news disseminated through the media to corroborate other admissible evidence tendered in support of the communication.

29. In *Sir Dawda K Jawara v. Gambia* [Communication 149/96; and see also Consolidated Communications 147/95 & 149/96] the Commission observed that

> while it will be dangerous to rely *exclusively* on news disseminated through the mass media, it would be equally damaging if the African Commission were to reject a Communication because *some aspects of it* are based on news disseminated through the mass media.

30. In the present Communication, evidence adduced before this Commission is based on official records, international statutes, as well as written, audio and video documents. Complainants will also provide statements made by the Respondent State through the mass media, to corroborate other pieces of evidence that will be adduced.

31. Complainants thus submit that the requirement under Article 56(4) is fulfilled.

Admissibility condition 5 - Compliance with Article 56(5) which provides that the Communications "are sent after the exhaustion of local remedies, if any, unless it is obvious that this procedure is unduly prolonged": Exhaustion of local remedies.

32. The relevance of the rule on exhaustion of local remedies is to ensure that international mechanisms do not become substitutes for domestic implementation of human right. The exhaustion of local remedies rule is conceived as a tool to assist the domestic authorities to develop sufficient protection of human rights in their territories. The Commission has thus emphasised the importance of this requirement in its case law. In *Sir Dawda K. Jawara v The Gambia*, the Commission characterised the rule on exhaustion of local remedies as "one of the most important conditions for admissibility of communications…"

33. Expatiating on this condition for admissibility of communications, the Commission declared in *Jawara* that

> three major criteria could be deduced from the practice of the Commission in determining this rule, namely: the remedy 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.

34. Complainants respectfully submit to this Honourable Commission that local remedies are clearly not available in respect of the massive and widespread human rights violations articulated in the present Communication. Local remedies are patently unavailable for the following compelling reasons.

35. First, some of the remedies sought by the Complainants include the right to existence and right to freedom from domination and oppression. There is no court in the Respondent State with jurisdiction to hear any such claim. There is also no municipal legislation which provides for the remedies sought by the Complainants. The Respondent State admitted that much in the *Gumne* wherein the Commission noted that the "Respondent State concedes that no legal remedies exist with respect to the claim for self-determination." To compound matters, all the leaders from the Southern Cameroons who called for self-determination (or in some instances even for federalism), have either been 'arrested' and accused of terrorism and state endangerment, and have been ferried to *République du Cameroun* or have been forced to go underground or to flee into exile.

36. The incredible official position of the Respondent State is that there has been no violation of any human rights whatever and that advocacy or even mere discussion on federalism, let alone, self-determination, is a taboo and is punishable capitally as 'terrorism', 'treason', and 'endangerment of state security'. The Respondent State has thus by its official policy manoeuvre constructively ousted the jurisdiction of its courts to deal with the matters that are the subjects of this communication. It follows that the remedy of self-determination, whether internal or external, is unavailable and

completely out of reach locally for the Complainants. In an important statement of the law the Commission held in *Jawara* that

> remedies, the availability of which is not evident, cannot be invoked by the State to the detriment of the complainant. Therefore, in a situation where the jurisdiction of the courts have been ousted by decrees … local remedies are deemed not only to be unavailable but also non-existent.

Complainants submit that with respect to the present Communication, local remedies are not only unavailable but they are in fact non-existent.

37. Second, the human rights violations that are the subject of this Communication are serious, massive and widespread involving the entire people of the Southern Cameroons. The Commission held in *Socio-Economic Rights and Accountability Project (SERAP) v the Federal Republic of Nigeria* [Communication 338/07] that it was prepared to waive the requirement of Article 56 (5) "in cases of serious and massive violations of human rights". The sheer scale, extent and nature of the human rights violations perpetrated, and still being perpetrated, throughout the territory of the Southern Cameroons which is populated by some 7 million people, is tantamount to the implementation of a national policy of collective punishment and guilt by association, and the pursuit of a tradition of violence.

38. The range of human rights violations include Internet blackout for a Guinness-Book-of-Records three months long period. That blackout occasioned devastating economic, social and cultural consequences for the people of the territory. There has been, and there continues to be, throughout the length and breadth of the Southern Cameroons widespread arrests, kidnappings, raids, torture, imprisonment under life-threatening conditions, persecution, and repression. Respondent State has also imposed in the Southern Cameroons a war-like militarisation. There are heavy military patrols by soldiers armed with heavy weapons of war, including tanks, to create fear and terror among the population. Respondent State has moreover erected countless military checkpoints, and has some twenty military bases, in the Southern Cameroons. Under such circumstances, even if local remedies were available (that point not being conceded) it is not possible to exhaust them. In *Jawara*, the Commission posited that

> the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness. Therefore, if the applicant cannot turn to the judiciary of his country because of generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.

39. As earlier pointed out, most of the leaders from the Southern Cameroon have been arrested and are facing trial in a court-martial in *la République du Cameroun* simply for calling for the redress of the mistreatment, oppression, persecution and repression of the people of the Southern Cameroons for 56 years already. Others are on the run or living underground while some have escaped into exile as political refugees. In the circumstances, and in the welcome words of the Commission in *Jawara*, "it would be an affront to common sense and logic to require the Complainants to return … to exhaust local remedies". There is a generalised environment of fear induced by the Respondent State in the Southern Cameroon. This has created in the minds of Complainants and also in those of right thinking people a well-founded fear that attempting to litigate these matters before the courts of *République du Cameroun* would be tantamount to foolhardily venturing into the lion's den. Under such circumstances, Complainants submit that domestic remedies cannot be said to be available and are definitely not available.

40. Third, Since October 2016 lawyers in the Southern Cameroons have been on strike, calling for an end to mistreatment, discrimination and the pursuit of the policy of assimilation by Respondent State. As a result, Courts in the Southern Cameroons have not been functioning. Even if remedies were available, it would have been difficult for Complainants to access them.

41. From the foregoing facts and circumstances, Complainants submit that local remedies are not available to them. The condition under Article 56(5) has thus been fulfilled.

Admissibility condition 6 - Compliance with Article 56(6) which requires that Communications be "submitted within a reasonable time from the time local remedies are exhausted…"

42. It has already been demonstrated above that local remedies are not available. Complainants did not therefore pursue any local remedies. Some of the violations took place many years ago, but are still continuing, and the massive and serious human rights violations that started in October 2016 are still continuing to date.

Admissibility condition 7 - Compliance with Article 56(7) which stipulates that Communications received by the African Commission shall be considered if they "do not deal with cases which have been settled by African Commission 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"

43. Regarding this admissibility condition, the Commission has explained that

> requirement under Article 56(7) of the African Charter is founded on the *non bis in idem* rule which ensures that no party may be sued or condemned more than once for the same alleged human rights violations. The rule also seeks to uphold and recognize the *res judicata* status of decisions issued by international and regional tribunals and/or bodies such as the African Commission. Accordingly, the African Commission will not entertain any Communication with the same facts and parties as that, which has been settled by another international body.

In *Gumne,* the Commission referred to its decision in *Mpaka-Nsusu AndrenAlphonse vs. Zaire* [Communication 15/88], and recalled its established jurisprudence 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.

44. Complainants submit that this Communication, based on the facts as therein presented, has not been settled by any other international body. It follows that the condition under Article 56(7) is fulfilled.

III. Conclusion

45. Complainants have sufficiently demonstrated that all the seven conditions of admissibility under Article 56 of the Charter have been fulfilled. Complainants therefore urge this Honourable Commission to declare the Communication admissible and to proceed to consider same on the merits.

Request for a hearing

46. May it please the Honourable Commission, Complainants have the honour to request the Commission to invoke Rule 99(1), and Rules 88(6) and 105(4) read together, for a hearing to allow Complainants to tender a body of evidence to support their arguments on admissibility. Complainants also have the honour to request the Commission for an expedited consideration of this Communication.

Submitted by Counsel for Complainants

Professor C Anyangwe

17th August 2017