

The Banjul Communiqué

37th Session of the African Commission on Human & Peoples Rights

Re: Communication No 266/2003

Dr. Kevin Ngwang Gumne and Others; Acting on their Behalf and on Behalf of SCNC/SCAPO and the Southern Cameroons

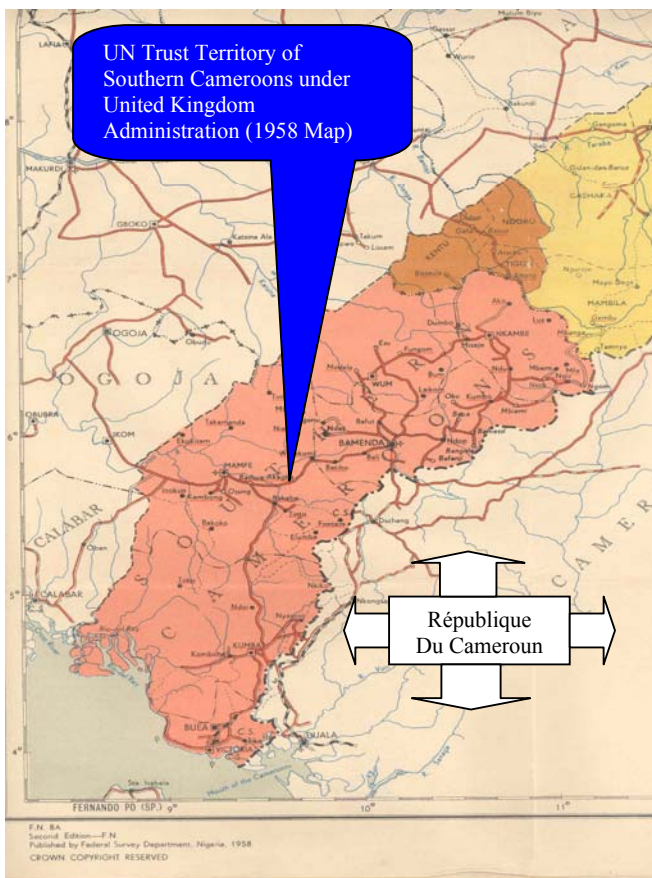
Versus

La République du Cameroun.

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Introduction

This is a case that was filed before the Africa Commission on Human and Peoples' Rights on January 9, 2003 by representatives of the Southern Cameroons National Council (SCNC) and Southern Cameroons Peoples Organisation (SCAPO), acting on their personal behalf and on the behalf of the Southern Cameroons. The plaintiffs who filed the case were the following:



1. Dr. Kevin Ngwang Gumne
2. Mr. Augustine Feh Ndangam
3. Dr. Martin Ngeka Luma (Deceased)
4. Chief Ayamba Ette Otun
5. Mr. Nfor Ngala Nfor
6. Mr. Humphrey Mbinglo
7. Mr. Albert Womah Mukong (Deceased)
8. Isaac M. Sona
9. Dr. Emil Mondoia
10. Dr. Tayoba Ngenge
11. Dr. Stephen Shemlon
12. Dr. Martin Ayim
13. Dr. J Asongu
14. Mrs. Regina Mankefor (Deceased)
15. Ms Melissa Nembang
16. Mr. Andrew Edimo
17. Mr. Tum Tafon
18. Mr. Dennis Atemkeng

The complainants were represented by **Prof. Carlson Anyangwe**, as lead Counsel and the law firm of **Akinlawon & Ajomo** of Lagos, Nigeria. The complaint recites that La République du Cameroun is guilty of violating the rights of hundreds of citizens of the Southern Cameroons and the collective rights of the People of the Southern Cameroons.

Violation of the Rights of Citizens of the Southern Cameroonians.

In their Submissions on Admissibility and on the Merits Complainants adduced compelling and conclusive evidence of a continuing and consistent pattern of gross and reliably attested violations by the Respondent State of individual human rights in the Southern Cameroons. **This was supported by an exhaustive catalogue of repression and oppression, targeting the people of the Southern Cameroons, involving torture, arbitrary arrest and detention, maiming, extra judicial executions and killings of the citizens of the Southern dating from 1961.**

Complainants submitted that 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. Particular attention was drawn to Article 4 which protects the right to life and to the physical integrity of the person; to Article 5 outlaws torture and other cruel, inhuman and degrading treatment and punishment; to Article 6 which prohibits arbitrary arrests and detention; Article 7 which guarantees the right to fair trial; and Articles 9-12 which guarantee the right to freedom of expression, association, assembly and movement.

Violation of the Collective Rights of the Peoples of the Southern Cameroons.

Complainants further submitted that forty-four years ago in 1961, Respondent State 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. But 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. Yet 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.

Relief Sought from the African Commission

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

The Commission is requested to find la République 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 the enjoyment of all the rights recognised to the peoples under this 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 La République du Cameroun; to call on La République du Cameroun to end its continuing violation of the human rights of individual Southern Cameroons citizens; and to find that victims of rights violations by la République du Cameroun are entitled to adequate compensation.

Admissibility of the Case

At the 35th Session of the Commission held in Banjul in May/June 2004 the admissibility of the case was considered. At that hearing La République du Cameroun was represented by an 8-man delegation led by **Dr. Dion Ngute**, Minister Delegate in the Ministry of Foreign Affairs.

The Respondent State argued that the communication does not meet the requirements of Article 56 (2) because the Complainants are advocating for secession under the pretext of allegations of violation of the provisions of the

African Charter and other human rights instruments. While conceding that the right to self-determination is an inalienable right, the Respondent State argued 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”

After satisfying itself that the communication satisfied the seven conditions stipulated in article 56 of the African Charter of Human and Peoples’ Rights, the Communication was declared admissible by the African Commission on Human & Peoples’ Rights. At the 36th Session of the Commission, held in Dakar in Nov/Dec 2004, the Respondent State demanded that a copy of the decision on the admissibility of the Communication be made available to them, failing which it would cease to co-operate with the Commission. The merit stage of the Case was therefore adjourned to the 37th Session scheduled to take place in Banjul in April/May 2005.

It may be recalled that at the 36th Session, at which **Humphrey Mbinglo** represented the Complainants, **Dr. Dion Ngute**, speaking on behalf of the Respondent State, said that the SCNC has been in factions and that La République du Cameroun did not know which faction to deal with. The Respondent State said it had now identified some SCNC individuals with whom it was discussing. He went on to name the four individuals as: **Isaac Oben, Theodore Leke, Samuel Tita** and **Gregory Agbor**. All four individuals were present in Dakar in the corridors of the Commission. The Commission listened to the statement from the Respondent State without comment.

The Merit Stage

At the 37th Session of the Commission, held in Banjul from April 27 to May 11, the Commission heard oral presentation made by the Complainant (Southern Cameroons) and the response of Respondent State (La République du Cameroun). The Complainants reiterated that their submissions at the Admissibility and Merit stages of this case established 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. Complainants repeated the following incontrovertible facts:

- (i) that the Southern Cameroons and République 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 République 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 République 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 République 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

The Complainants concluded their presentation as follows: “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, 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!**”

The Respondent State, replying in French, informed the Commission that it did not have much to say because the leader of their delegation, the Minister Delegate at the Ministry of External Affairs was not present. He further said that they had never seen the map of the Southern Cameroons and requested a copy of, together with Complainants oral presentation, so as to enable them to study both. He further wondered aloud the capacity in which the Complainants are acting before the Commission, saying the Respondent State was in possession of a document from “the **Chief of the Southern Cameroons**”. (Presumably one **Mr. Isaac Oben** who, together with three other individuals, have always been tagged along by the Respondent State since the 36th Session in Dakar).

Questions and Clarifications Sought by the Commission

The Commission asked for clarification on the following issues:

1. How do the Complainants reconcile their claim to self-determination with the OAU Cairo Declaration of 1964 on the inviolability of boundaries inherited at independence?
2. Whether the People of the Southern Cameroons were ethnically connected with the people of La République du Cameroun?

The Complainants responded by confirming their total subscription to the terms of the OAU Cairo Declaration that States must respect the borders, which they inherited at the time they attained independence. Complainants called the Commission’s attention to the fact that the Respondent State, a former UN Trust Territory under French Administration, achieved independence on January 1, 1960 and was admitted to membership of the United Nations on September 20, 1960. At no time prior to or at the independence of the Respondent State or at the time of its admission to the United Nations was the Southern Cameroons ever a part of the Respondent State. The international law principle of *uti possedetis juris* ordains that the boundaries of a colonial territory become frozen on the date of its attainment of independence. Respondent State’s claim to territory outside the territorial framework it inherited on its attainment of independence could only be expansionist, hegemonistic and colonialist--outlawed under international law.

On the second question, the Complainant stated that there is no substantial ethnic connection between the Southern Cameroons as a whole and the people of the Respondent State as a whole; but that along the common border between the Southern Cameroons and La République du Cameroun, one occasionally finds some communities astride the common border between the two countries. However, there is nothing unique about this phenomenon in Africa. For example, there are many tribes in the territory of the Respondent State, which spill over into the contiguous states of Equatorial Guinea, Gabon, Congo, Chad, Central African Republic and Nigeria. Along the common Nigeria – Southern Cameroons border, there are communities, which are astride Nigeria and the Southern Cameroons. Therefore even if such connection existed to a substantial degree, it cannot be the basis for laying any claim to the territory of the Southern Cameroons.

The Commission thanked the parties for their presentations and indicated that it would rule on the request made by the Respondent State to be given a written copy of the oral presentation of the Complainants and for a map of the Southern Cameroons. The Commission did deliberate and came out shortly afterwards to inform Complainants that a written copy of the oral presentation and a map of the Southern Cameroons should be made available to the Respondent State through the Commission. We have accordingly sent to the Commission a copy

of a 1958 map of the UN Trust Territory of Southern Cameroons under United Kingdom Administration together with a copy of the Boundary Treaty signed on January 9, 1931 by **Graeme Thomson**, Governor of the Colony and Protectorate of Nigeria and **Monsieur Marchand**, Gouverneur Commissaire de La République Française au Cameroun, defining the boundary between French and British Cameroons.

This brought to a close the formal hearing of the matter by African Commission of Human and Peoples' Rights. It is expected that the decision on the merits of the case shall be delivered in the coming months.

Link Between the Case Before the Human Rights Commission and the Verdict of the Federal High Court of Abuja.

It will be recalled that on February 14, 2002 a suit was filed at the Federal High Court in Abuja by 12 Southern Cameroonians acting for themselves and on behalf of the peoples of the Southern Cameroons, against the Attorney General of the Federal Republic of Nigeria. The Plaintiffs requested the following relief from the Court:

1. A Declaration that under Articles 1 and 20(1) (2) and (3) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation of Nigeria, 1990 the Federal Republic of Nigeria has a legal duty to place before the International Court of Justice and the United Nations General Assembly and ensure diligent prosecution to conclusion the claim of the Peoples of the Southern Cameroons to self-determination and their declaration of independence;
2. An Order compelling the government of the Federal Republic of Nigeria to place before the International Court of Justice and the United Nations General Assembly, and ensure diligent prosecution to conclusion the claim of the peoples of the Southern Cameroons to self-determination and declaration of independence.
3. A perpetual injunction restraining the Government of the Federal Republic of Nigeria whether by herself, her servants, agents and or representations or otherwise howsoever from treating or continuing to treat or regard the Southern Cameroons and the peoples of the territory as an integral part of La République du Cameroun.

After considering the admissibility as well as the substance of the case, the Federal High Court in Abuja finally issued the following ruling on March 5, 2002:

1. The Federal Republic of Nigeria shall institute a case before the International Court of Justice concerning the following:
 - a. Whether the Union envisaged under the Southern Cameroons Plebiscite 1961 between La République du Cameroun and Southern Cameroons took effect as contemplated by the relevant United Nations Resolutions particularly United Nations General Assembly Resolution 1352 (XIV) of 16th October 1959 and United Nations Trusteeship Council Resolution 2013 (XXIV) of 31st May 1960.
 - b. Whether the termination by the Government of the United Kingdom of its trusteeship over the Southern Cameroons on 30th September 1961 without ensuring prior implementation of the Constitutional arrangements under which the Southern Cameroons and La République du Cameroun were to unite as one Federal State was not in breach of Articles 3 and 6 of the Trusteeship Agreement for the Territory of Cameroons Under British Administration approved by the General Assembly of the United Nations on 13th December 1946, the United Nations General Assembly Resolutions 1352 of 16th October 1959; 1608 of 21st April 1961, and United Nations Trusteeship Council Resolution 2013 (XXIV) of May 31 1960 and Article 76 (b) of the Charter of the United Nations;
 - c. Was the assumption of the Sovereign Powers on 1st October 1961 and the continued exercise of same by the Government of La République du Cameroun over Southern Cameroons (after termination by the Government of the United Kingdom of its Trusteeship over the territory) legal

- and valid when the Union between the Southern Cameroons and La République du Cameroun contemplated by the Southern Cameroons Plebiscite 1961 had not legally taken effect?
- d. Whether the peoples of Southern Cameroons are not entitled to self-determination within their clearly defined territory separate from La République du Cameroun;
 - e. Whether it is the Southern Cameroons and not La République du Cameroun that shares a maritime boundary with the Federal Republic of Nigeria;
2. The Federal Republic of Nigeria shall take any other measures as may be necessary to place the case of the peoples of the geographical territory known as at 1st October 1960 as Southern Cameroons for self-determination before the United Nations General Assembly and any other relevant international organisations.

Conclusion

The history of the world shows that all oppressed people, wherever they are, sooner or later will stand up and fight for their freedom. The clarion call by **President George Bush**, of the United States during his inaugural speech in January 2005 for all oppressed people to rise up and fight for their freedom was heard loud and clear in the Southern Cameroons.

The decision of Her Majesty's Government to unceremoniously withdraw the protective force of the British army on September 30, 1961 without having exercised due diligence in the termination of the 1945 United Nations Trust Agreement over the Cameroons, in compliance with relevant United Nations Resolutions (cited above in the judgement of the Federal High Court of Abuja), is primarily responsible for exposing the people of this territory to the abuse that the people have suffered after the military occupation of the territory by La République du Cameroun since October 1, 1961. **This was a serious error in judgement, which needs to be corrected with the utmost urgency by Her Majesty's Government and the United Nations because it has finally crystallized into armed confrontation in the Bakassi Peninsula, pitting two Commonwealth member States (The Federal Republic of Nigeria and La République du Cameroun) against each other.** It is for this reason that we have decided to forward a copy of this communiqué with an appropriate covering letter to Her Majesty Queen Elizabeth II of England, in her capacity as Head of the Commonwealth and also because it was to her father King George VI that the UN Trust over the Cameroons was granted in 1945.

The people of the Southern Cameroons are grateful for the farsightedness of those who conceived the need for Africa to have a Charter for Human and Peoples Rights. This powerful instrument has now been recognised by the Federal High Court of Abuja as placing an obligation on the Government of the Federal Republic of Nigeria (which ratified the treaty in 1990) to exercise due diligence to assist the Southern Cameroons to attain its self-determination. In the case of the African Commission on Human and Peoples Rights, the mere fact that Communication No 266/2003 was found admissible by the Commission, is already a victory that the Southern Cameroons right to self-determination is recognised under the Charter.

The conclusion is that the colonial grip which La République du Cameroun has exercised over the territory of the Southern Cameroons, with disastrous consequences, both for the Southern Cameroons as well as for its own people, is being slowly dissolved by the moral authority of the African Charter of Human and Peoples Rights, which la République du Cameroun believed itself free to wantonly violate with impunity, after having ratified the treaty into law.

Done in Buea, Southern Cameroons on May 10, 2005.

Signed _____
Dr. Kevin Ngwang Gumne (70)