

## Recognition of minority groups as a prerequisite for the protection of human rights: The case of Anglophone Cameroon

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### Summary

*Human rights are inextricably linked. No instrument demonstrates this nexus between the various categories of rights better than the African Charter on Human and Peoples' Rights. In the African Charter collective rights and individual rights are interdependent and indivisible. In some circumstances it would be difficult if not impossible to protect individual rights if collective/group rights were not guaranteed and protected. The collective right of self-determination is recognised in the United Nations Charter. The right to self-determination is of particular relevance to the Republic of Cameroon where the Anglophone minority since independence continuously has complained of marginalisation and neo-colonialism. These complaints have been to the effect that severe violations of the rights of some Anglophone Cameroonians have occurred. The article contends that these violations are a direct consequence of the attempted erasure of the status of a 'people' that Anglophone Cameroonians as a group continued to enjoy after their free association with the Republic of Cameroon. The article demonstrates that the attempted erasure has enabled not only the violation of individual rights but has led to an armed conflict in Cameroon where there is now a struggle for the creation of an Anglophone state.*

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## 1 Introduction

Individual rights are linked inextricably to minority or group rights. It is difficult to protect the rights of individuals if the group to which the individual belongs is not recognised and the collective rights of the group are not guaranteed. Nowhere is this more evident than in Cameroon where a crisis that has been termed a civil war<sup>1</sup> is unfolding. The crisis in Cameroon started in October 2016 because of the ever-present feeling by the people of the former Trust Territory of Southern Cameroons under British administration, now called Anglophones, of being victims of marginalisation, discrimination and neo-colonialism. This feeling gave birth to what is generally called the Anglophone problem.<sup>2</sup> This problem partly stemmed from the attempted erasure of the status of a 'people' that the people of the former Southern Cameroons continued to exercise even after independence when the former Southern Cameroons associated with the Republic of Cameroon to become the federated state of West Cameroon with equal status to the federated state of East Cameroon in 1961. This erasure formed the basis of the submission of the African Commission on Human and Peoples' Rights (African Commission) in the *Southern Cameroons* case.<sup>3</sup> The petitioners partly argued that the former Southern Cameroons was annexed forcefully by 'La République du Cameroun' in 1961 and that a September 1961 Federal Constitution designed to respect the separateness and distinctness of the people of Southern Cameroons<sup>4</sup> had been agreed upon but was changed in 1972 after the declaration of a unitary state. According to the petitioners 'the imposition of the Unitary State on Anglophone Cameroon in 1972 was unconstitutional, illegal and a breach of

1 The International Crisis Group has stated that '[t]he crisis ... that began in October 2016 with protests by teachers and lawyers escalated into an armed insurrection at the end of 2017 and has since degenerated into a civil war'; International Crisis Group 'Cameroon's Anglophone crisis: How to get to talks?' Crisis Group Africa Report No 272, 2 May 2019, <https://www.crisisgroup.org/africa/central-africa/cameroon/272-crise-anglophone-au-cameroun-comment-arriver-aux-pourparlers> (accessed 13 May 2019).

2 For more on the Anglophone problem, see P Konings & FB Nyamnjoh 'The Anglophone problem in Cameroon' (1997) 35 *Journal of Modern African Studies* 207; E Anyefru 'Paradoxes of internationalisation of the Anglophone problem in Cameroon' (2010) 28 *Journal of Contemporary African Studies* 85; D Eyoh 'Conflicting narratives of Anglophone protest and the politics of identity in Cameroon' (1998) 16 *Journal of Contemporary African Studies* 249; EH Nfobin & NV Nchang 'The Cameroon "Anglophone question" in international law' (2014) 22 *African Journal of International and Comparative Law* 234; SE Ebai 'The right to self-determination and the Anglophone Cameroon situation' (2009) 13 *International Journal of Human Rights* 631.

3 *Gunme & Others v Cameroon* (2009) AHRLR 9 (ACHPR 2009) (*Southern Cameroons* case).

4 *Southern Cameroons* case (n 3) para 7.

faith'.<sup>5</sup> They therefore argued that the right to self-determination of the people of Southern Cameroon under article 20 of the African Charter on Human and Peoples' Rights (African Charter) had been violated.<sup>6</sup> Although the African Commission found that article 20 had not been violated,<sup>7</sup> unlike other articles, it recommended that the government of Cameroon enter 'into constructive dialogue with the complainants, and in particular, SCNC and SCAPO to resolve the constitutional issues, as well as grievances which could threaten national unity'.<sup>8</sup> This constructive dialogue has never materialised except for the Major National Dialogue that was called as a result of the conflict that started in October 2016, which separatist groups rejected as a non-event and did not participate in.

As the first part of the article demonstrates, international law for a long time has recognised that in some, if not all, cases the recognition of a 'people' or a group with accompanying rights is a prerequisite for the protection and exercise of individual rights. The second part shows that this is even more the case with the Anglophone people in Cameroon, considering that their status as a 'people' is a status that evolved as a direct consequence of the exercise of their right to independence. Part 3 demonstrates that authorities in Cameroon decided in 1972 to erase the protections guaranteed by the Constitution to the former Southern Cameroonians as a group, that is, erasing the federated State of West Cameroon. However, this erasure could not do away with the nature of 'peoplehood' as they remain a group with an inalienable right to self-determination. Part 4 shows that the direct consequence of this erasure has been the severe violation not only of the rights of Anglophones as a group, but especially the individual rights of any individual that refuses to accept the erasure and considers this erasure as having the effect of colonialism. Although groups enjoy many collective rights, the right to self-determination is paramount as far as the Anglophone problem in Cameroon is concerned as the problem stems from the violation of that right in particular.

## 2 Protection of group rights as a prerequisite for the protection of individual rights

The concept of group or collective rights is well-embedded as a legal concept in international human rights law. Jovanovic explains what it means methodologically for a theory of 'collective rights' to be legal.<sup>9</sup> She argues that collective rights are an emerging operative legal concept of a general kind as the notion is found in various

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5 *Southern Cameroons* case para 14.

6 *Southern Cameroons* case para 163.

7 *Southern Cameroons* case paras 197-198.

8 *Southern Cameroons* case para 215.

9 MA Jovanovic *Collective rights: A legal theory* (2012) 2.

international and municipal legal instruments, and also because references to it are made in judicial decisions or expert legal opinions as well as in numerous academic articles and books.<sup>10</sup> Two important examples suffice, the 1966 UN human rights covenants guarantee the collective right to self-determination<sup>11</sup> and, especially, the African Charter contains wide-ranging provisions on the protection of collective rights. For groups, this protection guarantees the inalienable right to self-determination, to development, to natural resources, a healthy environment, non-discrimination and equality, and international and national peace and security.<sup>12</sup> Group rights (third generation rights) are linked intimately to individual rights on the premise that groups are made up of individuals, and it is accepted now that all three generations of rights are interdependent. This interdependence is embodied in the African Charter. Although it was partly inspired by other international and regional instruments, the African Charter is unique by departing from these instruments<sup>13</sup> due to its technique of human rights protection. It treats all rights as indivisible, that is, civil, political, economic, social and cultural rights and peoples' rights.<sup>14</sup> For this reason, Dersso describes the Charter as 'unique in its definition of rights guaranteed' because it 'is the only international instrument that has entrenched all three categories of rights (first, second, and third generation rights)' and, more importantly, because 'all three categories of rights have the same legal

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10 Jovanovic (n 9) 4.

11 Common art 1 of UN General Assembly International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series Vol 999 171, <http://www.refworld.org/docid/3ae6b3aa0.html> (accessed 8 October 2018) (ICCPR), and UN General Assembly International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series Vol 993 3, <http://www.refworld.org/docid/3ae6b36c0.html> (accessed 8 October 2018) (ICESCR).

12 Arts 19-24 African Charter.

13 FM Ndahinda *Indigeness in Africa, A contested legal framework for empowerment of 'marginalised' communities* (2011) 187.

14 The Preamble to the African Charter stipulates: 'Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.' They are indivisible in the sense that there is no clear-cut difference between so-called first generation and second generation rights, with different modes of protection. Eg, first generation rights generally are considered to be beyond the reach of states, that is, states should not intervene in their enjoyment (negative duties of the state), while second generation rights require positive action by states for their enjoyment, eg, by the provision of economic facilities for economic and social rights. It is for this reason that the international community in 1966 came up with two international covenants for first generation and second generation human rights. See F Viljoen *International human rights law in Africa* (2012) 214. Also see MW Mutua 'The Banjul Charter and African cultural fingerprint: An evaluation of the language of duties' (1995) 35 *Virginia Journal of International Law* 339 at 340; E Ankumah *The African Commission on Human and Peoples' Rights. Practices and procedures* (1996) 159.

validity and are, legally speaking, equally enforceable'.<sup>15</sup> Even before the African Charter, and as early as 1968, the Teheran International Conference on Human Rights stated in its Declaration that

since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights, is impossible. The achievement of lasting progress in the implementation of human rights is dependent on sound and effective national and international policies of economic development.<sup>16</sup>

Further, in 1977 the United Nations (UN) General Assembly took a resolution<sup>17</sup> in which it noted that

all human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights ... consequently, human rights questions should be examined globally, taking into account both the overall context of the various societies in which they present themselves, as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society.<sup>18</sup>

Not only are rights interdependent and indivisible but it is difficult to exercise individual rights if group rights are not guaranteed. In this regard the following citation by Sohn is instructive:<sup>19</sup>

One of the main characteristics of humanity is that human beings are social creatures. Consequently, most individuals belong to various units, groups, and communities ... It is not surprising, therefore, that international law not only recognizes inalienable rights of individuals, but also recognises certain collective rights that are exercised jointly by individuals grouped into larger communities, including peoples and nations. These rights are still human rights; *the effective exercise of collective rights is a precondition to the exercise of other rights, political or economic or both. If a community is not free, most of its members are also deprived of many important rights.*

According to Kiwanuka, who suggests that collective rights should be regarded as *sui generis*, 'when the group secures the rights in question, then the benefits redound to its individual constituents and are distributed as individual human rights'.<sup>20</sup> Addressing African experts preparing the draft African Charter in Dakar, Senegal, then Senegalese President Senghor said that in Africa 'the individual and his rights are wrapped in the protection of the family and other

15 S Derso 'The African human rights system and the issue of minorities in Africa' (2012) 20 *African Journal of International and Comparative Law* 43.

16 UN Doc A/Conf.32/41 Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran (1968) para 13.

17 GA Res 32/130; Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms UN Doc A/32/45, 16 December 1977.

18 GA Res 32/130 (n 17) paras (a) and (b).

19 LB Sohn 'The new international law: Protection of the rights of individuals rather than states' (1982) 32 *American University Law Review* 1 48 (my emphasis).

20 RN Kiwanuka 'The meaning of "people" in the African Charter on Human and Peoples' Rights' (1988) 82 *The American Journal of International Law* 85.

communities'.<sup>21</sup> To further explain this situation in the African system it has been advanced that the nature of the African state, which is its inability to take care of all within the state due to its limited strength, calls for the recognition of peoples. Odinkalu states that 'in most African countries where the state is nowhere near as strong as it is in Europe and North America, the community often insures the individual against the excesses of unaccountable state power'.<sup>22</sup>

The importance of group rights for the protection of individual rights is even more invaluable as far as the group right of self-determination is concerned. It is this importance that motivated the inclusion of the right to self-determination in the 1966 Covenants. In their common article 1 they provide for the right both to equality and self-determination.<sup>23</sup> In its General Comment 12, the UN Human Rights Committee gave the *raison d'être* of this inclusion in these terms: 'The right of self-determination is of particular importance because its realisation is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.'<sup>24</sup>

The importance of this right for the purposes of individual rights had been recognised by the UN as early as 1952 when it

decided to include in the international covenant or covenants on human rights an article on the right of peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations. This article shall be drafted in the following terms: 'All peoples shall have the right of self-determination' and shall stipulate that all states including those having responsibility for the administration of Non-Self-Governing Territories (NSGT) should promote the realisation of that right in conformity with the purposes and principles of the UN and that states

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- 21 Address delivered by Leopold Sedar Senghor, former President of the Republic of Senegal, at the opening of the meeting of African Experts preparing the draft African Charter in Dakar, Senegal, 28 November to 8 December 1979 (Senghor's speech) in CH Heyns (ed) *Human rights law in Africa* (1998) 78-80.
- 22 AC Odinkalu 'Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights' (2001) 23 *Human Rights Quarterly* 344.
- 23 Common art 1 of the ICCPR and ICESCR: '1 All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development ... 3 The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.'
- 24 CPR Committee General Comment 12: Art 1 (Right to self-determination) The Right to Self-determination of Peoples Adopted at the 21st Session of the Human Rights Committee on 13 March 1984; also see GA Res 637 A (VII) 12 December 1952; and K Doehring 'Self-determination' in B Simma (ed) *The Charter of the United Nations: A commentary* (2002) 50.

having responsibility for the administration of NSGT should promote the realisation of that right in relation to the peoples of such territories.<sup>25</sup>

A further justification for this inclusion was that the violation of the right in the past resulted in bloodshed and it is considered a continuous threat to peace.<sup>26</sup> This is exactly what has occurred in Cameroon as there has been an attempted erasure of the group status of the Anglophone people in Cameroon with the right to self-determination and leading to the conflict that started in October 2016. This attempted erasure resulted in severe massive violation of the individual rights of Southern Cameroonians.

### 3 Evolution of Anglophone Cameroonians as a 'people' with accompanying rights, especially the right to self-determination

The territory today known as the Republic of Cameroon was part of the German protectorate of Kamerun from 12 July 1884 when the Germans signed protectorate treaties with Coastal Douala chiefs<sup>27</sup> to the advent of World War I. The boundary of German Kamerun was defined by treaties between Germany and Britain, on the one hand, and between Germany and France, on the other.<sup>28</sup> With the defeat of Germany in World War I, Britain and France took over German Kamerun. They administered the whole territory together as a condominium from 1914 to 1916, but this arrangement failed due to disagreements between them on how jointly to administer the territory.<sup>29</sup> This failure led to the partition of the territory by a Franco-British Agreement signed by the British Secretary for Colonies and the French Minister for Colonies. The agreement, signed on 10 July 1919, was further clarified on 29 December 1929 and 31 January 1931 by the signing of another agreement between the Governor of the Colony and Protectorate of Nigeria and the *Commissaire de la République Française au Cameroun*.<sup>30</sup> By a 2 August 1946 Order-in-Council providing for the administration of the Nigerian Protectorate and Cameroons the British divided its territory into two, thus giving birth to the Northern and Southern Cameroons. Northern Cameroons was administered as part of the northern region of Nigeria, while

25 Resolution 545 (VI), Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, 375th Plenary Meeting 5 February 1952.

26 Resolution 545 (VI) (n 25).

27 VJ Ngoh 'The political evolution of Cameroon, 1884-1961' Dissertations and Theses, Portland State University, 1979 (Paper 2929) 8.

28 See the Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v Nigeria: Equatorial Guinea intervening*) [2002] ICJ Rep 303 (*Bakassi case*) para 33.

29 W Dze-Ngwa 'The First World War and its aftermath in Cameroon: A historical evaluation of a centenary, 1914-2014' (2015) 3 *International Journal of Liberal Arts and Social Sciences* 82.

30 *Bakassi case* (n 28) para 34.

Southern Cameroons was administered as part of the eastern region of Nigeria. This administrative union of the Cameroons and the Nigerian protectorate was based on UNGA Res 224 (111) on Administrative Unions Affecting Trust Territories of the 160th plenary session of 18 November 1948. The respective British and French territories had become internationally-recognised separate legal entities under the League of Nations as League of Nations-Mandated Territories in 1922 and later by the UN as they became UN Trust Territories. The UN entered into Trust Agreements with Britain and France on the Cameroons.<sup>31</sup> In other words, the international law of decolonisation at the time was to apply to both colonial territories separately as under that law they were internationally-recognised colonial territories with the right to independence and full rights of territorial integrity. Referring to the independence of colonial countries, the Independence Declaration, Resolution 1514,<sup>32</sup> said to be the Magna Carta of decolonisation,<sup>33</sup> stated in paragraph 6 that 'any attempt aimed at the total or partial disruption of the national unity and territorial integrity of a country is incompatible with the purposes of the Charter of the United Nations'. According to Resolution 1541,<sup>34</sup> colonial countries had three ways of exercising their right to self-determination: emergence as a sovereign independent state; free association with an independent state; or integration with an independent state.

In the exercise of its right to self-determination the Trust Territory of Cameroon under French administration gained independence on 1 January 1960 to become the Republic of Cameroon and was admitted to the UN in September 1960.<sup>35</sup> For the exercise of their right to self-determination the UN decided that the Trust Territory of Southern Cameroons by a plebiscite should decide to join either the already-independent Federal Republic of Nigeria or the already-independent Republic of Cameroon.<sup>36</sup>

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31 UN and Britain signed Trusteeship Agreement Document A/152/REV2 and with France, Trusteeship Agreement Document A/155/REV2 on 13 December 1946.

32 UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples 14 December 1960, A/RES/1514(XV), <https://www.refworld.org/docid/3b00f06e2f.html> (accessed 4 October 2019).

33 H Gros Espiell 'The right to self-determination, implementation of United Nations Resolutions' UN Doc E/CH.4/Sub.2/405/Rev.1 1980.

34 UN General Assembly Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73(e) of the Charter, 15 December 1960, A/RES/1541, <https://www.refworld.org/docid/3b00f0654c.html> (accessed 4 October 2019).

35 See GA Res 1476 (XV), Admission of the Republic of Cameroon to Membership of the United Nations 20 September 1960, A/Res/1476/(XV). This shows that the former French-administered territory was admitted as 'The Republic of Cameroon'.

36 Res 1350- XIII on the Future of the Trust Territory of the Cameroons under United Kingdom Administration, 13th session, 794th plenary meeting 13 March 1959, and Res 1352-XIV on the Future of the Trust Territory of the Cameroons under United Kingdom Administration: Organisation of a Plebiscite in the southern part of the territory, 14th session, 829th Plenary Meeting, 16 October 1959.



In the subsequent plebiscite of 11 February 1961 the people of Southern Cameroons voted to join the Republic of Cameroon. Following pre- and post-plebiscite negotiations between the leaders of Southern Cameroons and the leaders of the Republic of Cameroon to the effect that Southern Cameroons would join the Republic of Cameroon as a federated territory with equal status to the Republic of Cameroon<sup>37</sup> and in respect of paragraph 5 of GA Resolution 1608<sup>38</sup> that certified the results of the plebiscite the people of Southern Cameroons achieved self-government through free association with the Republic of Cameroon in 1961. The former Southern Cameroons became the Federated State of West Cameroon, with a Prime Minister and a legislature, while the former Republic of Cameroon became the Federated State of East Cameroon, both with equal status forming the Federal Republic of Cameroon regulated by an agreed September 1961 Federal Constitution. According to plaintiffs in the *Southern Cameroons* case this arrangement was so that the cultures and way of life of the former Southern Cameroonians would be protected.<sup>39</sup>

The main effect of the division of German Kamerun between Britain and France was that both introduced their respective systems of administration. The British introduced indirect rule giving a prominent place to local rulers, whereas the French introduced direct rule that basically was a system of assimilation. The English language was used in Southern Cameroons and French was used in the French Cameroun with different legal systems and systems of education. In Southern Cameroons 'native authorities were established with courts and councils where chiefs meted out punishment more or less according to ... native customs'<sup>40</sup> to simplify the system of indirect rule that left

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37 Official records of the General Assembly 15th session, Annexes, Vol 1, Agenda items 13 and 47, 20 September-20 December 1960 and 7 March-21 April 1961, New York, Document A/4 727 Report of the United Nations Plebiscite Commissioner for the Cameroons under United Kingdom Administration; Letter dated 30 March 1961 from The United Nations Plebiscite Commissioner to the Secretary-General by Djalal Abdoh. See especially 17 of the official records wherein, in a reply to a request made by the administering authority regarding the Republic of Cameroon's stand on the basis on which of the people of Southern Cameroons would join the Republic of Cameroon, the Ministry of Foreign Affairs of the Republic of Cameroon, in a *note verbale* dated 24 December 1960, stated that Southern Cameroon would join as a federated state.

38 GA Res 1608 (XV), The future of the Trust Territory of the Cameroons under United Kingdom administration, 21 April 1961 UN Doc A/RES/1608(UN Doc A/RES). Para 4(b) provided that the trusteeship over the Southern Cameroons will come to an end 'upon its joining the Republic of Cameroon'. It continued in para 5, inviting the governments of Southern Cameroon and Republic of Cameroon to enter into discussions and determine the arrangements 'by which the declared policies of the parties concerned will be implemented'. The wording of these articles clearly indicates that Southern Cameroons was to achieve self-government by association with the Republic of Cameroon, and not integration, in line with Principle VI(b) and Principle VII GA Res 1541 (XV) *on principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under article 73(e) of the Charter*, 15 December 1960 (UN Doc A/RES/1541(XV)).

39 *Southern Cameroons* case (n 3) para 7.

40 Ngoh (n 27) 80.

the administration of local affairs in the hands of local authorities such as chiefs.

It may be concluded that because they associated with the Republic of Cameroon the people of former Southern Cameroons, whose territory became West Cameroon, maintained their distinct peoplehood with the right to self-determination. In this sense, Principle VII of Resolution 1541 is instructive:

- (a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent state the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.
- (b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

This principle established a continuous right of self-determination to the distinct people of the former Southern Cameroon, a right that has been violated as a result of the attempted erasure of their peoplehood status.

#### **4 The attempted erasure of the status of Anglophones as a 'people' and the continuous violation of their right to self-determination**

Ten years after coming together the terms of the agreement between the two entities were violated and the federated territory of West Cameroon was erased in a manner reminiscent of the actions taken by Emperor Haile Selassie regarding the status of Eritrea in 1952 that led to a 30-year civil war.<sup>41</sup> As described by Ndahinda, 'the political leadership of the French-speaking Republic of Cameroon manoeuvred

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41 Eritrea was an Italian colony up until 1947 when, after a peace treaty, Italy renounced the colony. The UNGA, instead of bringing Eritrea under the trusteeship system, placed it under temporary administration. The UNGA later in 1952 decided that Eritrea would join Ethiopia to form a federal state, with considerable autonomy. UNGA A/Res/390(V)A-B 2 December 1950 and UNGA A/Res/617 (VII), 17 December 1952. According to Resolution 390 (V)A of 2 December 1950 para1, the former Italian colony of Eritrea was to be established as 'an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown'. It also provided that the Eritrean government shall possess legislative, executive and judicial powers in the field of domestic affairs', para 2. After a few years the Ethiopian Emperor, Haile Selassie, integrated Eritrea into Ethiopia, and a civil war of independence ensued that lasted 30 years. See O Yohannes 'The Eritrean question: A colonial case?' (1987) 25 *Journal of Modern African Studies* 644 (fn omitted).

to abolish the federal structure and achieved this through a controversial national referendum held on 20 May 1972.<sup>42</sup> This controversial referendum which led to the declaration of a unitary state in 1972, is an illegal integration of the former Southern Cameroon into the former Republic of Cameroon as it is a violation of unification agreements, especially article 47 of the September 1961 Federal Constitution.<sup>43</sup> The name was changed from the Federal Republic of Cameroon to the United Republic of Cameroon. Later, claiming to consolidate national unity, a Restoration Law 84/01 in 1984 amended the 1972 Constitution further changing the name of the country to the name that East Cameroon had before Southern Cameroon associated with it: 'the Republic of Cameroon'. The explanatory note for the amendment stated:<sup>44</sup>

This Bill was prompted by the government's desire to consolidate national unity and democratise political life in Cameroon. The amendments give *de jure* and *de facto* recognition to Cameroon's fundamental option of national unity. The objective is to get rid of the ambiguity in the appellation: United Republic of Cameroon, by adopting the prestigious name 'Republic of Cameroon'. This stresses the one and indivisible nature of the nation. As a consequence of this amendment the Seal of Cameroon had also to be amended to be consonant with this appellation.

These all are attempts effectively to do away with the identity of the former Southern Cameroon. The attempted erasure of the status of Anglophones as a people that caused their territory to be named the North West and South West regions of Cameroon, directly violate their right to self-determination as democratically conceived, that is, it disregards the will of Southern Cameroonians who in 1961 voted in favour of a federated territory within the Federal Republic of Cameroon. Moreover, it also violated their right to internal self-determination as, unlike before, the people of the former Southern Cameroon no longer can decide their political, economic and social well-being by themselves as a people. As a federated territory the people of the former Southern Cameroon, which became West

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42 FM Ndahinda 'Peoples' rights, indigenous rights and interpretative ambiguities in decisions of the African Commission on Human and Peoples' Rights' (2016) 16 *African Human Rights Law Journal* 30.

43 It is considered illegal because of the violation of the Federal Constitution that certified agreements between the two entities in respect of GA Resolution 1608 (n 38). The Federal Constitution in art 47(1) held that 'any proposal for the revision of the present constitution which impairs the unity and integrity of the federation shall be inadmissible'. Constitution of the Federal Republic of Cameroon 1961. See PF Nkot 'Le référendum du 20 mai 1972 au Cameroun: Analyse de quelques tendances de la doctrine' (1999) 403 *Les Cahiers de Droit* 665. See especially AD Olinga 'La "Question Anglophone" dans le Cameroun d'aujourd'hui' (1994) 48 *Revue juridique et politique, indépendance et coopération* 292. He held that 'en méconnaissant ce bouclier, les auteurs du projet de Constitution créant un État unitaire ont violé la constitution de 1961', 304.

44 The Restorations Law 84/01 of 4 February 1984, originally published by the Association of Secretaries-General of Parliaments 1985: Explanatory note on the February 1984 Amendment of The Constitution of Cameroon, by Mr El Hadj Hayatou (on file with author).

Cameroon, had an elected legislature and a Prime Minister. As explained by the petitioners in the *Southern Cameroons* case, the people of Southern Cameroon remain a separate and distinct people with English as their official working language, whereas the people of East Cameroon are Francophones. The legal, cultural and educational traditions of the two parts remained different and also the character of local administration. The petitioners argued that the September 1961 Federal Constitution was designed to respect those differences.<sup>45</sup> This agreement was an effective exercise of internal self-determination or self-government, also guaranteed by the 1966 Covenants. According to Sohn:<sup>46</sup>

The Covenants clearly endorse not only the right of external self-determination, but also the right of internal self-determination: the right of a people to establish its own political institutions, to develop its own economic resources, and to direct its own social and cultural evolution. A people that cannot freely determine its political status can hardly determine its economic, social, and cultural status. A people should be free both from interference by other peoples or states and from deprivation of its right to self-determination by a tyrant or dictator.

The question now is whether the people of the former Southern Cameroon, a territory that now is the North West and South West regions of Cameroon, still constitute a distinct group/people with the right to self-determination within Cameroon irrespective of the actions taken in 1972 and 1984. Does the right to self-determination exist after decolonisation?

The African Commission decided that the Anglophone people of Cameroon constituted a people with the right to self-determination. The Commission made use of its Report of the Working Group of Experts on Indigenous Populations/Communities,<sup>47</sup> the definition given by the United Nations Educational, Scientific and Cultural Organisation (UNESCO)<sup>48</sup> and especially the perception that the population of the former Southern Cameroon have of themselves, to decide that they can legitimately claim to be a 'people' as they have a distinctive identity.<sup>49</sup> While accepting that a people may manifest ethno-anthropological attributes, the African Commission implied that

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45 *Southern Cameroons* case (n 3) para 7.

46 Sohn (n 19) 50.

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

48 *Southern Cameroons* case (n 3) para 170. The UNESCO meeting of experts that reflected on the concept of 'people' concluded that where a group of people manifest some of the following characteristics, a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered a 'people'. Such a group may also identify itself as a people, by virtue of their consciousness that they are a people. Final Report and Recommendations of the Meeting of Experts on extending of the debate on the concept of 'peoples' rights held in Paris, France, from 27 to 30 November 1989 (SHS-89/CONF.602/COL.1) para 22.

49 *Southern Cameroons* case (n 3) para 178.

these are not the only criteria to acknowledge a people, for it said that such attributes may be added to the characteristics of a people.<sup>50</sup> For the Commission 'the people of Southern Cameroon' qualify to be referred to as a 'people' because they

manifest numerous characteristics and affinities, which include a common history, linguistic tradition, territorial connection and political outlook. More importantly they identify themselves as a people with a separate and distinct identity. Identity is an innate characteristic within a people. It is up to other external people to recognise such existence, but not to deny it.<sup>51</sup>

The ethno-anthropological attributes would be necessary as a precondition only in other circumstances such as in the case of indigenous people<sup>52</sup> and cannot be used to deny a people their right to self-determination because, as the African Commission observed, the African Charter guarantees equal protection to people on the continent, including other racial groups whose ethno-anthropological roots are not African.<sup>53</sup> This reasoning established a clear difference between the people of former Southern Cameroon, the Anglophones, and other ethnic groups in Cameroon who do not have the right to external self-determination.

It is now settled that self-determination survived decolonisation. Common article 1 of the 1966 Human Rights Covenants<sup>54</sup> made equality and self-determination the rights of 'all peoples'.<sup>55</sup> It means that there are rights not only of colonial peoples but of all peoples, including those in independent states. This factor is evidenced by the fact that the third paragraph<sup>56</sup> of the article is dedicated to non-self-governing and trust territories. Thus, article 1(1) provides a universal right.<sup>57</sup> Moreover, the universal nature of this right in the common

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50 *Southern Cameroons case* (n 3).

51 *Southern Cameroons case* para 179.

52 *Southern Cameroons case* para 178.

53 As above.

54 ICCPR and ICESCR (n 11).

55 Common art 1(1): 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development ...'

56 Common art 1(3): 'The States Parties to the present Covenant, including those having responsibility for the administration of non-self-governing and trust territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.'

57 According to Crawford, 'as a matter of ordinary treaty interpretation, one cannot interpret article 1 as limited to the colonial case. Article 1, paragraph 1 does not say that some peoples have the right to self-determination. Nor can the term "peoples" be limited to colonial peoples. Article 3 deals expressly, and non-exclusively, with colonial territories. When a text says that "all peoples" have a right – the term "peoples" having a general connotation – and then in another paragraph of the same article, it says that the term "peoples" includes the peoples of colonial territories, it is perfectly clear that the term is being used in its general sense ... any remaining doubt is removed by article 2, which deals with permanent sovereignty over natural resources.' J Crawford 'Right of self-determination in international law: Its development and future' in P Alston (ed) *Peoples' rights: Collected courses of the Academy of European Law* (2001) 27.

article 1 was made clear by a number of states reacting to India's reservation to article 1. In ratifying the International Covenant on Civil and Political Rights (ICCPR), India stated that 'the words "the right of self-determination" ... applied only to the peoples under foreign domination and ... these words do not apply to sovereign independent states or to a section of a people or nation – which is the essence of national integrity.<sup>58</sup> In its reaction to this reservation, The Netherlands observed:<sup>59</sup>

The right of self-determination as embodied in the Covenants is conferred upon all peoples. This follows not only from the very language of article 1 common to the two Covenants but as well from the most authoritative statements of the law concerned ie the Declarations of Principles of International Law Concerning Friendly Relations and Co-Operation Among States in accordance with the Charter of the United Nations. Any attempt to limit the scope of the right or to attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself and would thereby seriously weaken its universally acceptable character.

Significantly, the African Charter made the right an inalienable right for all African peoples.<sup>60</sup> Moreover, the African Commission itself, after determining that the people of the former Southern Cameroon constituted a people, stated that they could not exercise their right to self-determination guaranteed by article 20 of the African Charter as other conditions for its exercise had not been established.<sup>61</sup>

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58 Crawford (n 57) 28.

59 CCPR/C/2/Add.5 (1982) 3, cited in Crawford (n 57) 28. Germany also 'strongly' (emphasis by Crawford) objected to the reservation in the following terms: 'The right to self-determination as enshrined in the Charter of the UN and as embodied in the covenants applies to all peoples and not only to those under foreign dominations. All peoples therefore have the inalienable right to freely determine their political status and freely pursue their economic, social and cultural development. The federal government cannot consider as valid any interpretation of the right of self-determination which is contrary to the clear language of the provision in question. It moreover considers that any limitation of their applicability to all nations is incompatible with the object and purpose of the covenants.' CCPR/C/2/Add4 (1980) 4. Crawford (n 57) 28.

60 Art 20: '(1) All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. (2) Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community. (3) All peoples shall have the right to the assistance of the states parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.'

61 A reading of the African Commission's decision makes it clear that if the rights of the people are grossly violated, they would have the right to exercise self-determination in the external sense. See *Southern Cameroons* case (n 3) para 194. It stated: 'Concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by article 13.1.' The only logical conclusion to make here is that the Commission would allow secession if it is convinced that the rights of Southern

The fact that the people of former Southern Cameroon still have the right to self-determination is further supported by the fact that they joined the Republic of Cameroon by way of free association in line with GA Resolution 1541. That Resolution has been interpreted in a way that if the conditions for incorporation with a state at independence are not respected, then international law authorises secession.<sup>62</sup> Quane reaches the same conclusion when she says that 'it seems that peoples who decide on association retain the right to alter their status in the future'.<sup>63</sup>

Therefore, it is up to the Anglophones as a people to decide their way of life without outside interference. According to Quane:<sup>64</sup>

Once an entity is recognised as a people, the traditional position in international law is that they enjoy the full range of options in respect of both internal and external self-determination ... state practice reveals that controversies may surround the recognition of an entity as a people ... once the entity is explicitly recognised as a people it is difficult to find many examples of a limitation being imposed on the range of self-determination options available to them. Further, there are no explicit references to any limitations on the right in the relevant international instruments.

The non-recognition of the status of Anglophones as a distinct group with rights in line with unification agreements has led to gross violations of the individual rights of Anglophones in Cameroon.

## **5 Violation of human rights of Anglophone Cameroonians as a direct result of the attempted erasure of their status as a group with the right to self-determination**

Following the erasure of the status of West Cameroon, and before the drafting of a new constitution for Cameroon in 1996, Anglophone Cameroonians made proposals for the new constitution. Very obvious among the proposals is the demand to return to the pre-1972

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Cameroonians had been massively violated and that they were oppressed, that is, if they did not participate in the affairs of the country, according to art 13 of the African Charter. Art 13(1) states that '[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law'.

- 62 MG Kohen 'Introduction' in MG Kohen (ed) *Secession: International law perspectives* (2006) 19. According to Kohen, if the conditions under which a territory was incorporated into a state by a decision of the UN General Assembly are not respected, the secession of the territory must be authorised under international law.
- 63 H Quane 'The United Nations and the evolving right to self-determination' (1998) 47 *International and Comparative Law Quarterly* 554.
- 64 H Quane 'The UN Declaration on the Rights of Indigenous Peoples: New directions for self-determination and participatory rights?' in S Allen & A Xanthaki (eds) *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (2001) 259-260.

arrangements, failing which the people of former Southern Cameroon would have no other option but to declare independence. In 1993 and 1994, respectively, representatives of Anglophone Cameroon adopted the Buea Declaration and the Bamenda Proclamations under the framework of the All-Anglophone Conference. In the former they alleged violations suffered by Anglophone Cameroonians since the erasure of their status within Cameroon. These violations, which we consider violations of collective rights, included the violation of the 1961 Constitution; the exploitation and rape of their economy; the lack of road infrastructure; the restriction of free movement of people and goods as a result of numerous road checkpoints; the marginalisation of Anglophones, especially with regard to official functions, where they alleged that Anglophone Cameroonians have only played second fiddle to their Francophone compatriots; discrimination in education and training; Francophone exploitation and domination; international isolation of Anglophone Cameroon; and other human rights abuses, especially torture, unlawful imprisonments, arrests, and so forth.<sup>65</sup> Because of these violations, the Buea Declaration stated:<sup>66</sup>

The imposition of the Unitary State on Anglophone Cameroon in 1972 was unconstitutional, illegal and a breach of faith; the only redress adequate to right the wrongs done to Anglophone Cameroon and its people since the imposition of the unitary state is a return to the original form of government of the Reunified Cameroon; to this end, all Cameroonians of Anglophone heritage are committed to working for the restoration of a federal Constitution and a federal form of government, which takes cognisance of the bi-cultural nature of Cameroon and under which citizens shall be protected against such violations as have been enumerated; that the survival of Cameroon in peace and harmony depends upon the attainment of this objective towards which all patriotic Cameroonians, Francophones as well as Anglophones, should relentlessly work.

In the Bamenda Proclamation they averred that

one year since the Anglophone constitutional proposals were officially submitted, the government had not reacted to them; that all efforts to generate the interest and understanding of the Francophone officials and Francophone public generally in the Anglophone constitutional proposals had been greeted with responses ranging from indifference through apathy to hostility.<sup>67</sup>

While reiterating the resolutions taken in the Buea Proclamation, the Bamenda Declaration further stated:<sup>68</sup>

Should the government either persist in its refusal to engage in meaningful constitutional talks or fail to engage in such talks within a reasonable time, the Anglophone Council shall inform the Anglophone people by all suitable means. It shall, thereupon, proclaim the revival of the independence and

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65 The Buea Declaration Issued by the All-Anglophone Conference held in Buea, Cameroon, on 2 and 3 April 1993 (on file with author).

66 *Southern Cameroons* case (n 3) para 14.

67 *Southern Cameroons* case para 15.

68 As above.



sovereignty of the Anglophone territory of Southern Cameroons and take all measures necessary to secure, defend and preserve the independence, sovereignty and integrity of the said territory

Even before the All-Anglophone Conference, some Anglophone Cameroonians had seen their rights violated because of their stance against the violation of the unification agreement. For example, a prominent Anglophone lawyer and former president of the Cameroon Bar Association, Fongum Gorji-Dinka, brought a case to the United Nations Human Rights Committee against the Republic of Cameroon. According to his submission, considering that Anglophones were subjugated and their human rights severely violated by members of the Franco-Cameroonian armed forces as well as militia groups, riots broke out in 1983 prompting Parliament to enact Restoration Law 84/01 dissolving the union of Southern Cameroons and the Republic of Cameroon. Consequently, he became head of the 'Ambazonian Restoration Council', published several articles calling on President Paul Biya of the Republic of Cameroon to withdraw from Anglophone Cameroon (which he called Ambazonia) in compliance with the Restoration Law.<sup>69</sup> As a result he was arrested, detained in inhumane conditions and he experienced both physical and mental torture, which caused a stroke that paralysed the left side of his body.<sup>70</sup> He also alleged that his and his people's right to self-determination under article 1 of ICCPR had been violated when the 1961 unifications agreements were violated in 1972, which amounted to an illegal annexation.<sup>71</sup> He continued that his rights under article 9 (on arbitrary arrests and detention), article 10 (on respect for the inherent dignity of the human person), article 12 (on liberty of movement), and article 5 of ICCPR (on the right to vote), all had been violated. Although the Human Rights Committee found that the complaint under article 1 was inadmissible, it decided that 'the facts before it reveal violations of articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant'.<sup>72</sup> The complaint under article 1 was inadmissible because, according to the Human Rights Committee, it 'does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self-determination protected in article 1 of the Covenant'.<sup>73</sup> This means that it is competent to consider only allegations of the violations of individual rights in respect of the Optional Protocol. To this effect it stated that 'the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated.

69 Communication 1134/2002 *Fongum Gorji-Dinka v Cameroon* UN Doc CCPR/C/83/D/1134/2002 (2005) para 2.5.

70 *Fongum Gorji-Dinka* (n 69) paras 2.6, 2.7.

71 *Fongum Gorji-Dinka* para 3.1.

72 *Fongum Gorji-Dinka* para 6.

73 *Fongum Gorji-Dinka* para 4.4. It had earlier arrived at the same conclusion in Communication 932/2000, *Gillot v France*, views adopted on 15 July 2002, para 13.4.

These rights are set out in part III (articles 6 to 27) of the Covenant.<sup>74</sup> This is according to article 1 of the Optional Protocol.<sup>75</sup>

Akwanga's situation is another example of the violation of human rights as a result of the non-recognition of Anglophones as a group. As an activist and leader of the Southern Cameroons Youth League, he was arrested and charged with aggravated theft, assassination, hostilities against the nation, attempted secession, non-denunciation of criminal activities, insurrection, revolution and complicity.<sup>76</sup> With allegations of inhuman and degrading treatment and of torture suffered as a result of his activities for the Southern Cameroons, he took his case to the Human Rights Committee, which found in his favour. The Committee found that 'the rights of Mr Akwanga under article 7; article 10, paragraphs 1 and 2; article 9, paragraphs 2, 3 and 4; and article 14' had been violated.<sup>77</sup> Whatever the importance of all of these rights, his right to a fair trial is of particular importance because of the regular use of military tribunals to try civilians in Cameroon. The Human Rights Committee found that 'the trial and sentencing of the author by a military court discloses a violation of article 14 of the Covenant',<sup>78</sup> and further stated that this is so because the state did 'not demonstrate the need to rely on a military court'. This reasoning was based on its

General Comment No 32, in which it considers that the state party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate for the task and that recourse to military courts is unavoidable.<sup>79</sup>

This reliance was criticised by a member of the Human Rights Committee itself. According to Fabian Omar Salvioli in his individual opinion in the case, although ICCPR does not prohibit the use of military courts,

the jurisdiction of the military criminal justice system should, however, be contained within suitable limits if it is to be fully compatible with the

74 *Fongum Gorji-Dinka*.

75 Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. Art 1 states that '[a] State Party to the Covenant that becomes a party to the present Protocol recognises the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.'

76 Communication 1813/2008 *Ebenezer Derek Mbongo Akwanga v Cameroon* UN Doc CCPR/C/101/D/1813/2008 (2011) para 6.2.

77 *Ebenezer Derek Mbongo Akwanga* (n 76) para 8. Art 7 of ICCPR prohibits torture and inhumane treatment; art 9 prohibits arbitrary arrests; art 10 protects human dignity and humanity; and art 14 protects the right to a fair trial.

78 *Ebenezer Derek Mbongo Akwanga* para 7.

79 *Ebenezer Derek Mbongo Akwanga*. See General Comment 32, art 14, CCPR/C/GC/32 para 22.

Covenant: *Ratione personae*, military justice should apply to serving military personnel, never to civilians or retired military personnel; *ratione materiae*, military courts should be competent to try disciplinary offences, never ordinary offences and certainly not human rights violations. Only under these conditions can military jurisdiction be compatible with the Covenant.<sup>80</sup>

He continued by stating that

General Comment No 32 is an important legal document with respect to the human right to due process, but its treatment of the issue under discussion here is highly regrettable ... and the Committee should take steps to correct the notion that military courts may try civilians; its current position is completely out of step with modern standards of international human rights protection and with the most enlightened doctrine on the subject.<sup>81</sup>

In the *Southern Cameroons* case, where the petitioners alleged the violation of rights to a fair trial under article 7(1) of the African Charter of individuals tried in military tribunals,<sup>82</sup> the African Commission stated that

trial by military courts does not *per se* constitute a violation of the right to be tried by a competent organ. What poses [a] problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military.<sup>83</sup>

Because 'the accused persons were not military personnel', and because 'the offences alleged to have been committed were quite capable of being tried by normal courts', the African Commission found that 'trying civilians by the Yaoundé and the Bafoussam Military Tribunals was a violation of article 7(1)(b) of the Charter'.<sup>84</sup> Added to this finding, the Commission found that the state was in violation of other individual rights of Southern Cameroonians.<sup>85</sup>

In the same case the African Commission also found that the respondent state, the Republic of Cameroon, had violated the group right to equality of the people of Southern Cameroon protected by

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80 *Ebenezer Derek Mbongo Akwanga*, individual opinion of Committee member Mr Fabián Omar Salvioli para 8.

81 *Ebenezer Derek Mbongo Akwanga* individual opinion (n 80) para 9.

82 *Southern Cameroons* case (n 3) para 121.

83 *Southern Cameroons* case para 127.

84 *Southern Cameroons* case para 128. Art 7(1) African Charter: 'Every individual shall have the right to have his cause heard. This comprises ... (b) the right to be presumed innocent until proved guilty by a competent court or tribunal.'

85 The African Commission found that the state had violated art 1 on the implementation of the African Charter; art 2 on non-discrimination; art 4 on the right to life; art 5 on human dignity; art 6 on liberty and security of the human person; art 7(1) on fair trial; art 10 on freedom of association; art 11 on the right to assembly; and arts 19 and 26 on group rights.

article 19.<sup>86</sup> It found that the 'relocation of business enterprises and location of economic projects to Francophone Cameroon, which generated negative effects on the economic life of Southern Cameroon, constituted violation of article 19 of the Charter'.<sup>87</sup>

Although the African Commission was 'not convinced that Cameroon had violated article 20 of the Charter'<sup>88</sup> because the complainants did not 'satisfy the Commission that the two conditions under article 20(2) namely oppression and domination have been met',<sup>89</sup> it declared that '[i]t is evident that the 1995 Constitution did not address the Southern Cameroonians' demands, particularly since it did not accommodate the concerns expressed through the 1993 Buea Declaration and 1994 Bamenda Proclamation'.<sup>90</sup>

Not only has the state not considered the demands of the people of former Southern Cameroon, as the African Commission said, the violation of human rights continues without abatement. In the armed conflict that started as a crisis in October 2016 the state is accused of committing crimes against humanity as a result of its systematic attacks against civilian populations.<sup>91</sup> Amnesty International revealed that along with other serious human rights violations (some having been committed by armed separatist groups) the government engaged in the burning of entire villages, resulting in hundreds of thousands of internally-displaced persons and thousands of refugees.<sup>92</sup> Furthermore, accusing armed separatists also of human rights violations, Human Rights Watch documented cases where not only had the government engaged in the burning of entire villages

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86 Art 19 African Charter: 'All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.'

87 *Southern Cameroons* case (n 3) para 162.

88 Art 20 of the African Charter guarantees the right to self-determination, and guarantees the right of colonised people to free themselves from domination.

89 *Southern Cameroons* case (n 3) para 197.

90 *Southern Cameroons* case para 202.

91 See art 7 of the Rome Statute which defines crimes against humanity as acts such as murder, torture, rape, and enforced disappearance, committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. See Rome Statute of the International Criminal Court, UN Doc A/CONF 183/9; 37 ILM 1002 (1998); 2187 UNTS 90. The Centre for Human Rights at the University of Pretoria, South Africa, released a statement to the effect that 'available evidence strongly suggests that crimes against humanity have been and are being committed in the English-speaking regions of Cameroon'. See Centre for Human Rights, Press Statement: 'Centre for Human Rights calls for independent investigation of sustained allegations of crimes against humanity in Cameroon' 11 June 2018 (on file with author). Also see Amnesty International report in which it documented human rights violations, including unlawful killings, destruction of private property, arbitrary arrests and torture committed by the Cameroonian security forces during military operations conducted in the Anglophone regions. See Amnesty International, Cameroon 'A turn for the worse: Violence and human rights violations in Anglophone Cameroon' 12 June 2018, [www.amnesty.org/download/Documents/AFR1784812018ENGLISH.PDF](http://www.amnesty.org/download/Documents/AFR1784812018ENGLISH.PDF) (accessed 27 June 2018).

92 Amnesty International (n 91).

but it had especially committed torture and extra-judicial killings, and incommunicado detentions.<sup>93</sup> The Raoul Wallenberg Centre for Human Rights and the Centre for Human Rights and Democracy in Africa published a comprehensive report in June 2019 in which they document evidence of crimes against humanity in the framework of the conflict that started in October 2016. The report documents cases of murder, deportation or forcible transfer of the population, torture, rape and sexual violence.<sup>94</sup> A year before this report, in April 2018, the African Commission adopted a resolution in which it recalled the recommendations it gave in the *Southern Cameroons* case, 'including the abolition of all discriminatory practices against people of the North-West and South-West of Cameroon, and the engagement in constructive dialogue in order to resolve the constitutional issues, as well as grievances that could threaten national unity'. It went further to condemn 'the various human rights violations committed in the country since October 2016' and 'the continuous repression against human rights defenders'.<sup>95</sup> Instead of entering 'into constructive dialogue with the complainants, and in particular, SCNC and SCAPO to resolve the constitutional issues, as well as grievances which could threaten national unity'<sup>96</sup> as recommended by the African Commission,<sup>97</sup> the Cameroon government called a Major National

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93 Human Rights Watch 'Cameroon: Routine torture, incommunicado detention' 6 May 2019, <https://www.hrw.org/news/2019/05/06/cameroon-routine-torture-incommunicado-detention> (accessed 14 May 2019); Human Rights Watch "'These killings can be stopped": Abuses by government and separatist groups in Cameroon's Anglophone regions' July 2018 32-50. Human Rights Watch also accused armed separatists of violating the rights to education, that is, attacks on students and teachers, the kidnapping of principals, arson attacks on schools, and threats to students, parents and teachers; <https://www.hrw.org/report/2018/07/19/these-killings-can-be-stopped/abuses-government-and-separatist-groups-cameroons> (accessed 26 July 2018).

94 Centre for Human Rights and Democracy in Africa & Raoul Wallenberg Centre for Human Rights 'Cameroon's unfolding catastrophe: Evidence of human rights violations and crimes against humanity' June 2019 27-23 54-56, [www.chrda.org/news/reports2019/cameroons-unfolding-catastrophe-2019/](http://www.chrda.org/news/reports2019/cameroons-unfolding-catastrophe-2019/) (accessed 30 October 2019).

95 See Resolution on the Human Rights Situation in the Republic of Cameroon ACHPR/Res 395 (LXII) 2018, adopted by the African Commission meeting at its 62nd ordinary session held in Nouakchott, Mauritania, from 25 April to 9 May 2018.

96 *Southern Cameroons* case (n 3) para 215.

97 It should be noted that the Southern Cameroon National Council (SCNC), one of the complainants in the *Southern Cameroons* case, was banned by the government in January 2017. See Amnesty International 'Cameroon: Arrests and civil society bans risk inflaming tensions in English-speaking regions' 20 January 2017, <https://www.amnesty.org/en/press-releases/2017/01/cameroon-arrests-and-civil-society-bans-risk-inflaming-tensions-in-english-speaking-regions/> (accessed 30 October 2019). The All Anglophone Conference that came up with the Buea Declaration and Bamenda Proclamation in 1993 and 1994, respectively, was renamed from Southern Cameroons People's Conference (SCPC) to Southern Cameroons People's Organisation (SCAPO), with the Southern Cameroons National Council (SCNC) as its executive governing body. See Centre for Human Rights and Democracy in Africa & Raoul Wallenberg Centre for Human Rights (n 94) 20; and

Dialogue held from 30 September to 4 October 2019.<sup>98</sup> However, the Major National Dialogue did not address the root causes of the Anglophone problem and the demands of Anglophone groups such as separation, secession and a return to federalism.<sup>99</sup> It was thus shunned by Anglophone separatist groups.<sup>100</sup> One of the major recommendations of the dialogue is the endowment of the North-West and South-West regions with a special status.<sup>101</sup> This proposal was dismissed by prominent Anglophone figures and separatist leaders. For example, Aya Paul Abine, a former justice of the Cameroon Supreme Court and prominent Anglophone activist, said that the conflict could not be resolved by 'a combination of fuzzy words' and that 'only negotiations between the two sides can end it'.<sup>102</sup> Ebenezer Akwanga who, as seen above, took Cameroon to the UN Human Rights Committee, stated that Ambazonia (the name coined by Gorji-Dinka, as seen above) does not 'need a special status' and continued: 'We don't want to be a part of Cameroon ... Ambazonia is marching to freedom and nothing can stop us.'<sup>103</sup>

## 6 Conclusion

Human rights are interdependent and indivisible and their effectiveness in the protection of one form or type of right (individual rights) is dependent on the guarantee and respect of the other (group

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Chatham House 'The Cameroon Anglophone crisis: Examining escalation and seeking solutions' Africa Programme Meeting Summary 2 November 2017, <https://www.chathamhouse.org/sites/default/files/events/Meeting%20Summary%20-%20The%20Cameroon%20Anglophone%20Crisis.pdf> (accessed 30 October 2019).

98 See [www.nationaldialogue.cm](http://www.nationaldialogue.cm) (accessed 29 October 2019).

99 Eg, Akere Muna, a political leader and former Cameroonian representative of Transparency International, while noting that the debate in the Anglophones regions of Cameroon involved secession and separation, questioned why there was no commission to examine those alternatives. See NK Chimtom 'Cameroon's conflict: Will the national dialogue make any difference?' *BBC News*, [www.bbc.com/news/world-africa-49931662](http://www.bbc.com/news/world-africa-49931662) (accessed 29 October 2019). The commissions created were Commission 1: Bilingualism, Cultural Diversity and Social Cohesion; Commission 2: Educational System; Commission 3: Judicial System; Commission 4: Decentralisation and Local Development; Commission 5: Reconstruction and Development of Crisis-Affected Regions; Commission 6: Return of Refugees and Internally Displaced Persons; Commission 7: Disarmament, Demobilisation and Reintegration of Ex-combatants; Commission 8: Role of Diaspora in the Crisis and its Contribution to the Country's Development. See Report of the Rapporteur General of the Major National Dialogue, 4 October 2019, [www.nationaldialogue.cm](http://www.nationaldialogue.cm) (accessed 29 October 2019).

100 ME Kindzeka 'Separatist leaders shun Cameroon's "National Dialogue"' *VOA*, [www.voanews.com/africa/separatist-leaders-shun-camerouns-national-dialogue](http://www.voanews.com/africa/separatist-leaders-shun-camerouns-national-dialogue) (accessed 29 October 2019).

101 Report of the Rapporteur General (n 99).

102 Journal du Cameroun 'Separatists derisive over "special status" move in Cameroon crisis' 4 October 2019, <https://www.journalducameroun.com/en/separatists-derisive-over-special-status-move-in-cameroon-crisis/> (accessed 30 October 2019).

103 As above.

rights). In some circumstances the cause of the violation of individual rights is the refusal to guarantee and protect the collective rights of the group to which individuals belong. It is after the erasure of the status of West Cameroon in 1972 and after the restoration law of 1984 that violations of other collective rights and individual rights of Anglophone Cameroonians intensified. Anglophone Cameroonians' rights to freedom from arbitrary detention, to life and other civil and political rights are directly linked to the collective right of Anglophones as a 'people' to self-determination, to decide their political future and to use their specific legal and educational systems. The right to a fair trial of an Anglophone arrested in an Anglophone region is indivisible from the rights of Anglophones as a group to their legal system. The right to education of an Anglophone child would be protected if the Anglophone system of education is protected and the appropriate language used in schools. Further, it is contended that the main cause of the conflict in Cameroon that started in October 2016 is the violation of the group right to internal self-determination, a direct consequence of the declaration of a unitary state in 1972 and the 1984 Restoration Law.

It has been argued that even the amalgamation of the former Southern Cameroon and the Republic of Cameroon did not provide for the equal partnership of both parties, let alone for the preservation of the cultural heritage and identity of each, but turned out merely to be a transitory phase in the total integration of the Anglophone region in a strongly-centralised and unitary state.<sup>104</sup> It is these factors that create an Anglophone consciousness which includes the feeling of being 'marginalised', 'exploited' and 'assimilated' by the Francophone-dominated state and even by the 'Francophone population as a whole'.<sup>105</sup>

According to Sohn, 'international law has long been concerned with one of the most basic of collective rights: the right of self-determination', and 'many wars were fought in the name of the principle of self-determination, and the international community has often come to the assistance of those who have invoked that principle'.<sup>106</sup> A recognition of the status that the people of the former Southern Cameroon received when they associated with the Republic of Cameroon would align with UN values and purposes, namely, equality and the right to self-determination<sup>107</sup> and would go a long way towards bringing peace to an otherwise fragile region with fragile countries and where the scourge of terrorism is causing destruction.

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104 Konings & Nyamnjoh (n 2) 207.

105 As above.

106 Sohn (n 19) 48.

107 Art 1(2) UN Charter.