

Gunme

Student Materials

- Decided by the African Commission on Human and Peoples' Rights in May 2009
- Key topics: competing perspectives (who matters?); human rights (civil and political rights; economic, social, and cultural rights)

Learning Objectives

- Understand and apply:
 - who is a subject of international law
 - the difference between individual and group rights
- Analyze and evaluate:
 - how the African Commission identifies protected groups
 - how state capacity affects economic, social, and cultural rights

Background Information

As shown in Figure 1, the modern-day state of Cameroon (called *La Republique du Cameroun* in French) is made up of two former colonial territories:

- Southern Cameroon: a UK-ruled territory that makes up the modern regions of Bamenda (known as the Northwest region) and Buea (known as the Southwest region). These regions are shown in blue in Figure 1.
- Cameroun: a French-ruled territory, shown in light grey in Figure 1.

Individuals who live in Bamenda and Buea often describe their homeland as “Southern Cameroon”. Many of them support secession, meaning that they want Southern Cameroon to become an independent state.

In the *Gunme* case, fourteen individuals who lived in Southern Cameroon filed a complaint at the African Commission on Human and Peoples’ Rights, arguing that Cameroon was violating numerous human rights that are protected in the African Charter on Human and Peoples’ Rights. Some of these alleged violations involved individual rights. Other alleged violations involved group rights. A key component of the complainants’ case was therefore to prove that individuals who lived in Southern Cameroon were a “people” under human rights law. The edited ruling below does not include all alleged legal violations in the case, which were very extensive. Rather, it highlights those rights claims that were most well-documented and pedagogically interesting.

Figure 1: Map of Cameroon



Source: IBTimes

Relevant Legal Texts

African Charter on Human and Peoples' Rights (1981)

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7(1)

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;
- (c) the right to defense, including the right to be defended by counsel of his choice;
- (d) the right to be tried within a reasonable time by an impartial court or tribunal.

Article 11

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

Article 17(1)

Every individual shall have the right to education.

Article 19

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.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Decision on Communication No. 266/2003

The Commission began by describing the complainants' arguments about the unique identity of people in Southern Cameroon. Namely, the complainants argued that regional differences in language and culture meant that the people of Southern Cameroon were distinct from the individuals living elsewhere in Cameroon:

The complainants allege [that] the people of Southern Cameroon remained a separate and distinct people. Their official working language is English, whereas the people in *La Republique du Cameroun* are Francophones. The legal, educational and cultural traditions of the two parts remained different, as was the character of local administration. In spite of the foregoing, they allege further that the respondent state manipulated demographic data to deny the people of Southern Cameroon equal rights to representation in government. They allege that the people of Southern Cameroon have been denied powerful positions within the national/federal government ...

The Commission then summarized the complaints' description of the overall marginalization of the Southern Cameroon people since Cameroon's independence:

The complainants allege [that] Southern Cameroonians remain marginalised. They allege that Southern Cameroon was allocated 20% instead of 22% of the seats in the Federal/National Assembly, as per the population ratio, thus denying them equal representation ... The complainants allege further that the Francophones occupy local administrative positions in Southern Cameroon, and abuse their positions to amass land, and access economic resources, while the Southern Cameroonians play the minutest role at the local or national level.

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

The complainants allege further that the Francophones have monopolistic control of the Ministry of National Education, that the respondent state has under funded primary education in Southern Cameroon, it failed to build new schools, understaffed primary schools, and it is closing all teacher training colleges ...

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

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

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

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

The Commission then discussed individual rights under the African Charter. It began by discussing claims of widespread discrimination against individuals who lived in Southern Cameroon, focusing on economic policy:

The complainants submit that Southern Cameroonians are discriminated against by the respondent state, in various forms. These include under-representation of Southern Cameroonians in national institutions [and] economic marginalisation through the denial of basic infrastructure... It is submitted that Southern Cameroonians are discriminated against in the legal and judicial system ...

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

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

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

It states further that other non-French-speaking countries including Ghana and Nigeria, were undergoing the process of acceding to the OHADA treaty. The respondent state submitted that it had taken several measures, such as the translation of the OHADA laws into English ... and the training of Anglophone and Francophone magistrates ... It stated further that the apprehension by the Anglophones was merely a transitory situation.

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

The mere accession or ratification of OHADA, should not be deemed a violation of Article 2, unless the respondent state had manifestly failed to take any steps to ameliorate the effects of the linguistic differences. The respondent state has shown that it took measures, such as the training of magistrates, and translation of texts to address the discriminatory concerns. The OHADA ratification, however, resulted in the discrimination of Anglophone based companies and businesses, which could not open bank accounts unless they registered under OHADA. There was no response from the respondent state on this issue. Nor were any measures taken to address this

complaint. Notwithstanding the translation of OHADA into English, it was wrong for institutions, such as banks to force Southern Cameroon based companies to change their basic documents into French. The banks and other institutions could have dealt with the companies without imposing the language conditionality. Banking documents should have been translated into English. The Commission finds that the respondent state failed to address the concerns of Southern Cameroonian businesses, which were forced to reregister under OHADA, and as such violated Article 2 of the African Charter ...

The Commission next proceeded to ask whether Cameroon had provided fair trials to individuals who lived in Southern Cameroon and were arrested for crimes:

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

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

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

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

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

The Respondent state did not explain why it transferred individuals from North West Cameroon for trial by the Yaoundé and Bafoussam Military Tribunals, nor the reason why the victims were tried by tribunals outside the jurisdictions where the offences were allegedly committed. The Commission has stated previously that trial by military courts does not *per se* constitute a violation of the right to be tried by a competent organ. What poses problem is the fact that, very often, the military tribunals are an extension of the executive, rather than the judiciary. Military tribunals are not intended to try civilians. They are established to try military personnel under laws and regulations which govern the military ...

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

The Complaints submit that the accused were tried in a language they did not understand, without the help of interpreters. The respondent state did not contradict that allegation. The Commission states that it is a prerequisite of the right to a fair trial, for a person to be tried in a language he understands, otherwise the right to defence is clearly hampered. A person put in such a situation cannot adequately prepare his defence, since he would not understand what he is being accused of, nor would he apprehend the legal arguments mounted against him. The aforementioned Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa states that one of the essential elements of a fair hearing is: “an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body.”

The Commission recognizes that the respondent state is a bilingual country. Its institutions including the judiciary can use either French or English. However, since not all the citizens are fluent in both languages, it is the state’s duty to make sure that, when a trial is conducted in a

language that the accused does not speak, he/she is provided with the assistance of an interpreter. Failing to do that amounts to a violation of the right to a fair trial.

The Commission therefore concludes that the respondent state violated Article 7(1)(b) (c) and (d) of the Charter ...

The Commission then considered the freedom of assembly under the African Charter:

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

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

The Commission does not condone unlawful acts by individuals or organisations to advance political objectives, because such actions or their consequences are likely to violate the African Charter. It encourages individuals and organisations, when exercising their right to freedom of assembly, to operate within the national legal framework. This requirement does not absolve [Charter members] from their duty to guarantee the rights to freedom of assembly, while maintaining law and order. The respondent state admits that it detained demonstrators, applied excessive force to enforce law and order, and in some cases lives were lost. The Commission concludes therefore that Article 11 of the African Charter was violated ...

The Commission next considered the individual right to education under the African Charter:

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

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

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

Concerning the alleged refusal to grant authorisation for the registration of the Bamenda University of Science and Technology, the respondent state stated that the said university did not fulfill conditions for establishment of private universities. The complainant did not show whether the criteria were met by the Bamenda University of Science and Technology or not ... The complainants did not substantiate the allegations. For the above reasons, the African Commissions finds that there is no violation of Article 17(1) of the Charter.

The Commission then discussed possible violations of group rights under the African Charter. It began by considering whether Southern Cameroon had been economically marginalized by inadequate infrastructure spending:

The complainants alleged cases of economic marginalisation, and denial of basic infrastructure by the respondent state, as constituting violations of Article 19 ...

The respondent state contested the allegation of economic marginalisation. It submitted documents and statistics in support of its provision of basic infrastructure in Southern Cameroon. The statistical information and data show that ... the situation in the Anglophone regions is not that different from other parts of the country. It argued that the problem concerning inadequate infrastructural development is not peculiar to Southern Cameroon ... The Commission finds no reason why it should not rely on the data and statistics provided by the respondent state in its

decision. The Commission holds that the respondent state allocated public resources to the Anglophone provinces without discrimination.

The Commission then asked whether the relocation of public enterprises—like a seaport—harmed economic outcomes in Southern Cameroon:

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

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

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

The Commission then asked whether individuals living in Southern Cameroon qualified as a “people” under the African Charter:

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

The respondent state ... denies that Southern Cameroonians exist as a “people.” It states the following:

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

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

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

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

The African Commission has itself dealt with the issues of peoples’ rights without defining the term “people” or “peoples’ right.” In its acclaimed Report of the Working Group of Experts on Indigenous Populations/Communities, the African Commission described its dilemma of defining the concepts in the following terms:

[d]espite its mandate to interpret all provisions of the African Charter ..., the African Commission initially shied away from interpreting the concept of ‘peoples’. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence ... It is surprising that the African Charter fails to define “peoples” unless it was trusted that its meaning could be discerned from the prevailing international instruments and norms ...

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

The Commission states that after thorough analysis of the arguments and literature, it finds that the people of Southern Cameroon can legitimately claim to be a “people.” Besides the individual rights due to Southern Cameroon, they have a distinct identity which attracts certain collective rights. The UNESCO [report] states that for a collective of individuals to constitute a “people” they need to manifest some, or all the identified attributes. The Commission agrees with the respondent state that a “people” may manifest ethno-anthropological attributes. Ethno-anthropological attributes may be added to the characteristics of a “people.” Such attributes are necessary only when determining indigenology of a “people,” but cannot be used as the only determinant factor to accord or deny the enjoyment or protection of peoples’ rights ... The African Charter guarantees equal protection to people on the continent, including other racial groups whose ethno-anthropological roots are not African.

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

The respondent state might not recognise such innate characteristics. That shall not resolve the question of self identification of Southern Cameroonians ...

The Commission is aware that post colonial Africa has witnessed numerous cases of domination of one group of people over others, either on the basis of race, religion, or ethnicity, without such domination constituting colonialism in the classical sense. Civil wars and internal conflicts on the continent are testimony to that fact ... Mechanisms such as the African Commission were established to resolve disputes in an amicable and peaceful manner. If such mechanisms are utilised in good faith, they can spare the continent valuable human and material resources, otherwise lost due to conflicts fighting against ethnic, religious domination or economic marginalisation ...

The Commission ... finds ... that the respondent state violated various rights protected by the African Charter in respect of Southern Cameroonians. It urges the respondent state to address the grievances expressed by the Southern Cameroonians through its democratic institutions.

Finally, the Commission asked whether Cameroon had violated the right of the people of Southern Cameroon to development:

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

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