

**Communication 260/2002 - Bakweri Land Claims Committee (BLCC) v. Cameroon
(Review on Admissibility)**

Summary of the Application for Review:

1. On 12 September 2013, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat), received a request for reconsideration of the decision of the African Commission on Human and Peoples' Rights (the Commission) reached during its 36th Ordinary Session held from 23rd November to 7th December 2004, in which the Commission declared Communication 260/2002, *Bakweri Land Claims Committee (BLCC) v. Cameroon*, inadmissible.
2. The request is submitted by the BLCC Secretary General (the Complainant), in accordance with Rule 118 (2) of the 1995 Rules of Procedure of the Commission (hereinafter the 1995 Rules).
3. The original Communication was declared inadmissible on the ground that it did not comply with Article 56 (5) of the African Charter on Human and Peoples' Rights (the African Charter) which requires Communications to be sent to the Commission after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged. In its decision, the Commission concluded that the Complainants did not make any attempts whatsoever to exhaust local remedies.
4. In relation to the original Communication, the Complainant submitted that the rule for exhaustion of domestic remedies, presupposes a level legal playing field for the contestants, but that in the case of the Respondent State, the President is constitutionally the Chief Magistrate/Judge who presides over the Higher Judicial Council that hires, pays, transfers, promotes, and disciplines all judicial officers including magistrates and judges, all of whom are appointed by him and hold office at his pleasure. These appointees perform their duties on powers delegated to them by the President.
5. Further in support of its contention regarding the Respondent State's judiciary, the Complainant referred the Commission to various independent international reports pertaining to the Respondent State's judiciary, which conclude that the judiciary is overloaded, corrupt, and tele-guided by the executive arm of the State.

Not satisfied with the Complainant's arguments, the Commission found for the Respondent State and declared the Communication inadmissible.

6. The Complainant states that the present request for review is based on the Commission's subsequent decision in Communication 266/2003 - **Kevin Ngwang Gumne & Other v Cameroon**¹ (**Gumne Communication**), specifically para 211, wherein the Commission established the following facts in relation to the independence of judiciary in the Respondent State;

"The Commission states that the doctrine of separation of powers requires the three pillars of the state to exercise powers independently. The executive branch must be seen to be separate from the judiciary, and parliament. Likewise in order to guarantee its independence, the judiciary must be seen to be independent from the executive and parliament. The admission by the Respondent State that the President of the Republic and the Minister responsible for Justice are the Chairperson and Vice Chairperson of the Higher Judicial Council respectively is manifest proof that the judiciary is not independent."

7. The Complainant submits that subsequent to Communication 260/2002 which is the subject of this request, the jurisprudence of the Commission has been updated to agree with Complainant's submissions that, in so far as the Respondent State is concerned, there is no independent judiciary that could arbitrate impartially on a matter in which the Respondent State is cited as Respondent. Accordingly, there were no judicial domestic remedies available for the Complainant to exhaust.
8. On the basis of its conviction that there were no effective judicial remedies that could have been exhausted, the Complainant respectfully invites the Commission, to correct this 'inadvertent oversight and to declare the Communication admissible for progression to the Merits stage'.
9. The Complainant avers that gallant steps were taken for amicable settlement of the dispute, which yielded no positive reaction from the Respondent State.

¹ Communication 266/2003 -Kevin Ngwang Gumne & Others v Cameroon (2009) ACHPR

Prayers

10. The Complainant prays to the Commission as follows:
 - a. In the light of the current jurisprudence of the Commission as enunciated in Communication 266/2003, Communication 260/2002 should now be declared admissible, on grounds that there are no judicial domestic remedies to be exhausted in the Respondent State on a matter touching the State, since the President of Cameroon is constitutionally the Chief Magistrate/Judge of Respondent State's judiciary.
 - b. Request the Respondent State to organize a delegation to the next Session of the Commission, to dialogue with a delegation from BLCC, in an endeavor to seek an amicable settlement of the dispute, under the auspices of the Commission.
 - c. A reminder to H.E. President Paul Biya that the Restraining Request of 22nd May 2003 issued pursuant to Rule 111(3) of the Rules of Procedure of the Commission, to the effect that no further alienation of the disputed Cameroon Development Corporation (CDC) lands, is still in force until a final decision is taken on the matter before the Commission.

Procedure

11. The request for review was initially received by the Secretariat in January 2011. The Complainant resubmitted the request on 12 September 2013. The Secretariat acknowledged receipt of same on 11 October 2013.
12. The request was forwarded to the Respondent State for its comments on 07 February 2014. The Respondent State has not submitted any comments on the request for review. The Commission will proceed to examine the application on the basis of the Complainant's Submissions.

Analysis of the Commission on Review

13. The present request for review is submitted pursuant to Rule 118(2) of the 1995 Rules of Procedure of the Commission (the 1995 Rules) which provides as follows:

“If the Commission has declared a communication inadmissible under the Charter, it may reconsider this decision at a later date if it receives a request for reconsideration.”

14. The 1995 Rules have since been replaced by the 2010 Rules of Procedure² which are currently applied by the Commission. Considering that the present request was initially submitted to the Secretariat in January 2011, following the adoption of the current Rules of Procedure, the Commission will be guided by Rule 107 (4) of the 2010 Rules of Procedure on review, which provides as follows;

“If the Commission has declared a Communication inadmissible, this decision may be reviewed at a later date, upon the submission of new evidence, contained in a written request to the Commission by the author.”

15. The original Communication was declared inadmissible for the reason that it did not comply with Article 56(5) of the African Charter which requires Communications to be sent to the Commission after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged. In its original decision, the Commission had concluded that the Complainants did not make any attempts whatsoever to exhaust local remedies.
16. Accordingly, the Commission will first consider the admissibility of the request for review by assessing whether the issues raised by the Complainant constitutes ‘new evidence’ in terms of Rule 107 (4) of the Commission’s Rules of Procedure.
17. The Commission has clearly set jurisprudence that it ‘can review its own decision when it is apparent that the application introduces a new or compelling element, the failure to consider which would be an affront to fairness, justice and good conscience.’³ Further, this Commission has stated that;

the application would be granted where it is proved that some facts have been discovered which intrinsically might have had a decisive influence on the judgment had it been brought to the attention of the Commission at the time the decision was made, but which at the time was unknown to both the Commission and the party making the application

² 2010 Rules were adopted by the Commission during its 47th Ordinary Session held in Banjul, The Gambia from 12 to 26 May 2010

³ Communication 373/09 - INTERRIGHTS, Institute for Human Rights and Development in Africa, and Association Mauritanienne des Droits de l’Homme v Mauritania (2010) ACHPR, para 11

*and also which could not, with reasonable diligence, have been discovered by the party before the judgment was made or on account of some mistake, fraud or error on the face of the record or because an injustice has been done.*⁴

18. From the Complainant's Submissions, the request for review of the Commission's decision is solely based on the Commission's subsequent decision in **Gumne Communication**, by which the Complainant contends that the Commission accepted the submission that the judiciary in the Respondent State is not independent. The question to be asked and answered on the basis of the Rules of Procedure and the Commission's established jurisprudence is whether the reason advanced, amounts to new or compelling element to warrant a review.
19. Paragraph 211 of the **Gumne Communication** was adopted by the Commission, taking into account the arguments brought forth by the parties regarding the alleged violation of Article 26 of the African Charter, which was at the Merits stage of the Communication. That decision cannot be taken to mean that all Complainants bringing Complaints against the Republic of Cameroon should be exempted from complying with Article 56(5) of the African Charter, rather each Communication is considered on its own merits.
20. As established in Commission's jurisprudence, domestic remedies required to be exhausted in terms of Article 56 (5) of the African Charter must be available, effective and sufficient. If the domestic remedies do not meet these criteria, the Complainant may not have to exhaust them. However, in order to trigger the exception to the requirement to exhaust local remedies, the Complainant needs to be able to show that the remedies do not fulfil these criteria in practice. It must not merely be in the opinion of the victim or that of his or her legal representative.⁵
21. The Commission recalls that in Communication 260/02, it was satisfied that the reliefs sought could be obtained in domestic courts and the Complainant had

⁴ Communication 384/09 - Kevin Ngwang Gumne v. Cameroon (2012) ACHPR, para 37

⁵ 284/03 Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe/Republic of Zimbabwe (2009) ACHPR para 101

avenues to approach domestic courts, but failed to do so. The burden of proof was on the Complainant to prove that he attempted to exhaust local remedies, but domestic courts lacked independence and offered no relief.

22. From the above, it is evident that the Complainant has not presented new evidence or compelling reasons to warrant a review of the Commission's decision.

Decision of the Commission

23. The application is hereby dismissed.

Done at the 16th Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held from 20 to 29 July 2014 in Kigali, Rwanda