Cameroon Journal of Law, Politics and Human Rights (CJLPHR) (2026)

ARTICLE

Case Note: The Right to Self-Determination and the Politics of Compatibility with the African Charter and AU Constitutive Act (ACHPR Communications 266/03 and 650/17)

Ruddy Fualefeh Morfaw Azanu*

LLD Candidate, Centre for Human Rights, University of Pretoria

*Corresponding author: ruddymorfaw7@gmail.com

(Received: 09 September 2025; Accepted: 20 December 2025; Published: 5 January 2026)

Abstract

Although increasingly claimed by litigants against state parties to the African Charter on Human and Peoples' Rights (African Charter), the right to self-determination under its Art 20 has hardly embraced a solid interpretation by the African Commission on Human and Peoples' Rights (African Commission), as regards the extent of its enforcement. The complexity surrounding the compatibility of its claim in relation to the African Charter and the African Union Constitutive Act has in the last decade led to two fundamentally opposing and controversial decisions of the African Commission involving similar issues and the same state party - Cameroon. The question therefore is, what justified these opposing reasonings and what is the judicial implication of this conflicting interpretation of the right to self-determination and Compatibility under the Charter?

Keywords: Self-determination; Cameroon; Anglophone Crisis; African Charter; African Commission, Communications

1. Introduction

One reason the African Commission on Human and Peoples' Rights (African Commission) has been hailed by scholars and activists in the African human rights space is its progressive interpretation of the rights enshrined within the African Charter on Human and Peoples' Rights (African Charter), whose Article 45 accords it the liberty to justly interpret its provisions. This progressiveness has been evident in the interpretation of various rights examined under the Commission's protection mandate, particularly through its Communications procedure and through General Comments issued from time to time. However, one issue which has increasingly remained unsettled, and which

lies at the core of state responsibility and in the possibility to claim all other rights from state parties to the Charter, is the issue of self-determination (the choice and nature of statehood and the fact of belonging to one); and the question of its compatibility with the African Charter and the African Union Constitutive Act (AU Constitutive Act). Pertinent is the fact that although this issue continues to feature in more Communications appearing before the African Commission, a relevant analysis on them can only be traced primarily back to the Commission's decisions in the Communications themselves, which attempt (although sparsely) to clarify the position of the Commission and establish its jurisprudence on the questions discussed. There has so far been no other elaborative document providing interpretative direction on the Commission's position, which would serve as a valuable compass to the public and to litigants prior to approaching the Commission on such apparently controversial matters touching on African State sovereignty and integrity. This paper examines this issue (the right to self-determination and its compatibility with the African Charter and the AU Constitutive Act) in the light of two key decisions passed by the Commission in the last decade, which express conflicting legal interpretations and reasonings, and yet relate to similar events pertaining to one State party – the Republic of Cameroon. These cases are: ACHPR Communication 266/03 : *Kevin Mgwanga Gunme et al v Cameroon*; and ACHPR Communication 650/17: *Divine Chi and 74 Others (represented by Professor Carlson Anyangwe) v The Republic of Cameroon.*[1]

The aim of this paper is to examine the Commission's interpretation and reasoning in both cases and hence analyse both Communications in the light of the key factual and legal issues surrounding the right to self-determination and the question of Compatibility. The paper explores the impact of the Commission's decision and interpretation on future cases with similar issues, as well as the socio-political and legal implications. It concludes with one key recommendation.

2. Case summary

2.1 *Communication 266/03 Kevin Mgwanga Gunme et al v Cameroon*

This Communication was filed against the Republic of Cameroon by fourteen individuals representing themselves and the people of 'Southern Cameroon'. Two principal issues were up for determination: (i) The political status of Cameroon and the desire to secede; and (ii) allegations of multiple rights violations.

The Complainants contended that the current political status of Cameroon is illegitimate due to the irregularities surrounding the history of the fusion of English Cameroon (Southern Cameroon) and French Cameroon (La Republique du Cameroun) following the expiry of the UN Trusteeship which terminated the colonial leadership of Britain and France on the respective territories.[2] They contended that several appeals have been made to the government of La Republique du Cameroun to reinstate the initial political status of federalism which had been agreed upon by both sides at the time of reunification, to no avail. Therefore, with the government's failure to heed to their appeal, they have decided to secede and become an independent country in view of claiming their right to self-determination under Art 20 of the Charter. This, they said, is in view of a referendum duly conducted, in which 99 percent of South Cameroonians voted in favour.

The Complainants alleged further, that since the amalgamation of the two territories, the people of Southern Cameroon who are the numeric minority have been socio-politically and economically marginalized by the government of La Republique du Cameroon, and have suffered multiple in-

[1] Formerly: ACHPR Communication 650/17: Kum Bezeng and 75 Others (represented by Professor Carlson Anyangwe) v The Republic of Cameroon, until Kum Bezeng asked to withdraw from the proceedings about three years after it was filed. His position as first Complainant was replaced by the second individual (Divine Chi) as principal Complainant. (PP 51 53, pages 9 10).

[2] See particularly paragraphs 2 – 7 of Communication 266/03.

stances of rights violations, which they enumerated, accompanied by gathered evidence. They alleged that all attempts to bring the government's attention to these issues have equally been futile.

The Complainants prayed the Commission to find the Respondent State in violation of:

> (i) Articles 2, 3, 4, 5, 6, 7.1, 9, 10, 11, 12, 13, 17.1, 19, 20, 21, 22, 23.1 24 of the African Charter.
>
> (ii) The general duty under Article 26 to guarantee the independence of the judiciary.

This Communication was declared admissible and considered on its merits, wherein after a period of about six years, the Commission at its 45th Ordinary Session in May 2009 found the State in violation of Articles 1, 2, 4, 5, 6, 7.1, 10, 11, 19 and 26 of the African Charter.

2.2 Communication 650/17 Divine Chi and 74 Others v Cameroon

The Complainants in this case were filing on behalf of themselves and "the People of the former UN Trust Territory of the Southern Cameroons". The Communication raised similar issues as those in *Communication 266/03*.

The Complainants in *Communication 650/17* challenged the political status of the Respondent State and claimed to assert their right to self-determination under Art 20 of the African Charter, through the secession of Southern Cameroon, following a failure by the Respondent State to domestically consider questions of federalism. They made reference to *Communication 266/03* and the fact that till the time of filing the present Complaint, the decision of the Commission had not been implemented by the Respondent State, nor had the Commission engaged any follow-up process for implementation as required under Rule 112 of its 2010 Rules of Procedure.

The Complainants equally alleged several rights violations orchestrated by the government of *La Republique du Cameroun* against Southern Cameroon (Northwest and Southwest Regions) following recent grievances expressed to the government by the Anglophone legal and academic corps regarding marginalization and bad governance, all of which had occasioned gross civil unrest (the Anglophone Crisis)[3] in the two English-speaking regions of the country. The Complainants alleged "serious and massive violations of human and peoples' rights",[4] and prayed the Commission to particularly find the State in violation of Articles 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 17, 19, 20, 21, 22, 23 and 24 of the African Charter.

They further requested the Commission for three main Provisional Measures (PMs): An order requiring the government of La République du Cameroun to[5]:

> (i) "pull out its heavy military presence and close down its numerous military outposts strewn all over the territory of the former UN Trust Territory of the Southern Cameroons"
>
> (ii) "end forthwith its kidnapping, intimidation, the daily threatening of citizens of the Southern Cameroons with abduction, imprisonment and death, and the carrying out of any other acts in terrorem"
>
> (iii) "immediately restore internet services in the Southern Cameroons; and to make such other interim orders as the Commission may consider appropriate.

[3] See generally "Cameroon's Anglophone Crisis at the Crossroads" International Crisis Group, Report No 250/Africa, 2 August 2017 https://www.crisisgroup.org/africa/central-africa/cameroon/250-cameroons-anglophone-crisis-crossroads (accessed 25 August 2025).

[4] Comm 650/17 at PP 42 – Page 8

[5] ibid, page 9

The Complainants also requested the Commission to transfer the case to the African Court on Human and Peoples' Rights (African Court), in accordance with Rule 118(3) of the Commission's Rules of Procedure 2020. However, the Commission decided otherwise. In the Commission's ruling on Provisional Measures, two of the Complainants' prayers were granted, and the Respondent State was requested to:

> (i) halt all forms of intimidation, kidnapping, arrest, shootings and other acts of violence against residents of the Northwest and Southwest regions of Cameroon;
>
> (ii) disclose the whereabouts of all those arrested [and whose] whereabouts are not yet known; and
>
> (iii) restore internet connections in the Northwest and Southwest Regions of Cameroon.

After a period of about five years, this Communication was declared Inadmissible at the Commission's 71st Ordinary Session in 2022, for failure to meet the requirements of Art 56(2) of the African Charter on the question of compatibility with the Charter and the AU Constitutive Act. The facts of this inadmissibility decision therefore constitute the crux of the analysis in the ensuing paragraphs.

3. Understanding the Commission's Reasoning of Arts 20 and 56(2)

The right to Self-determination is generally agreed as founded on the right of a people to freely determine their political, economic, and socio-cultural development. As Summers notes, the right to self-determination "has a central position in international law as a primary principle in the creation and destruction of states." [6] Within the African human rights system, and precisely under the jurisdiction of the African Commission, the right to self-determination is defined and governed by Article 20 of the African Charter which provides as follows:

> 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. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized 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.

From the foregoing, the enforcement of this right under the Charter is preconditioned by the respect of state sovereignty and integrity as prescribed by the AU Constitutive Act (formerly OAU Charter), which is the mother convention to the African Charter. According to the jurisprudence of the African Commission, the manner in which the right to self-determination can be exercised can be traced back to one of its earliest decisions in *Communication 75/92 - Katangese Peoples' Congress vs Zaire*)[7] which established as follows:

> Self-determination may be exercised in any of the following ways: independence, self-government, local government, federalism, confederalism, unitarism or any form of relations that accords with the wishes of the people but fully cognisant of other recognised

[6] James Summers "Self-Determination in International Law" Oxford Bibliographies, 22 August 2023, available at https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0033.xml (accessed 20 August 2025)

[7] Katangese Peoples' Cong. vs. Zaire, Comm. 75/92, 8th ACHPR AAR Annex VI (1994-1995), Pp 4.

principles such as sovereignty and territorial integrity.

In relation to the two Communications being examined here (266/03 and 650/17), in which the Complainants sought to claim their right to self-determination, we have already established that the Commission declared *Communication 266/03* admissible and the latter inadmissible, despite the fact that both Communications raised similar issues. It should be noted that it is the trite principle of the Commission that, for a Communication to be considered admissible, all the seven conditions of admissibility prescribed under Art 56 must be cumulatively fulfilled, to the effect that the failure to meet any one of them amounts to a failure to satisfy all, and hence the inadmissibility of the Communication in question. One of these admissibility conditions is thus the highly contentious provision of Article 56(2).

Article 56(2) provides that Communications shall be considered if they are "**compatible with the Charter of the Organisation of African Unity or with the present Charter**". This means that the content of Communications must comply with or must not stand to infringe the provisions of the AU Constitutive Act,[8] and/or the African Charter itself. Although the African Charter does not define what such compatibility means, the Commission has largely interpreted this to refer to the nature of the rights being claimed. On the other hand, it has principally considered compatibility with the Constitutive Act to entail compliance with the provisions of Articles 3 and 4 of the Act, which outline the guiding principles and objectives of the African Union. The interest of the Commission in view of Art 56(2) has therefore been to ensure that the prayers made in each Communication do not contravene the said objectives and principles of the AU Constitutive Act.

Nevertheless, as observed in the two Communications mentioned above, the allegation of human rights violations in Communications always comes in an assortment of complicated facts and legal issues to be determined, making the question of compatibility not always simplistic to determine. Which is why the following question is posed: what element(s) in Communication 650/17 rendered the said Communication incompatible with the AU Constitutive Act to warrant its inadmissibility under Article 56(2), as opposed to Communication 266/03 which was declared admissible and proceeded to the Merits despite raising similar issues?

3.1 Analysis - Communication 266/03

In Communication 266/03, the Complainants' assertion as to why the Communication fulfilled the requirements of Art 56(2) was on the basis that it alleged "violations of the African Charter and other international human rights instruments".[9] The Respondent State on the other hand, held otherwise, propounding that the Complainants were simply using the claim of rights violation as a pretext to advocate for secession.[10] To this, the Commission in its analysis laid down a three-pronged criterion for compliance under Art 56(2). It held that for compliance to be established, the Communication:

(i) Should be "against a State party to the African Charter"

(ii) Must allege prima facie violations of rights in the Charter

(iii) Must only allege violations "rationae temporis". That is, violations which occurred after the state had ratified the Charter, or which occurred before the State's ratification, but which continued even after such date of ratification

This criterion, for the purpose of the present analysis, would be considered the First Standard of Compatibility. The Commission thus found that all the three conditions were met and found that Art 56(2) had been satisfied.

[8] Which replaced the 1963 OAU Charter following the transformation into the African Union (AU) in 2000.
[9] Communication 266/03, Pp 69
[10] ibid, 68

3.2 Analysis - Communication 650/17

In Communication 650/17 the Commission reiterated the three-pronged criterion above.[11] In its analysis, it found as follows:

> (i) **Requirement against a State party to the African Charter**: The Commission found that this condition had been met, given that the Complainants had identified and mentioned the Republic of Cameroon as the respondent, who is a party to the Charter.[12] This was so despite the fact that the State had claimed in its Preliminary Objection that the Complainants' reference to violations committed against and on the "Former United Nations Trust Territory of the British Southern Cameroon" or "Southern Cameroons" amounts to alleging violations which occurred outside the territory of the Republic of Cameroon and therefore do not concern it.[13]
>
> (ii) **Requirement of Prima facie violations of rights in the Charter and (iii) violations "rationae temporis"**: In the same light, the Commission found that these two conditions had been met.[14]

The Commission nevertheless went on to lay out a Second Standard, by making reference to its earlier jurisprudence in *Communication 321/2006 - Law Society of Zimbabwe et al v Zimbabwe*, where it established that compatibility is especially benched on "whether the prayers requested in the Communication would contravene the objectives or principles expressed in the [AU Constitutive] Act".[15] The Commission highlighted that, the "objectives and principles" in question here, refer to the need to "defend the sovereignty, territorial integrity and independence of its Member States"[16] Therefore, the Second Standard hinges on the nature of the Prayers in the Communication, in relation to state sovereignty, integrity and independence. With *Comm 650/17* therefore, in finding that the requirements of Article 56(2) had not been met, the Commission stated that there was an incompatibility in the "spirit" of the Complainants' request for Provisional Measures.[17] It held that their request for the Commission to order "the government of *La République du Cameroun* to pull out its heavy military presence and close down its numerous military outposts strewn all over the territory of the former UN Trust Territory of the Southern Cameroons" would culminate in an inference "that the République du Cameroun and the UN Trust Territory of the Southern Cameroons are two different sovereign States, in which case, one is subject to military occupation."[18] In the reasoning of the Commission, such a request by the Complainants "challenges the independence of the Republic of Cameroon", as it "questions the unity, territorial integrity and the sovereignty of the country", which the Constitutive Act is meant to protect precisely in its Art 3(b).[19] For this reason, the Commission found that Art 56(2) had not been satisfied, and therefore the Communication was inadmissible.

3.3 The Irony

A couple of issues can be identified here:

First, provisional measures (PMs) were granted under this Communication. During the consideration of PMs, the Commission focused on and awarded the second and third prayers, while ignoring the first prayer to order the respondent State to withdraw its military from the territory of 'Southern

[11] Communication 650/17, Pp 29, page 15
[12] Communication 650/17, Pp 30 - 32, page 15.
[13] Communication 650/17, Pp 54 – 58, page 10.
[14] Communication 650/17, PP 31 32, Page 16.
[15] ACHPR Communication 321/2006 – Law Society of Zimbabwe et al v Zimbabwe (2013), Para 67 https://www.achpr.org/sessions/descions?id=211 in Communication 650/17 at para 28
[16] Communication 650/17, Pp 33, page 16.
[17] Communication 650/17, Pp 35, Page 16.
[18] Communication 650/17, Pp 34 35, page 16.
[19] Communication 650/17, Pp 35, Page 16.

Cameroon'. In granting the request for PMs, the Commission did not raise any issues with regard to the terminology used and implications these appellations may have on the finding of a violation or in the determination of the case as a whole. In fact, the Commission found a way to navigate the prayers of the Complainants', focussing on the fact of the violations, while leaving the determination of territorial status for subsequent analysis in the proceedings.

Secondly, in the decision on PMs, the Commission found that "the Complaint constitutes a case of serious and massive human rights violations as provided under Rules 84 of the Rules of Procedure of the Commission."[20] This shall be further examined below.

Thirdly, when the Respondent State raised the Preliminary Objection saying the Complainants' reference to 'Southern Cameroon' was tantamount to denying "the existence of the State of Cameroon in its current territorial extent" and that in the light of this reasoning, the violations therefore did not occur on its territory in order to warrant liability on its part, the Commission again did not find anything concretely negating the existence of the Republic of Cameroon as a State party to the Charter 'in its current territorial extent'.[21] In fact, here again, the Commission used its jurisprudence in *Communication 409/12 – Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others*[22] to establish the reasoning that, because the State of Cameroon had been mentioned and identified in the Communication, this was sufficient enough for the Commission to have jurisdiction (rationae personae), in the light of its mandate to uphold the rights enshrined within the Charter.[23]

From the above, the legitimacy of the Commission's finding is indeed perplexing, considering that the Commission suddenly concluded later in its analysis of Article 56(2) that the requirements of the said provision had not been satisfied, given that attribution to multiple territories is an attack on the integrity of the State of Cameroon. One more element to consider is the Commission's waiver of the Complainants' need to exhaust local remedies as prescribed under Article 56(5) of the Charter. The Complainants' claimed that there were no "available, effective, and sufficient" domestic channels to address their grievances due to the "generalised atmosphere of instability and fear of persecution" prevailing in the Anglophone regions.[24] From the arguments presented by the Complainants, including evidence of how much the devastation orchestrated by the Anglophone Crisis in the country had already become general knowledge, the Commission found in favour of the Complainants. It should be noted that, just like in Communication 266/03, the Commission had waved the need to exhaust local remedies, as the Complainants demonstrated (and the Respondent State affirmed) that there were no domestic mechanisms available to hear issues pertaining to the political status of the country, including questions of Federalism.[25] This means that the Commission acknowledged in both Communications that the Complainants' prayers had no other channel of recourse and therefore could only be brought before the Commission as a next possible resort, whatever these issues may have been.

In such an instance then where the domestic channels would not entertain the alleged grievances and where the rules still make it practically impossible to address them before the Commission, it may then be conveniently perceived that the African Commission even as a judicial body unfortunately only reiterates the political apprehension of African leaders to deal with or even as much as

[20] *Communication 650/17 Kum Bezeng and 75 Others (represented by Professor Carlson Anyangwe) v The Republic of Cameroon* (Now - *Communication 650/17 Divine Chi and 74 Others (represented by Professor Carlson Anyangwe) v The Republic of Cameroon*), *Decision of the African Commission on Human and Peoples' Rights on Seizure and Provisional Measure*s, Pp 49

[21] Communication 650/17, Pp 55, Page 10.

[22] Communication 409/12 – Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others, https://www.achpr.org/public/Document/file/English/achpr54$_4$09$_1$2$_e$*ng.pdf*

[23] Communication 650/17, PP 59 – 63, Page 10 11

[24] Communication 650/17, PP 55, page 20.

[25] mmunication 266/03, PP 81 82

discuss governance questions related to the political status of their territory, which continue to raise citizenry disgruntlement across the continent. This decision in *Communication 650/17* only raises questions as to the political underpinnings surrounding the reasoning of the Commission.

4. Implications on other cases

In principle, because a latter jurisprudence overrides the former, it may be concluded that the differential position of the Commission in *Comm 650/17* overrides that in *Comm 266/03*. Nevertheless, without a definitive position established and clarified by the Commission and because of the sensitivity surrounding the issue of self-determination and state sovereignty, more cases like these with possibly even more complex scenarios may face a tough route of determination before the Commission. Does it therefore mean that all potential complaints touching on issues of self-determination would for the mere sake of this fact be considered inadmissible under Art 56(2)?

If one goes by the Commission's interpretation in the *Katangese case* that Self-determination could be exercised via other means such as federalism, unitarism, etc, then it should be expected that such a Communication touching on these other forms of government/statehood (internal self-determination) would pass the admissibility test under Art 56(2). Meaning, if the Communication has facts limited to federalism or unitarism or other internal forms of self-governance, then the question of incompatibility may not arise at least under the Second Standard indicated above. Nevertheless, the Commission in Comm 266/03, held that the right to self-determination could only be exercised via two criteria: (i) proof of oppression and domination by another,[26] and (ii) "proof of massive violation of human rights" as stated in the *Katangese case*.[27] This implies that without these two being fulfilled, a Complainant's prayer under Art 20 cannot be entertained. In fact, in the same Communication, the Commission went on to state that "the people of Southern Cameroon ***cannot engage in secession***, ***except within the terms*** expressed hereinabove, since ***secession is not recognised as a variant of the right to self-determination*** within the context of the African Charter."[28] (emphasis added). This implies either of two things:

> 1.) That secession can be invoked if oppression, domination and massive human rights violations are proved, OR
>
> 2.) That secession cannot be invoked at all, since it is not envisaged under the right to self-determination.

If the former is the case, then it means that the Commission will have to give such Communications the chance of Admissibility in order to subsequently consider the question of secession at its Merits. This is because the existence of massive human rights violations could unfortunately only be concretely determined at the Merits stage of any case when all the evidence and arguments are being examined against each Article of the African Charter alleged to have been violated. This analysis cannot be sufficiently performed at the level of Seizure or Admissibility, which is why the Commission only initially proceeds with Complaints based on the existence of 'prima facie' violations. As the Commission in fact noted in *Comm 650/17*, "the consideration of a Complaint by the Commission is a process. Findings related to the analysis of the alleged violated articles occur in the merit phase."[29]

If Communications claiming the right to self-determination do not even have the luxury of reaching the Merits stage in order for the question of massive human rights violations to be concretely deter-

[26] Communication 266/03, Pp 197
[27] Communication 266/03, Pp 199
[28] Communication 266/03, Pp 200
[29] Communication 650/17, Pp 44, page 18.

mined, then it means a fair chance has not been accorded under the law, and the Commission would never have the opportunity to entertain such discussions. Could it have been the intention of the Commission in laying down this criterion for massive human rights violations in the Katangese Case and in Comm 622/03 to set the bar so high such that Article 20 is almost never invoked considering how sensitive it is?

Indeed, in Communication 650/17, the Complainants in their prayers did allege the existence of "serious and massive violations of human and peoples' rights",[30] which could have subsequently been examined at the Merits stage in order to determine if the question of self-determination by secession could stand a chance of being considered. Unfortunately, *Communication 650/17* was declared inadmissible for the same reason. Worthy of note is the fact that, as mentioned earlier, the Commission in its decision on Provisional Measures, acknowledged that this was a case of massive human rights violations. This finding could have been a basis for consideration of the issue of self-determination, under the criteria prescribed above.

If on the other hand we go by the second reasoning that secession is by no means a variant of self-determination under Article 20, then this would imply that the African Commission has limited its interpretation of this right, and hence even in cases envisaged under Article 20(2) – colonisation or oppression (which is similar to the exception in international law),[31] such a right cannot be claimed, and the Commission has no business entertaining conversations on secession.

It may be considered that the Commission's interest was to stay away from such politically pregnant issues and rather stick to its assigned legal mandate. However, the burden unfortunately is, there remains a very fine line as to where the argument stretches from being legal and human rights-based, to being purely or even partially political.

This position becomes even less clear, when one considers the objectives and principles in the AU Constitutive Act which are meant to be guaranteed by the African Charter. The AU Constitutive Act was celebrated for its progressiveness in being more people-centred, where its Articles 3 and 4 inter alia indicated the Union's interest in promoting "democratic principles and institutions, popular participation and good governance", "human rights, [and] the rule of law".[32] This being so, could it be considered that the mere expression of interest to claim the right of self-determination (even if by secession) does not automatically imply encroachment on the sovereignty, territorial integrity and independence of the Charter's members so as to warrant the inadmissibility of a Communication? This is because, going by the principles of democracy and good governance mentioned above, it would be safe to say that entertaining discussions on the political status of a country demonstrates compliance with the democratic values of inclusion and public participation.

Certainly, such issues of self-determination (especially secession) remain a delicate matter in the constitution of states, and sometimes may fundamentally go further to create prolonged domestic instability, reason why governments employ a calculated strategic in managing such issues in the light of the context of their own country. Nevertheless, it may be reasonable to uphold such discussions particularly when, prima facie, multiple/massive human rights violations are alleged, and where the State provides no channels to entertain such discussions domestically. It should be noted that this does not necessarily mean granting forthright the Complainant's prayer for secession, or federalism (or whatever the case might be), but simply not letting the mere interest to exercise self-determination be the ground for inadmissibility of a Communication.

In *Comm 266/03*, although the Complainants sought to claim their right to self-determination by se-

[30] See particularly PP 42 43, page 8, of Communication 650/17

[31] See for example: Milena Sterio "Self-determination and Secession under International Law: The Cases of Kurdistan and Catalonia" 5 June 2018, ASIL, Vol 22, Issue 1

[32] Arts 3(h) 4(m) of the Constitutive Act 2000

cession, the Commission proceeded to declare the Communication admissible, and to find violations of certain rights at the merits stage, while proposing to the Complainants to the seek other ways to assert this right, rather than by secession.[33] The Commission also recommended that the Respondent State engages in constructive dialogue with the Complainants on the issues surrounding the desire for secession.[34] Although there was eventually no feedback from the parties on the implementation of the Commission's decision (as has sadly been the case with a lot of the Commission's decisions), such a reasoning by the Commission helps to set the groundwork for informing legal conversations on governance and human rights within and among member states, particularly as far as the right to self-determination is concerned.

5. Conclusion Recommendation

The right to self-determination under Art 20 is therefore not wholesome, and by the facts above, highly difficult to assert. The latest jurisprudence of the Commission reveals prima facie that where such a claim touches on the integrity and sovereignty of a state, the said Communication would not pass the Admissibility stage. In this light, such Complaints may even in the worst-case scenario, risk being rejected at Seizure, given that it would be obvious from the onset that the Complainants seek to invoke a right that cannot be upheld by the Charter – a claim which the Commission will not entertain at the level of Admissibility. Therefore, it could be deemed useless to waste the Commission's time. It seems therefore that the Commission will examine only questions of internal and not external Self-determination. In other words, allegations of rights violations and internal governance matters may be entertained, but not such claims that a portion of a country does not belong to the said member State. To better establish a more reliable legal position therefore, it may be worthy for the Commission to issue a Guidance Note or General Comment on the issue of Compatibility under Art 56(2) in general and particularly in relation to the right to self-determination under Article 20 of the African Charter, as well as with the provisions of Articles 3 and 4 of the AU Constitutive Act. This would go a long way to establish a more binding legal position of the Commission on the said issue, and to guide litigants and the public on matters touching on these issues

Reference List

ACHPR Communication 266/03 - Kevin Mgwanga Gunme et al v Cameroon (2009), Available at: https://achpr.au.int/en/decisions-communications/kevin-mgwanga-gunme-et-al-cameroon-26603.

ACHPR Communication 321/2006 – Law Society of Zimbabwe et al v Zimbabwe (2013), Available at: https://www.achpr.org/sessions/descions?id=211.

ACHPR Communication 650/17 - Divine Chi and 74 Others v The Republic of Cameroon (2022). Formerly: ACHPR Communication 650/17: Kum Bezeng and 75 Others v The Republic of Cameroont.

AU Constitutive Act 2000

Communication 409/12 - Luke Munyandu Tembani and Benjamin John Freeth (represented by Norman Tjombe) v Angola and Thirteen Others, Available at: https://www.achpr.org/public/Document/file/English/achpr54_409_12_eng.pdf.

Communication 650/17 - Kum Bezeng and 75 Others (represented by Professor Carlson Anyangwe) v The Republic of Cameroon, Decision of the African Commission on Human and Peoples' Rights on Seizure and Provisional Measures.

Communication 75/92 - Katangese Peoples' Cong. v. Zaire, 8th ACHPR AAR Annex VI (1994-1995).

[33] Communication 266/03, Pp 215(2)
[34] Communication 266/03, Pp 203

International Crisis Group (2017) Cameroon's Anglophone Crisis at the Crossroads. Report No 250/Africa. Available at: https://www.crisisgroup.org/africa/central-africa/cameroon/250-cameroons-anglophone-crisis-crossroads (Accessed: 25 August 2025).

Sterio, M. (2018) "Self-determination and Secession under International Law: The Cases of Kurdistan and Catalonia" ASIL, 22(1), Available at: https://www.asil.org/insights/volume/22/issue/1/self-determination-and-secession-under-international-law-cases-kurdistan (Accessed: 9 September 2025).

Summers, J. (2023) 'Self-Determination in International Law' Oxford Bibliographies Available at: DOI: 10.1093/obo/9780199796953-0033.