

## Communication 389/10 – *Mbiankeu Geneviève v. Cameroon*

### Summary of the Complaint

1. On 7 September 2010, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received from Mrs Geneviève Mbiankeu Kamenga, a citizen of Cameroon with French nationality, a Communication submitted pursuant to Article 55 of the African Charter on Human and Peoples' Rights (the African Charter). The Complainant is a radiology technician resident in France.
2. The Communication was submitted against the Republic of Cameroon (the Respondent State or Cameroon), a State Party to the African Charter.<sup>1</sup>
3. The Complainant submits that following a mandate entrusted to a law firm in Yaoundé, she and her husband were informed on 6 June 2007 that a 2,000 m<sup>2</sup> plot of land located in a residential neighbourhood in Yaoundé was on sale. After verifying the documents in the possession of the vendor's notary, Mr Pierre Firmin ADDA, a notary in Yaoundé, the Complainant and her husband were informed that there was no opposition to the sale of the plot of land. On 8 June 2007, the firm, on their behalf, negotiated with the vendor for the purchase of an area of 500 m<sup>2</sup> valued at 22,500,000 (twenty-two million five hundred thousand) CFA francs.
4. The Complainant avers that her husband then left Paris for Yaoundé where he signed, on 26 June 2007, the deed of sale in exchange of the sum of 26,578,000 (twenty-six million five hundred and seventy-eight thousand) CFA francs which was handed over to the notary. This amount included the sum of 3,020,340 (three million twenty thousand three hundred and forty) CFA francs as fees paid to the Government of Cameroon and notary and lawyer fees.
5. The Complainant contends that following the land sale and administrative steps taken by the notary, her husband received by DHL on 17 August 2007, a land certificate no. 38826/Mfoundi issued on 6 August 2007 by the Government of Cameroon.
6. The Complainant further alleges that her husband returned to Yaoundé on 25 October 2007 to start developing the land. She contends that on 29 October 2007, the Land Registry issued her husband a certificate of ownership stating that the land certificate was not subject to any charges or fees, and that as

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<sup>1</sup> The Republic of Cameroon ratified the African Charter on 20 June 1989.

from 30 October 2007, her husband was prevented from enjoying ownership of the land as a result of a number of incidents.

7. The Complainant avers that between 30 October and 20 November 2007, several acts were committed by law enforcement officers, land tenure officers and private individuals with the aim of making her husband to leave the land which they claimed belonged to the Government. Such acts include sudden visits to the land, destruction of property and installations, assault and death threats. In some cases, the perpetrators of these acts claimed to be acting on the orders of Mr Ambroise MBAGOFA, a rich businessman, who claim to have a land certificate over the land including the plot bought by the Complainant's husband.
8. The Complainant avers that on 19 November 2007, as her husband was heading to the police station to file a complaint, he was stopped by a uniformed police officer who pointed his service weapon at him and asked him to take off his glasses and raise his hands. The officer then sprayed his face with tear gas and ordered him never to return to the plot of land.
9. The Complainant contends that on 19 November 2007, her husband went to the Land Registry where he was received by the Land Registrar to whom he mentioned the difficulties he had been facing, and that the latter confirmed that the land certificate had been duly obtained and was not subject to any opposition. She maintains that the Land Registrar informed her husband that land certificate no. 25641 belonging to Mr MBAGOFA contained some inconsistencies, especially relating to the boundaries, and that the said land certificate had been suspended by the Administrative Chamber of the Supreme Court of Cameroon by Ordinance No. 61/OSE/PCA/CS/98-99 of 29 June 1999; that the Government of Cameroon by a request dated 6 April 2001 had also requested the Administrative Chamber to annul the same land certificate on grounds of fraud. She avers that the Registrar gave her husband copies of the Ordinance and the annulment request made by the Government of Cameroon which are included in the Communication file.
10. The Complainant avers that as a result of the assault committed by the police officer, her husband suffered excruciating pain that made him drop his glasses which broke when he accidentally stepped on them. He fell into a ditch, injured his mouth and his hip; and his eyes irritated and he had difficulty breathing. She further avers that in spite of his condition, he managed to go to the Yaoundé Central Police Station on two occasions to lodge a complaint, but was unable to do so since there was no officer on duty. After an hour of fruitless waiting, her husband had to leave the police station because he had to quickly find a seat on a flight back to Paris, fearing for his

life. On the same day, he took a flight from Douala. She contends that when her husband returned to Paris on 21 November 2007, he went to hospital for an emergency consultation following which a medical certificate was issued to him granting him four days of rest.

11. The Complainant avers that between 23 November 2007 and 25 March 2010, her husband made several attempts in vain to initiate administrative and judicial actions in Cameroon in order for their right to property to be reinstated. The following measures were taken:

- 23 November 2007: a complaint with a claim for damages sent, by international registered mail, to the State Counsel of the Yaoundé High Court;
- 3 May 2008: another complaint/reminder sent, by international registered mail, to the State Counsel given the lack of response regarding the first complaint;
- 25 August 2008: a petition for arbitration in respect of land rights sent by registered mail with acknowledgement of receipt to the Minister of State Property and Land Tenure, copying the Inspector-General in charge of the Anti-Corruption Unit at the same ministry;
- 25 August 2008: a petition for arbitration in respect of land and property rights sent by registered mail to the Minister, Assistant Secretary-General at the Presidency of the Republic;
- 16 September 2008: another petition sent by fax to the Minister, Assistant Secretary-General at the Presidency of the Republic;
- 21 September 2008: a petition for arbitration in respect of land and property rights sent, by Chronopost with a delivery certificate dated 25 September 2008, to the Inspector-General in charge of the Anti-Corruption Unit at the Ministry of State Property and Land Tenure;
- 10 October 2008: a petition sent by registered mail to the Minister of Justice regarding the failure by the judicial services to act on two complaints filed;
- 2 February 2009: another letter sent to the Minister, Assistant Secretary-General at the Presidency of the Republic, informing the latter that his address in France provided on the land certificate issued to him by the Government of Cameroon had been used to utter death threats against him and his family through anonymous letters and phone calls, and requesting protection from the Government;
- 3 February 2009: a reminder sent by registered mail to the Minister of Justice complaining against the lack of action by the judicial services.

12. The Complainant maintains that with so many petitions and letters unanswered by the authorities of the Respondent State, her husband sent six

- (6) other petitions for arbitration, by fax and registered mail, to the Minister of State Property and Land Tenure, respectively on 25 March 2009, 11 June 2009, 7 October 2009, 3 November 2009, 9 February 2010 and 25 March 2010.
13. The Complainant asserts that since his return to France on 21 November 2007, her husband has continued to receive death threats through anonymous phone calls from Cameroon, and that he has not returned to Cameroon out of fear for his life.
14. The Complainant declares that up to the day the Commission was seized of the Communication, the Government of Cameroon had not responded to their various petitions and that as a result, the Government has deprived them of their right to property, since they were forced to abandon a plot of land for which they continue to repay monthly instalments.
15. The Complainant alleges that the absence of notification from the Government of Cameroon has prevented them from challenging any decision before the administrative courts; that it is undeniable that the purchase of the land has caused them so many difficulties, whereas it was supposed to be protected by the State.

#### **Articles alleged to have been violated**

16. The Complainant alleges that the facts stated above constitute a violation of Article 14 of the African Charter and prays the Commission to ensure:
- a) The reinstating and protection of their right to property through the return of their land; or, if not possible, the granting of compensation for loss of their land rights, loss of ownership, deprivation of effective enjoyment and loss of the land, corresponding to the market value of the property in question;
  - b) The refund of the costs incurred for the purchase and development of the property;
  - c) The granting of compensation proportionate to the gravity of the violation of the rights guaranteed by the African Charter.

#### **Procedure**

17. The Complaint was received at the Secretariat on 7 September 2010. The latter acknowledged receipt on 21 September 2010.

18. At its 48<sup>th</sup> Ordinary Session held from 10 to 24 November 2010 in Banjul, The Gambia, the Commission considered the Complaint and decided to be seized thereof. On 3 October 2011, the Secretariat notified this decision to the parties and informed them that during its 49<sup>th</sup> Ordinary Session held from 28 April to 12 May 2011 in Banjul, The Gambia, the Commission considered the Communication and deferred its admissibility decision for lack of submissions from the parties. By the same letters, the Secretariat requested the Complainant to submit her observations on admissibility within two months following the notification of the seizure decision.
19. On 16 November 2011, the Secretariat informed the parties that during the 50<sup>th</sup> Ordinary Session held from 24 October to 5 November 2011 in Banjul, The Gambia, the Commission decided to defer its admissibility decision to its 51<sup>st</sup> Ordinary Session to be held from 18 April to 2 May 2012, for lack of admissibility submissions from the parties. The Secretariat also requested the parties to submit their observations on admissibility within two months following the notification.
20. On 3 January 2012, the Secretariat received a letter transmitting the Complainant's observations on admissibility. The Secretariat acknowledged receipt on 12 January 2012, and transmitted the said submission to the Respondent State for its comments.
21. On 31 May 2012, the Secretariat informed the parties that at its 51<sup>st</sup> Ordinary Session held from 18 April to 2 May 2012 in Banjul, The Gambia, the Commission considered the Communication and decided to defer its decision on admissibility to its 52<sup>nd</sup> Ordinary Session to be held from 9 to 22 October 2012 in Yamoussoukro, Côte d'Ivoire, given that the Respondent State was yet to submit its arguments on admissibility. By the same note verbale, the Secretariat requested the Respondent State to submit its arguments within two months from the notification, latest 31 July 2012. By letter on the same date, the Secretariat forwarded the same information to the Complainant.
22. On 3 July 2012, the Respondent State informed the Secretariat of the Commission that it could not submit its observations on admissibility given that it had not yet received a copy of the Complainant's submission on admissibility. On 14 August 2012, the Secretariat responded by resending a copy of the Complainant's admissibility submission and requested the Respondent State to submit its observations no later than 15 October 2012.
23. On 4 September 2012, the Respondent State again wrote to the Secretariat stating that it had not received the document. The Secretariat again responded by resending the Complainant's submission on admissibility. On

- 13 November 2012, the Secretariat also informed the Respondent State that failing its observations latest 13 January 2013, the Commission will be obliged to take a decision on the basis of the information in its possession.
24. On 13 November 2012, the Respondent State forwarded its observations to the Secretariat which acknowledged receipt on 20 November 2012. On the same date, the Secretariat forwarded the said observations to the Complainant and requested her to submit her rebuttal, if any, within one month.
  25. On 3 February 2013, the Complainant submitted her rebuttal to the Secretariat of the Commission which acknowledged receipt on 6 February 2013. The last correspondence between the parties was the Complainant's rebuttal of 6 February 2013.
  26. At its 53<sup>rd</sup> Ordinary Session held from 9 to 23 April 2013 in Banjul, The Gambia, the Commission considered the Communication and decided to defer its decision on admissibility to its 14<sup>th</sup> Extraordinary Session to be held from 20 to 24 July 2013 in Nairobi, Kenya. The parties were duly informed of this decision on 30 April 2013.
  27. At its 14<sup>th</sup> Extraordinary Session held from 20 to 24 July 2013 in Nairobi, Kenya, the Commission declared the Communication admissible. The Secretariat informed the parties of this decision on 12 August 2013 and requested the Complainant to submit on admissibility within two months.
  28. On 25 August 2013, the Complainant sent a request for amicable settlement to the Commission. The Secretariat acknowledged receipt of the request on 23 September 2013. At its 54<sup>th</sup> Ordinary Session, the Commission acceded to the request and appointed a Commissioner to facilitate the amicable settlement. On 14 November 2013, the Secretariat informed the Complainant of this decision and the related conditions and requested for her confirmation.
  29. On 22 December 2013, the Complainant confirmed her request for amicable settlement and transmitted her proposals for the settlement. The Secretariat acknowledged receipt on 20 January 2014 and forwarded the proposals to the Respondent State on the same date. Without any response from the Respondent State, the Secretariat sent a reminder letter to the latter on 6 March 2014. The Complainant was notified of this latest development. Having received no response to the various letters, the Commission decided to consider the Communication on the merits. On 17 April 2014, the Secretariat informed the Complainant of this decision and requested her to submit her arguments on the merits.

30. On 12 May 2014, the Complainant submitted her arguments on the merits. The Secretariat acknowledged receipt on 22 May 2014 and forwarded the submission to the Respondent State on the same date. On 21 July 2014, the Respondent State requested for a 60-day extension to submit its observations. On 22 July 2014, the Secretariat granted a 30-day extension in accordance with the Commission's Rules of Procedure. The Complainant was informed of this latest development.
31. On 21 October 2014, the Respondent State submitted its observations to the Secretariat. On 28 October 2014, the Secretariat acknowledged receipt and forwarded the observations to the Complainant for her comments.
32. On 28 November 2014, the Complainant wrote to the Secretariat requesting for an extension to submit her observations. On 8 December 2014, the Secretariat granted a 30-day extension in accordance with the Commission's Rules of Procedure. The Respondent State was informed of the extension.
33. On 4 January 2015, the Complainant forwarded her observations to the Secretariat. On 26 January 2015, the Secretariat acknowledged receipt and forwarded the observations to the Respondent for a rebuttal, if any. There was no other correspondence between the parties.

## **The Law on Admissibility**

### **Complainant's Submissions on Admissibility**

34. The Complainant submits that the Communication meets the conditions to be declared admissible, basing her admissibility arguments on the fact that the requirement of exhaustion of local remedies under Article 56(5) of the African Charter has been met.
35. The Complainant submits that the exhaustion of local remedies requirement is inseparable from that of the prior existence of available and fair local remedies, and that such a condition can become an obstacle only in cases where prompt and sufficient local remedies are available. The Complainant further submits that going by the jurisprudence of the Commission, the condition of exhaustion of local remedies must be applied concomitantly with Article 7 which establishes and protects the right to a fair trial.
36. The Complainant submits that local remedies exist in this case but are not available. She submits that since the property was acquired in the most legal

manner, the only remedy left to them was to rely on the intervention of the judicial and administrative authorities for local remedies.

37. The Complainant argues that the procedure of local remedies in Cameroon was unduly prolonged. She contends that even though available, local remedies do not achieve their main purpose of being effective. She declares that to their knowledge, the matter has not made any progress at the national level even after bringing the case before the Commission. As such, she prays the Commission to declare that a period of more than three years without any action regarding their complaint is beyond a reasonable period within the meaning of Article 56(5) of the African Charter.
38. The Complainant concludes that up to the date the Commission was seized of the matter, it did not appear that the Respondent State met its obligation to provide the remedy which is required under the African Charter. As such, she requests the Commission to declare the Communication admissible.

#### **Respondent State's Submissions on Admissibility**

39. Without disputing the facts as presented by the Complainant, the Respondent State considers, however, that the Communication brought before the Commission cannot be admissible. The Respondent State submits that local remedies exist and are available, and that the Complainant's husband failed in his obligation to exhaust local remedies.
40. In support of the claim that local remedies exist, the Respondent State invokes Section 157(1) of the Cameroon Criminal Procedure Code, which provides that: "Any person who alleges that he has suffered injury resulting from a felony or misdemeanour may, when lodging a complaint with the competent Examining Magistrate, file a claim for damages".
41. The Respondent State submits that the availability and effective use of this remedy by individuals are demonstrated by the statistics on indemnification claims filed with the Mfoundi High Court in Yaoundé over the period from 27 November to 28 December 2007, and from January to February 2009 during which the Complainant's husband alleges to have attempted to exhaust local remedies. Cameroon further avers that a review of the said statistics shows that during that period all complaints filed were effectively processed and in some cases led to the trial of the accused persons. The Respondent State underscores that in addition to the possibility of filing a claim for damages, the Cameroonian legal system also offered the Complainant the possibility of instituting action by direct summons as



provided for by the Criminal Procedure Code. As such, the Respondent State concludes that local remedies are indeed effective.

42. Regarding the Complainant's obligation to take steps to exhaust local remedies, the Respondent State calls on the Commission to examine the consistency of such efforts. In response to the local procedures alleged to have been followed by the Complainant's husband, the Respondent State submits that no relevant evidence was submitted in the Communication file. The Respondent State further submits that the failure to come to Cameroon in person to file the complaint may simply be interpreted as a refusal to exhaust available remedies.
43. Cameroon states, in connection with the steps allegedly taken by the Complainant, that investigation conducted by the Government at the mail service of the Ministry of Justice, the Registry of the Mfoundi High Court in Yaoundé and the Office of the State Counsel of the said court produced no trace of the letters the Complainant alleges to have been sent to the Minister of Justice and the State Counsel of the Mfoundi High Court.
44. The Respondent State concludes that in view of its arguments, local remedies are available but the Complainant's husband did not take steps to exhaust them, and that under these circumstances the Communication should be declared inadmissible on grounds of non-exhaustion of local remedies.

#### **Analysis of the Commission on Admissibility**

45. The Communication was submitted in accordance with Article 55 of the African Charter on Human and Peoples' Rights under which the Commission is mandated to receive and consider "Communications other than those of State Parties." To be declared admissible, Communications have to meet the conditions under Article 56 of the African Charter.
46. A consideration of the above arguments and facts suggests that the parties are in agreement on all the admissibility conditions laid down in Article 56 of the African Charter, with the exception of the exhaustion of local remedies. It also appears to the Commission that, with the exception of the exhaustion of local remedies, the conditions laid down in Article 56 have all been met.
47. The condition of the exhaustion of local remedies is laid down in Article 56(5) of the African Charter as follows: in order to be considered by the Commission, Communications must be "sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged".

48. Article 56(5) has been applied by the Commission in several Communications which confirms and broadens this interpretation. The principle decision on the issue is without doubt the decision passed in the case of *Jawara v. The Gambia*, in which the Commission explains the nature and quality of local remedies which are required to be exhausted by a Complainant. The Commission stated that within the meaning of Article 56(5) of the African Charter, local remedies must be “available, effective and sufficient”.<sup>2</sup> The Commission clarified the meaning of these criteria as follows:

A remedy is considered **available** if the petitioner can pursue it *without impediment*, it is deemed **effective** if it offers a prospect of success, and it is found **sufficient** if it is capable of redressing the complaint.<sup>3</sup>

49. In the case of this Communication, the Complainant alleges to have attempted to exhaust local remedies and that such remedies were not made available by the Respondent State which, moreover, unduly prolonged them. For its part, the Respondent State simply contests the efforts made by the Complainant claiming that it never received any of the alleged petitions. Under such circumstances, it is incumbent on the Commission to determine if the Complainant actually attempted to exhaust local remedies and if the said remedies exist and are available, effective and sufficient. The Commission will also determine if, according to the Complainant’s allegations, the remedy sought was unduly prolonged.

50. In the *Jawara* case, the Commission emphasises that the existence of a local remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility.<sup>4</sup> On this point, the Respondent State provides details to support its claim that the availability and effective use of this remedy by individuals are demonstrated by the statistics on indemnification claims filed with the Mfoundi High Court in Yaoundé over the period from 27 November to 28 December 2007, and from January to February 2009 during which the Complainant’s husband alleges to have attempted to exhaust local remedies.

51. After considering the Respondent State’s submission, the Commission does not have any doubt about the existence of local remedies in Cameroon, both in theory and in practice. The Complainant does not also contest the existence of such remedies since she alleges that her husband brought the matter to their attention. The Complainant rather contests the inaccessibility of the said

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<sup>2</sup> *Jawara v. The Gambia* Communication 147/95-149/96 (2000) AHRLR 107 (2000) para 31.

<sup>3</sup> *Jawara* para 32. Highlighted by the Commission.

<sup>4</sup> *Jawara* para 35.

remedies due to the failure by the Respondent State to activate them by considering the alleged complaints.

52. The Commission is of the view that remedies can actually exist legally and in practice without necessarily being accessible to a Complainant. There is therefore the need to make a distinction between the existence and availability of local remedies. In this case, the Respondent State denies having received any petition from the Complainant whereas the latter provides supporting documents to prove that she filed several complaints which have not been acted upon. As such, the criterion of availability will mainly be assessed in the light of accessibility and in particular the possibility of making local remedies available.
53. Regarding accessibility as a result of failure on the part of the Respondent State, the Commission decided in the case of *Article 19 v. Eritrea* that “the local remedies rule is not rigid. It does not apply if recourse to local remedies is made impossible.”<sup>5</sup> In the case of *Anuak Justice Council v. Ethiopia*, the Commission further stresses that a remedy is considered to be available if it is “accessible and within reach”.<sup>6</sup> It emerges that the failure by the Respondent State and its authorities to activate such remedies renders them unavailable. In the present case, Cameroon considers that remedies were accessible and available. The Respondent State contends that the Complainant did not follow the necessary formalities and also did not make enough effort to attempt to exhaust local remedies.
54. With regard to the formalities for seizure which the Respondent State argues, under Cameroonian law it appears that there is no provision in the procedure codes which prohibits seizure of the judicial authorities by correspondence. The same laws do not also make it mandatory the use of a representative or any form that a petition should take for a case to be heard in court. In fact, in addition to direct referral provided for in Section 135(1) (b) of the Cameroon Code of Criminal Procedure, Section 135(1) (a) of the Code stipulates that: “matters shall be brought to the State Counsel either by way of written information, a written or oral complaint or a written report by a competent authority”.<sup>7</sup> In this regard, Cameroon has not provided the Commission with evidence that the formalities and means of seizure used by the Complainant are prohibited by the relevant laws or fail to comply with these laws.
55. Alternatives such as claims for damages or direct summons, which Cameroon seems to fault the Complainant for failing to explore, are nothing other than

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<sup>5</sup> *Article 19 v. Eritrea* Communication 275/03 (2007) AHRLR 73 (ACHPR 2007) para 48.

<sup>6</sup> *Anuak Justice Council v. Ethiopia* Communication 299/05 (2006) AHRLR 97 (ACHPR 2006).

<sup>7</sup> Cameroon Code of Criminal Procedure (27 July 2005).

forms of seizure organised according to the circumstances and the individuals of a given case. A reading of the following Sections of the same Code reveals that the Complainant submitted her complaints following the formalities required by law since Section 135(4) (a) of the Code states that: "When the written or oral report is made by the victim of the offence, it shall be considered as a complaint..."<sup>8</sup> Moreover, Section 135(4) (b) stipulates that "...complaints shall not be subjected to any formalities or fiscal stamps. The authorities referred to in sub-section (2) - the State Counsel, any judicial police officer or any administrative authority - shall be bound to receive the information or complaints."

56. The Commission considers that the clarity of these provisions calls for no interpretation as to their meaning and purpose. Moreover, in civil law tradition, the general rules of procedure state that the formalities for seizing a court may range from a simple statement at the court registry on plain paper to more complex statements, including a writ of summons served by a bailiff.
57. The supporting documents accompanying the Complainant's submission reveal that she attempted to activate local remedies by sending letters and petitions by international registered mail - including with proof of delivery, fax and Chronopost International. It appears to the Commission that in application of the Respondent State's laws underscored above, the means by which the Complainant sought local remedies are consistent with and are not contrary to the legal provisions. As such, the argument that the Complainant failed to exhaust local remedies by not complying with the seizure requirements cannot be accepted.
58. Even though the means of seizure used by the Complainant are consistent with the law, the Respondent State however denies having received any of the several letters sent by the Complainant through the various channels indicated above. In this regard, as a general rule, a correspondence is deemed to have been delivered once the sender has evidence that the letter was actually delivered to the person or institution responsible for its transmission which, in the case under consideration, are the various postal services cited by the Complainant. It will therefore be sufficient to have a simple receipt from the postal service used - either by post or by fax, for that correspondence to be presumed delivered to the recipient. However, according to the reception theory, evidence of sending a mail only presumes that the mail was delivered until the recipient proves the contrary.

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<sup>8</sup> Cameroon Code of Criminal Procedure (27 July 2005), Section 135(4) (a).

59. In this case, the Complainant has proven to the Commission that she seized several authorities of the Respondent State. Documentary evidence provided include, among others, deposit slips, receipts and certificates of delivery regarding the correspondences sent to the various authorities as mentioned above under the summary of the Complaint.
60. The Commission notes that having received copies of the documents produced by the Complainant, the Respondent State cannot contest the fact that the various authorities were petitioned, as attested by the certificates of delivery contained in the Communication file.
61. At this stage, the Commission will verify if in addition, the petitions were sent to the competent authorities and if the efforts made by the Complainant are sufficient within the meaning of the condition of the exhaustion of local remedies.
62. Regarding the competence of the authorities to be seized, the Commission notes that the complaints made by the Complainant are about the violation of her right to property. Under Cameroonian law which both parties invoke, any person who has knowledge of an offence classified as a felony or misdemeanour shall directly and immediately inform either the State Counsel or any judicial police officer or in their absence, any administrative authority of the locality.<sup>9</sup>
63. The Commission notes that the complaints sent to the authorities of the Respondent State are aimed at putting an end to the violation of the right to property, fully reinstating the Complainant's right to the plot of land or, alternatively, refunding the costs incurred for the purchase of the property, including the expenses for obtaining a land certificate incurred for the benefit of the Government. Under Cameroonian law, the Complainant has two options: seize a criminal court capable of passing judgements in criminal and civil matters, or seize administrative authorities who are competent in matters of land dispute. When administrative authorities have been seized, they can either settle the dispute or seize the competent judicial authorities.
64. The Commission has already noted that the Complainant actually seized the competent administrative authorities. Failing to settle the dispute, the administrative authorities concerned have the obligation, under Cameroonian law, to inform the judicial authorities of the alleged violation in order to institute legal proceedings.

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<sup>9</sup> Cameroon Code of Criminal Procedure (27 July 2005), Section 135(2).

65. In fact, Sections 135(2) and 135(3) of the Cameroon Criminal Procedure Code makes it mandatory for government officials, representatives of government authorities and even civil servants to inform the judicial authorities by all means whenever they are aware of an offence. The Commission notes that the Minister of Land Tenure, the Inspector-General of the said ministry and the Land Registrar are government authorities and civil servants. As such, they are bound by the obligation stipulated in the abovementioned provisions.
66. The Commission also recognises the obligation of administrative authorities to initiate local remedies whenever they have the competence. In this regard, the Commission confirms that local remedies which must be exhausted by a Complainant must be of a judicial nature as it indicated in the case of *Cudjoe v. Ghana*.<sup>10</sup> However, the Commission notes that, in cases where administrative remedies are those that are competent under the country's law, such remedies may be relevant if they exist and are effective.<sup>11</sup>
67. For example, in the case of *Mouvement des Réfugiés Mauritanien au Sénégal v. Senegal*, the Commission admitted the submissions of the parties citing the administrative authorities, in particular the Governor, the Minister of Interior and the Prime Minister, as local remedies through whom the action required should have been initiated before the administrative court. After accepting this argument put forward by the Respondent State, the Commission declared the Communication inadmissible for lack of attempt to exhaust local remedies. On the contrary, the Commission is of the view that when national laws provide for the initiation of local remedies by administrative or politico-administrative authorities, refusal or failure to initiate legal proceedings amounts to the unavailability of the said remedies by preventing access to them.<sup>12</sup>
68. The UN Human Rights Committee confirms such an interpretation. In the case of *Sankara v. Burkina Faso*, the Committee held that "domestic remedies must be understood as referring primarily<sup>13</sup> to judicial remedies" and that "the effectiveness of a remedy also depended, to a certain extent, on the nature of the alleged violation".<sup>14</sup>
69. Regarding the issue of the formalities and means of seizure, the Commission therefore notes that the Complainant complied with the formalities and

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<sup>10</sup> Communication 221/98 (2000) AHRLR 127 (ACHPR 1999) para 14.

<sup>11</sup> *Ilesanmi v. Nigeria* Communication 268/03 (2005) AHRLR 48 (ACHPR 2005).

<sup>12</sup> See *Mouvement des Réfugiés Mauritanien au Sénégal v. Senegal* Communication 254/02 (2003) AHRLR 131 (ACHPR 2003) paras 19-21.

<sup>13</sup> Highlighted by the Commission.

<sup>14</sup> *Sankara v. Burkina Faso* Communication 1159/2003 (2006) AHRLR 23 (HRC 2006) para 6.4.

means of seizure prescribed by the laws of the Respondent State. Moreover, the petitions were sent to the competent authorities.

70. Regarding the efforts required for which the Respondent State faults the Complainant, the Commission notes that the Complainant sent not less than fifteen petitions to various authorities. As established by the Commission above, at least ten (10) of these petitions were transmitted to the competent administrative and judicial authorities in compliance with the rules prescribed by the laws of the Respondent State. Under such circumstances, it will be unreasonable and unjust to consider that the efforts made by the Complainant are insufficient. In this case, efforts regarding seizure as prescribed by the laws of the Respondent State are not quantitative but qualitative. As such, the Commission deduces that extraordinary efforts or supplementary action cannot be required from a Complainant in order to exhaust local remedies even where the threshold of action required by law has been reached.
71. The Commission notes that the inherent meaning of the term “exhaustion” refers to the conclusion of an action, the beginning of which is possible and achievable. It will therefore be illusory for averagely reasonable formalities to be required of an individual in order to conclude an action which he or she could not initiate due to a material or legal impossibility. The Commission confirms, as it did in the case of *Amnesty International v. Sudan*, that the spirit of the provisions of Article 56(5) is to uphold the principle of subsidiarity by providing the State the opportunity to redress violations committed in its territory.<sup>15</sup> The philosophy underlying this rule is not therefore to impose insurmountable efforts on the Complainant.
72. The European Court of Human Rights adopts the same position when it considers for example in the case of *Moreira Barbosa v. Portugal*<sup>16</sup> and *Jelicic v. Bosnia-Herzegovina*<sup>17</sup> that when there is more than one potentially effective remedy, the applicant is only required to exhaust or attempt to exhaust one of such remedies.
73. In the present case, the Commission notes that having seized the judicial and administrative authorities of the Respondent State mentioned above, the Complainant reached the threshold of efforts required by the condition of the exhaustion of local remedies within the meaning of Article 56(5) of the

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<sup>15</sup> Also see *Amnesty International and Others v. Sudan* Communications 48/90, 50/91, 52/91, 89/93 (2000) AHRLR 297 (ACHPR 1999) paras 31-39 and *Anuak Justice Council v. Ethiopia* Communication 299/05 (2006) AHRLR 97 (ACHPR 2006)

<sup>16</sup> Case No. 65681/01, decision of 29 April 2004.

<sup>17</sup> Case No. 41183/02, decision of 15 November 2005.

African Charter. The Commission concludes that the Complainant did not only seize the competent authorities following the required formalities but also exceeded the efforts required to activate local remedies.

74. The Respondent State also contends in its submission to the Commission that the Complainant's husband should have come in person to seize the Cameroonian authorities. On this issue, the Commission has already noted above that under Cameroonian law complainants are not obliged to be physically present to be able to lodge a valid complaint. This position stipulated in the law of the Respondent State is in line with the African Charter and the jurisprudence of the Commission.
75. In fact, the issue of the need for a Complainant's physical presence in the territory of the Respondent State at the time of the attempt to exhaust local remedies has been settled by the Commission. In the case of *Abubakar v. Ghana*<sup>18</sup> and *Amnesty International v. Zambia*<sup>19</sup> for example, the Commission consistently considers that several reasons, such as political exile, fear for one's life – such as following death threats as it is in the present case, or deportation may prevent a Complainant from being in the territory of the Respondent State at the time he or she seizes the local courts.
76. Under such circumstances, the Commission is of the view that in the present case, it would be unreasonable and illogical to require that the Complainant's husband, whereas he and his family were receiving constant death threats including through phone calls, returns to Cameroon and lodge a complaint, where he previously experienced serious attacks on his person.<sup>20</sup> Such an approach would be risky and superfluous given that it is not required by law.
77. At this stage, the Commission notes that local remedies existed at the time of the events both in theory and in practice. The Commission also notes that the Complainant seized the competent authorities in accordance with the formalities prescribed by law. The Commission however notes that the said remedies were not available to the Complainant, and that the lack of action by the authorities of the Respondent State rendered such remedies inaccessible. Moreover, the Commission is satisfied that the efforts made by the Complainant are sufficient. The Commission concludes that the remedies rendered inaccessible were not available, even if they existed, and that the Complainant actually attempted to exhaust them.

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<sup>18</sup> Communication 103/93 (2000) AHRLR 124 (ACHPR 1996). Also see *Jawara* para 35.

<sup>19</sup> Communication 212/98 (2000) AHRLR 325 (ACHPR 1999).

<sup>20</sup> See *Abubakar v. Ghana*; *Amnesty International v. Zambia*. See in particular *Rights International v. Nigeria* Communication 215/98 (2000) AHRLR 254 (ACHPR 1999) para 24.



78. Since evidence has been shown that the competent authorities were seized following the required formalities, the Respondent State has two obligations: act immediately to prevent remedies from being unduly prolonged or refute the Complainant's evidence.
79. Regarding the first obligation following seizure, the responsibility lies with the Respondent State to ensure that local remedies are not unduly prolonged. On this point, the Commission notes that between the date when the Complainant's husband attempted to exhaust remedies at the national level, that is, on 23 November 2007, and the time the Commission was seized on 7 September 2010, close to three years elapsed without the Complainant receiving any response from the authorities of the Respondent State.
80. The Commission notes in particular that between 13 November 2012 when the Respondent State acknowledged receipt of the Complainant's submission and the date of this decision, the Respondent State has been unable to prove to the Commission that action has been taken to activate local remedies. In summary, from the time local remedies were sought in 2007 to the date of this decision, it has been close to five years since the Complainant has not received any outcome regarding her complaints. Even if the latter period cannot be taken into account when calculating the delay of remedies, the Commission notes that its seizure of the matter does not prevent the Respondent State from activating local remedies. Consequently, the Respondent State was well informed of the facts and had the discretion to act.
81. In any case, the Commission notes that at the time it was seized, local remedies were prolonged for three years without any response. In its jurisprudence, the Commission has considered that local remedies were unduly prolonged for ten years<sup>21</sup> and also for five years.<sup>22</sup> It can be concluded that the Commission's position is to consider if remedies have been unduly prolonged on a case-by-case basis. By comparison, in the case of *Bousroual v. Algeria*,<sup>23</sup> the UN Human Rights Committee considered as unduly prolonged a procedure that lasted four years. In the light of the circumstances of the present case presented above, the Commission notes that local remedies were unduly prolonged, and as such fail to meet the requirements of Article 56(5) of the African Charter.

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<sup>21</sup> See *Modise v. Botswana* Communication 97/93 (2000) AHRLR 30 (ACHPR 2000) para 69.

<sup>22</sup> See for example *Association of Victims of Post Electoral Violence and Interights v. Cameroon* Communication 272/03 (2009) AHRLR 47 (ACHPR 2009); *People's Democratic Organisation for Independence and Socialism v. The Gambia* Communication 44/90 (2000) AHRLR 104 (ACHPR 1996).

<sup>23</sup> Communication 1085/2002 (2006) AHRLR 3 (HRC 2006) para 8.3.

82. Such failure inevitably undermines the effectiveness of remedies, even though the Respondent State has done so well to prove their existence in its submission on admissibility. The judicial and administrative remedies that are capable of ensuring the protection and enjoyment of the right to property supposedly granted to the Complainant by the Government of Cameroon through a land certificate have remained inaccessible to the Complainant as a result of the Respondent State's lack of action.
83. Regarding the second obligation following seizure, in its jurisprudence the Commission has adopted the stance that the Respondent State bears the burden to prove the existence and availability of local remedies once the Complainant has shown evidence of having sought such remedies. The Commission states this position on the shift in the burden of proof in the case of *Rencontre Africaine pour la Défense des Droits de l'Homme v. Zambia*.<sup>24</sup>
84. The Commission recalls the jurisprudence of the UN Human Rights Committee in the *Sankara* case to note that the burden of proof does not mean that the Respondent State should confine itself to a mere recital of remedies available under its law but should rather demonstrate that they would have constituted effective remedies for the applicant.<sup>25</sup>
85. The Commission notes that the Respondent State merely recited remedies, in particular judicial remedies, without necessarily demonstrating their effectiveness in the case of the Complainant. In the present case, the administrative remedies mentioned by the Complainant and which were specifically relevant to her complaints were not commented upon by the Respondent State. Overall, the Respondent State was unable to refute the Complainant's evidence of having tried in vain to seize the competent authorities. The Commission underscores that the burden of proof shifts from the Complainant to the Respondent State once the latter contests the exhaustion of local remedies.<sup>26</sup>
86. In view of the foregoing, the Commission notes that local remedies were unduly prolonged and that in the circumstances of this case the Respondent State was unable to refute this fact. As such, the Commission concludes that since these remedies were unduly prolonged, they cannot be effective.
87. The Commission is of the view that local remedies existed both in theory and in practice. The Commission finds that the Complainant sought local

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<sup>24</sup> Communication 71/92 (2000) AHRLR 321 (ACHPR 1996) para 12.

<sup>25</sup> *Sankara v. Burkina Faso* Communication 1159/2003 (2006) AHRLR 23 (HRC 2006), para 6.4.

<sup>26</sup> See *Zimbabwe Lawyers for Human Rights and One Another v. Zimbabwe* Communication 293/2004 (2008) AHRLR 120 (ACHPR 2008) para 44.

remedies following the formalities required by law, that these remedies were sought from the competent authorities, and that the necessary efforts within the meaning of the condition of the exhaustion of local remedies were made. As such, the remedies were effectively sought and it was incumbent upon the Respondent State to ensure access to the remedies, an obligation which the Respondent State failed to discharge. Such failure rendered the remedies unavailable given that they were inaccessible. Moreover, the failure to act by the authorities of the Respondent State made remedies to be unduly prolonged, which resulted in their ineffectiveness. Having concluded on the unavailability and ineffectiveness of local remedies, the Commission is of the view that it is no longer necessary to consider if local remedies were sufficient.

### **Decision of the Commission on Admissibility**

88. For the above reasons, the African Commission on Human and Peoples' Rights declares the Communication admissible in accordance with Article 56 of the African Charter.

### **Consideration of the Merits**

#### **Complainant's Submissions on the Merits**

#### **Alleged violation of Article 14**

89. In her merits submissions, the Complainant presents arguments to prove that she has property right over the contested property, that she met the national legal requirements for buying real estate, that the State failed in its obligations and that as a result of its failure her right to property under Article 14 of the African Charter was violated. In the alternative, the Complainant claims a violation of the right to adequate housing by invoking the provisions of Articles 16 and 18 of the African Charter.

90. In proving that she has property right, the Complainant submits that it is only the land certificate which can be considered as the indisputable proof of the right of ownership. In this regard, she submits that the duly obtained land certificate no. 38826 issued on 6 August 2007 by the Respondent State is an incontestable proof of ownership. According to the Complainant, the State was the original owner of the land in question, a part of which it retroceded to her vendor under another land certificate no. 38602. The Complainant submits that the land certificate issued by the Respondent State gives her unassailable, inviolable and final right of ownership over the land and that its

registration in the Land Register makes this right opposable to third parties, including the State.

91. Regarding the national procedures for buying real estate, the Complainant describes the successive stages involved in the national laws laying down the conditions for obtaining land certificates. She submits that she successively contacted a notary, the Land Registrar and the Divisional Head of Service of Land and Surveys who are all authorities of the Respondent State before whom she produced all the required information and documents. The Complainant submits that having met the legal requirements before the authorities recognised by the law to cross-check and double-check the authenticity of the procedure for obtaining land certificates, and the said authorities having found that the land was not subject to any opposition, the land certificate constitutes an authentic document that is opposable to both the State and to third parties. The Complainant further submits that she presumed to be in possession of an unquestionable land certificate since it was obtained in strict conformity with the legal requirements.
92. The Complainant further avers that the alleged violations were committed as a result of the Respondent State's failure in its obligations to respect, protect, promote and enforce her right to property. She argues that the State failed in its obligation to respect the said right as a result of the intervention of its employees who prevented the enjoyment of the property and dispossessed her of her property, without any grounds of public use or legal grounds. Regarding the violation of the obligation to protect, the Complainant submits that it is as a result of the fact that the State did not prevent third parties and its own employees from evicting her from the land and destroying her property and installations. The Complainant argues that since the State has authority over land and having issued an authentic and inviolable land certificate, it had the obligation to protect the conferred right to property. She contends that having failed to ensure such protection, the State also failed to conduct an investigation towards punishing the perpetrators whereas she had brought the matter to the attention of the competent authorities.
93. Regarding the obligation to promote, the Complainant states that this obligation was not met as a result of the Respondent State's incapability to secure her right. Regarding the enforcement of her right to property, she maintains that even though the State has a law governing the issuance of land certificates, it has however failed to comply with Article 1 of the African Charter which imposes an obligation of result and not of means.
94. The Complainant submits that the State has not only violated her ownership right in terms of property but also other related rights and privileges,

including in particular the right to use, sell, bequeath, mortgage and develop the land. The Complainant further submits that the violation has lasted for six years during which, despite having been duly informed of the situation, the State has not done anything to restore her rights and punish the persons responsible.

95. While acknowledging that any use in the interest of public need could justify what she considers as a de facto expropriation, the Complainant submits that the use in the public interest of such an expropriation has not been proven and that as such, there was a violation.

### **Alleged violation of the right to adequate housing, a combined reading of Articles 14, 16 and 18**

96. In the alternative, the Complainant claims a violation of the right to adequate housing by invoking the provisions of Articles 14, 16 and 18 of the African Charter. In support of this claim, the Complainant argues that by allowing the destruction of the hut which was meant to provide shelter for her and her family, the Respondent State violated their right to family life. She further submits that in general, the right to shelter goes beyond the right to have a roof over one's head to include the right to be left alone and to live in peace, whether under a roof or not. The Complainant contends that as a result of the repeated trespassing on the land, she was prevented from enjoying a peaceful family life.

### **Respondent State's Submissions on the Merits**

#### **Alleged violation of Article 14**

97. The Respondent State submits that the case brought by the Complainant before the Commission is about a dispute between individuals and to which the State is not a party. In support of this claim, the Respondent State argues that the inviolable nature of land certificates alleged by the Complainant is not absolute, since the relevant laws provide for situations where land registration can be questioned. Among other exceptions, the Respondent State cites cases of fraudulent land registration and the withdrawal of land certificates by the Minister of Land Tenure for administrative error or fraud by the land certificate holder.
98. The Respondent State submits that in order to obtain his own land certificate, the Complainant's vendor resorted to fraud which is penalized on several accounts by the judicial and administrative authorities. The Respondent State

contends that the court issued Ordinance No. 71/C withdrawing the Ordinance granting the vendor's land certificate, and that the Minister of Land Tenure annulled the said land certificate in accordance with the Decree to establish the conditions for obtaining land certificates in Cameroon. The Respondent State submits that the irregularities in the procedure through which the vendor's land certificate was obtained had consequences on the Complainant's land certificate which lost its opposability to third parties under the same law.

99. The Respondent State submits that protection, as raised by the Complainant, indeed existed, not through remedies relating to the property but rather through a personal action for damages against the person responsible for fraud, a remedy which the Complainant failed to pursue. The Respondent State maintains that the protection of government authorities was extended to the true owner of the plot of land who brought the matter before the competent courts. Reiterating its role as a third party in this dispute, the Respondent State maintains that it would have met its obligation to protect if the Complainant had brought a case against her vendor for failing to honour the sales contract.

#### **Alleged violation of the right to adequate housing, a combined reading of Articles 14, 16 and 18**

100. In refuting the argument on the violation of the right to adequate housing, the Respondent State submits that the Complainant's claim is baseless given that the disputed land already belonged to someone else. The Respondent State maintains that the Complainant was expelled in accordance with the relevant legal provisions which also provide that any development project shall automatically belong to the owner without any compensation to be paid to the occupant. The Respondent State concludes that it has not violated any of the provisions of the African Charter given that it is a dispute between individuals.

#### **Complainant's rebuttal**

101. In response to the argument that her land certificate is illegal as a result of the fraud involved in her vendor's land certificate, the Complainant submits that her good faith throughout the procedure has given her apparent legality. She maintains that the negligence shown by the competent authorities cannot be blamed on her and should fall under the full responsibility of the Respondent State. She concludes that in any case, the subsequent disputes

cannot undermine her right established in the past and through a procedure that was validated by the Respondent State itself.

102. The Complainant submits that the Respondent State cannot claim the failure to seek remedies to justify its failure to meet its obligation to protect. She contends that despite the several steps she took to obtain the protection of the State, the latter did not take any measure and was incapable of detecting the numerous cases of error, fraud and irregularities involved in the procedure for issuing the land certificate. The Complainant points out that under Cameroon criminal law the State should have taken action, simply on the basis of information provided to the State Counsel, against third parties and government employees.

103. Regarding the procedure for issuing the land certificate, the Complainant maintains that the State should have annulled the land certificate no. 25641 used by Mr MBAGOFA to claim ownership over the entire land from which was extracted the plot of land allocated to her vendor by the authorities of the Respondent State. In this regard, the Complainant presents correspondences and a report dated November 2008 and January 2009, documents recommending the annulment of the three land certificates mentioned above. The Complainant submits that it is important to find out why the Respondent State failed to discuss these documents.

### **Analysis of the Commission on the Merits**

#### **Alleged violation of Article 14**

104. Article 14 of the African Charter stipulates that: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws". Using a literal interpretation, the Commission notes that under the said provision the African Charter stipulates a right that is guaranteed but also limited by the interest of public need and general interest, limitations that have to be determined by the relevant laws.

105. After considering the arguments put forward by the parties, it appears to the Commission that in this case, the limitations provided for under Article 14 of the African Charter do not apply; the reason being that in response to the violations alleged by the Complainant the Respondent State does not invoke neither general interest nor public need. In order to determine if the right guaranteed under Article 14 has been violated, the Commission will consider

if the right to property alleged by the Complainant was guaranteed as stipulated in the African Charter. Before conducting such an assessment, it is important to verify if the subject of the dispute actually constitutes property within the meaning of the African Charter and if the Complainant meets the necessary legal requirements to be entitled to the right to property.

106. In its jurisprudence on the right to property, the Commission has not defined property and all that it entails under Article 14 of the African Charter. However, the Commission notes that property is generally understood as the right to use, enjoy and dispose of something in an exclusive and absolute manner subject only to the limitations laid down by law. That said, property also refers to the property on which such a right is based.<sup>27</sup> The property which is the subject of dispute before the Commission is a plot of land. As the Commission decided in the case of *Malawi African Association and Others v. Mauritania*, the Commission notes that a plot of land and any building thereon constitute property within the meaning of Article 14 of the African Charter.<sup>28</sup> In this case, the plot of land and the building on it thus constitute property. Before determining if there was a violation of ownership, it is important to establish the Complainant's right to property over the property in question.
107. The issue to be resolved at this stage is that of the legal guarantee of the right to property. In other words, the Commission has to determine if the Complainant meets the requirements and can prove that she is legally entitled to the right she invokes. In this regard, the Commission notes that the land certificate is the legal guarantee of the right to property. In terms of land in general, property ownership is guaranteed by a document called "land certificate". This position is in line with national and international laws and jurisprudence.
108. Regarding national laws, the Commission notes that Article 1 of *Decree No. 76/165 of 27 April 1976 to establish the conditions for obtaining land certificates, amended and supplemented by Decree No. 2005/481 of 16 December 2005* in Cameroon stipulates that: "The land certificate shall be the official certificate of real property rights." This view is shared by the European Court of Human Rights which states in the case of *Rimer and Others v. Turkey* that "the title deed is considered as the indisputable proof of the right to property".<sup>29</sup> In the *Endorois* case, the Commission recognised legal title as the guarantee for an

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<sup>27</sup> See S. Braudo *Dictionnaire privé du droit privé* <http://www.dictionnaire-juridique.com/definition/propriete.php>; Juritravail 'Propriété' <http://www.juritravail.com/lexique/Propriete.html> (consulted on 20 March 2015).

<sup>28</sup> *Malawi African Association and Others v. Mauritania* (2000) AHRLR 149 (ACHPR 2000) para 128.

<sup>29</sup> See *Rimer and Others v. Turkey* Application No. 18257/04 ECtHR (2009) para 36.



effective protection of the right to property protected under Article 14 of the African Charter.<sup>30</sup>

109. In this case, whereas the Complainant holds a land certificate which she deems valid, the Respondent State considers that the said land certificate lost its opposability to third parties as a result of the annulment of her vendor's land certificate. In order to resolve this aspect of the dispute, the Commission will start by verifying if the Complainant holds a valid land certificate in accordance with the relevant laws before considering the cogency of the loss of opposability as argued by the Respondent State.
110. The Commission will begin by verifying if the Complainant followed the established procedure for obtaining a land certificate in Cameroon and, as appropriate, what the legal consequences are. In this regard, the Commission notes that under the law cited above, applications to convert various deeds into land certificates shall be submitted to the Provincial Head of Service of Land Tenure of the locality where the property is situated and have to meet certain format requirements. The same law provides that the notary who draws up the sales deed shall submit to the Land Registrar of the locality where the property is situated a file containing the required documents, including the situation plan of the property duly signed by the Divisional Head of Service of Land and Surveys.
111. The Commission notes in particular that Article 30 of the Decree cited above stipulates that: "Before converting deeds into land certificates, the Land Registrar shall verify the documents submitted and *ensure the identity and capacity of the parties and the availability of the property*".<sup>31</sup> It emerges that the sworn authorities of the Respondent State cannot issue a land certificate on a property without verifying if the procedure is in compliance with the law. Moreover, and in particular, the said authorities are obliged to refrain from issuing a land certificate unless they have verified the availability of the property, that there is no dispute and that it indeed belongs to the vendor.
112. In the present case, the Commission notes that the Respondent State does not at any given time dispute the legality of the procedure followed by the Complainant to buy the property or obtain a land certificate. In fact, the Complainant contacted the competent authorities who made the necessary verifications and duly issued a land certificate. As such, the land certificate was opposable to third parties and the State. Regarding the resulting legal implications, the land certificate obtained by the Complainant became

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<sup>30</sup> See *Centre for Minority Rights Development and Minority Rights Group v. Kenya* (2009) AHRLR 75 (ACHPR 2009) para 205.

<sup>31</sup> Highlighted by the Commission.

unassailable, inviolable and final. However, the Complainant's right to property has to be free from any of the exceptions to inviolability.

113. The exception raised by the Respondent State relates to the loss of opposability to third parties as a result of the annulment of the vendor's land certificate. The Respondent State raises the issue of fraud by the holder of the land certificate, the vendor, which under the relevant laws makes the land certificate liable to withdrawal by the Minister of Land Tenure. The Respondent State contends that the fraud was penalised by the court which withdrew the Ordinance granting the vendor's land certificate, and following which the competent Minister withdrew the said land certificate. The Respondent State maintains that as a result, the Complainant should have filed a fraud suit for damages against the vendor who committed fraud.
114. Regarding this argument, the Commission recalls its decision in the case of *SERAC and Another v. Nigeria* to state that the nature of the obligations of States under the African Charter is not only to respect rights but also to guarantee their protection, fulfilment and promotion.<sup>32</sup> The obligation to respect requires States to refrain from participating directly in committing violations, while the obligation to protect requires intervening to prevent these rights from being violated. Regarding the obligations to fulfil and to promote, they require implementing the necessary measures for the effective enjoyment of the guarantees provided for by the law.
115. In this case, the Commission notes that since the land certificate issued to the Complainant was fully valid under the relevant laws, no error involved in the procedure for issuing the document can encumber the right of the Complainant who scrupulously complied with the legal requirements under the supervision of sworn government authorities. It would be unjust for buyers of good faith to be left in total legal insecurity, at the mercy of vendors who commit fraud and dishonest competent authorities who allowed the fraud that is subsequently alleged. In this case, the fraud committed by the vendor which the Respondent State raises falls under the full responsibility of the authorities who issued the land certificate that was later annulled, and thus entails the responsibility of the Respondent State.
116. The Commission notes that instead of fraud on the part of the beneficiary, it should be a question of "error on the part of the Administration as a result of an irregularity occasioned during the procedure for obtaining the land certificate and with regard to authentic documents". The relevant laws of the Respondent State provide for such administrative error as an exception to the

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<sup>32</sup> See *SERAC and Another v. Nigeria* Communication 155/96 (2001) AHRLR 60 (ACHPR 2001) para 44.

absolutely opposable nature of an obtained land certificate. In any case, the error on the part of the Administration cannot be opposable to the Complainant who is a buyer of good faith. As a result, since the Administration is at fault, it had to shoulder the responsibility for the damage by redressing the damage suffered by the presumed true owner of the property. Otherwise, it would appear that the buyer of good faith was penalised for scrupulously complying with the laws and obtaining a land certificate validated with the seal of the State.

117. From the foregoing, it should follow that by allowing through its fault the competent court and Minister to take actions that undermine the tangible land certificate held by the Complainant, the Respondent State violated its obligation to respect the right to property guaranteed under Article 14 of the African Charter.
118. Supposing that the Complainant should have filed a fraud suit for damages against the vendor who committed fraud, the Commission is of the view that the Respondent State should first of all have met its obligation to verify the authenticity of the vendor's land certificate which supposedly gave rise to the validity of the Complainant's land certificate. It appears that despite the fact that the Complainant complied with the established procedure, government employees failed to detect the vendor's alleged fraud and as a result failed to protect the Complainant. The obligation to protect was not also met afterwards given that despite the several complaints filed by the Complainant, the Respondent State did not take any action to initiate legal proceedings against its employees or the vendor who committed fraud. It should be concluded that the obligation to protect was violated.
119. Lastly, the Commission is of the view that the obligations to fulfil and to promote the right to property required the Respondent State to implement the relevant laws and take the necessary administrative and other measures to facilitate the practical enjoyment of the right in question. In this case, even if there is a relevant law governing the conditions for obtaining land certificates, the legal insecurity involved in the practical issuance of land certificates and the constant possibility to question a duly obtained land certificate undermine the fulfilment and promotion of the right to property. In this case, despite the fact that she scrupulously complied with the legal requirements, the Complainant, for close to seven years, was prevented from enjoying her property which was nevertheless duly bought and protected by a land certificate bearing the seal of the State. Under such circumstances, it should be noted that the Respondent State did not meet its obligations to fulfil and promote the right to property.

## **Alleged violation of the right to adequate housing, a combined reading of Articles 14, 16 and 18**

120. At this stage, the Commission has to determine if there is a right to adequate housing under Article 14 of the African Charter read together with Articles 16 and 18, in which case it will be important to determine if the facts of the case constitute a violation of the right to adequate housing. Article 16 of the African Charter stipulates that: "Every individual shall have the right to enjoy the best attainable state of physical and mental health." Article 18 stipulates that: "The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical and mental well-being".
121. Regarding the existence of a right to adequate housing, the Commission notes that the right to property under Article 14 of the African Charter has to be understood at least using the three broad, inclusive and interdependent approaches. With the broad approach, the right to property has to entail the traditional possibility to include a wide range of subsequent rights such as *usus*, *fructus* and *abusus*. Moreover, and in particular, property ownership is typical in that its ultimate objective is to meet the need to provide housing, and housing is one of the most fundamental human rights.<sup>33</sup>
122. With the inclusive approach, the Commission is of the view that the right to property is governed by the famous saying that "the accessory follows the principal". In this regard, since the ownership of land carries that of what is above and below, the projects and other activities undertaken by the owner to develop the land cannot reasonably be excluded from an objective and holistic definition of property. Regarding the interdependent approach to the right to property, it is defined as the relationship of this right with other rights of the African Charter. As such, it will be difficult for the individual who owns this right to enjoy other rights such as the rights to health and to education in the absence of adequate housing. In all likelihood, an individual without shelter will not be able to enjoy the best attainable state of physical and mental health guaranteed by the African Charter. In any case, since housing is one of the fundamental human rights,<sup>34</sup> it contributes to the realisation of the right to live in one's own house.
123. In its jurisprudence on the right to property, the Commission recognises the right to housing as a right deriving from a combined reading with the right to the best attainable state of physical and mental health guaranteed

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<sup>33</sup> See Universal Declaration of Human Rights, Article 25(1); International Covenant on Economic, Social and Cultural Rights, Article 11(1).

<sup>34</sup> See UDHR, ICESCR, *op. cit.*

under Article 16 of the African Charter. Particularly in the case of *SERAC v. Nigeria*, the Commission concluded that “although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions of Articles 14, 16 and 18(1) of the African Charter makes it an implicit right”.<sup>35</sup> The interdependent approach to the right to property mentioned above is in line with the spirit of this jurisprudence. Indeed, the right to property cannot be violated without violating the corollary rights, including its adjoining and dependent rights in particular such as the right to housing, physical and mental health, as well as the well-being of the family.

124. In this case, the Commission notes that the Complainant, her husband and their children undertook to buy the land in question in order to build a house. In doing so, they took a bank loan and the building of a hut on the land was only a step towards achieving their ultimate objective of developing the land. By destroying or allowing the destruction of the hut, the Respondent State and its employees destroyed or at least frustrated the project to realise the right to adequate housing. In the circumstances of the case, the Commission is of the view that such acts constitute a violation of both the provisions of Articles 16 and 18 of the African Charter and the right to adequate housing arising therefrom following a combined interpretation.

### **Alleged violation of Article 1**

125. The Complainant further claims that the Respondent State violated Article 1 of the African Charter since it failed to prevent third parties from stopping her from realising her right to property and her right to adequate housing. In this regard, the Commission recalls its jurisprudence and notes that in principle, a violation of any provision of the African Charter automatically means a violation of Article 1”.<sup>36</sup>

126. However, it is important to understand the obligation under Article 1 of the African Charter which provides for both a legislative or administrative undertaking of a legal nature as well as a “commitment” to give effect to the rights enshrined in the African Charter. It is obvious that there are two obligations under Article 1 of the African Charter: an obligation of means and of result. In this case, the Commission notes that the Respondent State adopted a number of laws and regulatory standards to organise and govern real estate transactions and in particular the obtaining of land certificates.

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<sup>35</sup> *SERAC v. Nigeria* op. cit. para 60.

<sup>36</sup> See, among others, *Jawara v. The Gambia* Communication 147/95 and 149/96 (2000) AHRLR 107 (ACHPR 2000) para 46; *Association des Victimes des Violences Post-Electorales and Interights v. Cameroon* Communication 272/03 (2009) AHRLR 47 (ACHPR 2009) para 105-115.

127. On the other hand, and despite these legal measures, the Respondent State argues the fraud within its administrative system to contest the land certificate obtained by the Complainant in full compliance with the regulations in force. In any case, with the full knowledge of the authorities of the Respondent State and, in part, through their direct intervention, the Complainant was unable to achieve the ultimate result of enjoying her rights. Under such circumstances, the Commission notes that the State failed in its obligation of result under Article 1 of the African Charter. As such, the Commission concludes that Article 1 of the African Charter has been violated.

## **Prayers of the Complainant**

### **Request to find a violation**

128. In the light of the foregoing, the Commission concludes that there is a violation of Articles 1, 14, 16 and 18 of the African Charter and, by implication, the right to adequate housing.

### **Reparation**

129. Regarding reparation, the Complainant requests for the restoration of the plot of land or a financial compensation as a result of the loss of her right to property, the land and related rights and corresponding to the market value of the property in question. In addition, she requests for the refund of the expenses incurred in buying and developing the property, as well as compensation proportionate to the gravity of the violations of the rights guaranteed by the African Charter.

130. Regarding the request for reparation, the Commission notes that in accordance with its jurisprudence, a violation of the rights protected under the African Charter leads to reparation, including financial compensation.<sup>37</sup> Since the Commission has concluded that there was a violation of the abovementioned provisions of the African Charter, it will then consider the requests for reparation.

131. Regarding the request for restoration or compensation, the Commission notes that restoration remains the ideal since reparation addresses the need of *restitutio in integrum* which requires restoring the victim to the original situation before the violation. However, where restoration is impossible or

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<sup>37</sup> See *Good v. Botswana* op. cit. para 245; *Antoine Bissangou v. Congo* Communication 253/02 (2006) AHRLR 80 (ACHPR 2006); *Embga Mekongo Louis v. Cameroon* Communication 59/91 (2000) AHRLR 60 (ACHPR 1995) para 2.

unsuitable, the related obligation results in compensation. In any case, the reparation has to be fair, adequate, effective, sufficient, appropriate, satisfactory to the victim and proportionate to the damage suffered.<sup>38</sup>

132. That said, restoration does not necessarily exclude an additional compensation. In order to restore the victim to the original situation, there is the need, including when dealing with property and cash, to return the property or return its value in the form of cash payment and also to compensate for the damage suffered as a result of the violation.<sup>39</sup> As a result, fair reparation must not only include the restoration of the property, another property of a similar nature and of equal value or its equivalent in cash.
133. Moreover, the consequences of the violation have to be addressed to the extent possible, in particular through the payment of damages.<sup>40</sup> The European Court of Human Rights recognises the relevance of an additional compensation to the primary reparation. Its relevant jurisprudence includes the case of *Trévalec v. Belgium* in which the Court decided to grant compensation for non-material damage in addition to the primary reparation obtained by the petitioner under an initial decision. The Court thus held that the primary reparation only partially addressed the damage suffered.<sup>41</sup>
134. In this case, the Commission notes that on the basis of the facts, with which the Respondent State fully agrees, the plot of land bought by the Complainant was taken from her by the judicial, political and administrative authorities and given to someone else whom they considered to be the true owner. The Commission has already decided on the opposability, in any case to the Respondent State, of the land certificate obtained by the Complainant. As a result, it should be further concluded that there was expropriation without grounds of public interest in favour of another individual. In accordance with established international jurisprudence adopted by the Commission, this is clearly a case of de facto expropriation in disguise; the reason being that the Respondent State had ownership over the land including the plot of land and contributed to the expropriation of the Complainant not in the general interest or in its own interest but in the

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<sup>38</sup> See *Loayza Tamayo v. Peru* (1998), *Velasquez* (1989), *Aloboetoe v. Suriname* (1993) of the Inter-American Court of Human Rights; *Djot Bayi v. Nigeria* (2009) of the ECOWAS Court of Justice. Also see, in general, REDRESS *Reaching for justice: The right to reparation in the African Human Rights System* (2013).

<sup>39</sup> See S. Francq 'L'influence du droit européen sur la réparation du dommage' Cour de cassation [https://www.courdecassation.fr/venements\\_23/colloques\\_activites\\_formation\\_4/2005\\_2033/europeen\\_reparation\\_8066.html](https://www.courdecassation.fr/venements_23/colloques_activites_formation_4/2005_2033/europeen_reparation_8066.html) (consulted on 4 April 2015)

<sup>40</sup> See Ch Quézel-Ambrunaz 'Dommages et intérêts octroyés par la Cour européenne des droits de l'homme' *Revue des droits et libertés fondamentaux* 2014, Chronique no 5.

<sup>41</sup> See *Trévalec v. Belgium* Application No. 30812/07, Judgement of 25 June 2013 (ECtHR).

interest of another individual.<sup>42</sup> Moreover, as the Commission decided in the case of *Huris-Laws v. Nigeria*, in the absence of adequate compensation as it is in this case, there is a flagrant violation of the right to property protected under Article 14 of the African Charter.<sup>43</sup>

135. It emerges from the foregoing that the property over which the Complainant obtained an inalienable right to property is no longer in her possession. Under such circumstances, and since ownership of the same property has been transferred to someone else by the State, it should be noted that compensation through another plot of land of equal value is capable of compensating for the primary damage. Failing that, the most appropriate reparation would be the payment of financial compensation corresponding to the value of the property.

136. As concerns determining the value of the plot of land in question, the Commission notes that the assessment of reparation for the violation of the right to property on the basis of the market or capital value of the property is firmly established by international human rights jurisprudence.<sup>44</sup> In practice, the assessment of real estate in common law considers market value to be the value that one is likely to get from a property in the event it is resold under the current market conditions.<sup>45</sup> On this basis, it should be concluded in the present case that the assessment has to be current and as such has to be made on the basis of the value of the property at the date of the decision granting reparation, especially given that the violation has not stopped.

137. Moreover, the assessment of the damages relating to the related damages suffered by the Complainant cannot be separated from that of the reparation of the primary damage. The parties do not dispute the fact that the Complainant lost both the material property and all the related rights, in particular *usus*, *abusus* and *fructus*. Also, installations made and materials kept on the plot of land were destroyed which definitely led to a financial loss.

138. Through the submissions to support her request for reparation, the Complainant requests for the following payments:

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<sup>42</sup> See *Sporrong and Lönnroth v. Sweden*, Judgement of 23 September 1982 (ECtHR).

<sup>43</sup> See *Huris-Laws v. Nigeria* Communication 225/98 (2000) AHRLR 273 (ACHPR 2000) para 53.

<sup>44</sup> See *Case Concerning the Factory at Chorzow*, Judgement of 13 September 1928, International Court of Justice; *Guiso-Gallisay v. Italy*, Application No. 58858/00 (ECtHR), Judgement of 22 December 2009; *Salvador Chiriboga v. Ecuador*, Judgement of 6 May 2008, Inter-American Court of Human Rights.

<sup>45</sup> See Dictionnaire juridique du droit français <http://dictionnaire-juridique.jurimodel.com/Valeur%20v%E9nale.html> (consulted on 5 April 2015).



- a) an amount of 152,076,556 (one hundred and fifty-two million seventy-six thousand five hundred and fifty-six) CFA francs corresponding to the appreciated market value of the property;
  - b) an amount of 9,000,000 (nine million) CFA francs for material damages, to cover architect and builder fees; the destruction of the hut, the survey beacons, the perimeter wall and materials; various expenses as a result of loss of income, travel costs and other expenses;
  - c) a financial compensation of 15,391,460 (fifteen million three hundred and ninety-one thousand four hundred and sixty) CFA francs as a result of the deprivation of enjoyment and use of property; and
  - d) a compensation for non-material damages assessed at 5,000,000 (five million) CFA francs for the feeling of uncertainty and frustration as a result of the fact that the authorities prevented the enjoyment of the right to property for a long time.
139. In the light of the findings and conclusions on reparation and its assessment, the Commission notes that the sequence described by the Complainant is in conformity with the relevant international law and practice. As such, the Commission will then consider each of the requests in detail.

***Primary damage: sales value of the plot of land***

140. Regarding the primary damage, the compensation of 152,076,556 CFA francs requested by the Complainant for the sales value of the plot of land is calculated on the basis of the total acquisition cost of 50,692,185 CFA francs multiplied by a coefficient of 2.5% to which is added the cost of buying a similar or an equivalent property at the market value. Regarding the total cost, it is obtained by adding the purchase price, the land transfer fees paid to the State, the fees and disbursements paid to the notary, the cost of the bank loan, as well as the fees and commissions paid to the lawyer and to third party intermediaries.
141. The Commission is of the view that with this breakdown, the assessment of the total cost of the plot of land is based on objective criteria of which the calculation coefficients and tangible proof were provided by the Complainant. It should be noted that a primary damage of 50,692,185 CFA francs has to be placed on the Respondent State.

142. However, the assessment of the sales value of the plot of land is a bit less obvious to corroborate; the reason being that the Complainant does not provide any official source or basis for determining the coefficient of 2.5% applied in this case. The Commission notes in this regard that the relevant practice requires that the Complainant should have conducted an expert assessment, the report of which should indicate the reliability and validity of the coefficient applied. In the absence of such evidence and in order to expedite the procedure, the Commission is of the view that the issue has to be referred to the competent administrative and judicial authorities of the Respondent State for them to determine the coefficient to be applied to the cost price mentioned above in order to arrive at the sales value of the plot of land. The assessment shall be made on the basis of the national or international standards applicable in the territory of the Respondent State.
143. In any event, and since the plot of land has been declared as reserved for the housing of the Complainant's family, the sales value shall in no case be lower than that of a plot of land of equal size, situated in an area of equal standing and offering the same facilities. Such an assessment will only be fair given that it is an empty land, and the development costs have been included when calculating the material damage to be considered below.
144. Without prejudice to such a conclusion, the Commission is of the view that the importance of the right to property and the right to adequate housing in the context of Africa requires that the fate of a Complainant who is a victim of de facto expropriation should not depend exclusively on the vicissitudes relating to the internal procedures of the Respondent State responsible for the established violation. Under such circumstances, it is necessary to provide for a procedural guarantee which protects the Complainant from any uncertainty regarding the enjoyment of prompt and effective reparation.
145. In this regard, the Commission is of the view that on the basis of the customary nature of the right to property whose guarantee by the African Charter has been firmly established, the implementation of a decision issued pursuant to the African Charter is mandatory.<sup>46</sup> The Commission's position on this issue is stated in its *Resolution 97* on the importance of the implementation of its recommendations under which a Respondent State is required to implement within a period of six months. This Resolution derives its legal basis from Article 45(2) of the African Charter, and its validity has been endorsed by African Union policy organs, in particular through

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<sup>46</sup> See F. Viljoen *International Human Rights Law in Africa* (2012) pp. 355-356; K. Bonneau 'Le droit à réparation des victimes de violations des droits de l'homme : le rôle pionnier de la Cour interaméricaine des droits de l'homme' (2006) 6 *Droits fondamentaux*.

*Executive Council Decision 344(X)*.<sup>47</sup> In its subsequent established jurisprudence, the Commission has reaffirmed this period for the implementation of its recommendations in order to guarantee the right to effective reparation.<sup>48</sup>

146. In this case, the Commission is of the view that in the event where the assessment of the sales value for the purpose of compensation is not concluded within six months following the present decision, it will be considered following a reasoned submission from the Complainant. If the need arises, the procedural rights of the Respondent State will be guaranteed.

### *Subsequent damages*

147. Considering the evidence submitted and in light of the foregoing, material damage in the amount of 9,000,000 CFA francs is granted and is to be paid insofar as the Complainant presents the necessary supporting evidence for the fees claimed from the Respondent State following the notification of this decision. The financial compensation of 15,391,460 CFA francs as a result of the deprivation of enjoyment and use of the property has been sufficiently proven by the Complainant, and assessed on the basis of the regulations in force in the competent regional financial institutions, in particular the Bank of Central African States. As such, the Commission accedes to this request.

148. Regarding non-material damage, the Commission notes that following the expulsion of the Complainant's husband, his family was deprived of the right to enjoy a property which was nevertheless bought in full compliance with the regulations of the Respondent State. This situation inevitably led to frustration which turned into uncertainty when the several attempts to seek the relevant remedies were frustrated by the authorities of the Respondent State as the Commission concluded at the admissibility stage.

149. The Complainant's uncertainty and frustration have lasted for close to seven years, and the violation has continued as a result of the Respondent State's refusal to take the necessary measures to restore the Complainant's rights. Considering the nature of the right in question, the project undertaken by the Complainant and her family and the circumstances of the case, the Commission is of the view that 5,000,000 CFA francs is not an exorbitant amount, and as such accedes to this request.

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<sup>47</sup> See Executive Council Decision on the 21<sup>st</sup> Activity Report of the African Commission on Human and Peoples' Rights - Doc EX.CL/322(X) AU Doc EX.CL/Dec.344(X) Tenth Ordinary Session, 25-26 January 2007.

<sup>48</sup> See, among others, *Zimbabwe Lawyers for Human Rights and Another (Meldrum) v. Zimbabwe* (2009) AHRLR 268 (ACHPR 2009); *Lawyers for Human Rights v. Swaziland* (2005) AHRLR 66 (ACHPR 2005).

150. The Commission notes that under Rule 112(2) of its Rules of Procedure, in the event of a decision against a State Party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days of being informed of the decision, of all measures taken or being taken by the State Party to implement the decision of the Commission.

### **Decision of the Commission on the Merits**

#### **For the above reasons, the Commission:**

151. Finds that the Republic of Cameroon has violated the provisions of Articles 1, 14, 16 and 18 of the African Charter.

152. Further finds, and by implication, that the Republic of Cameroon has violated the right to adequate housing.

153. As such:

- i. Requests the Republic of Cameroon to provide the Complainant with a plot of land of equal value and nature in accordance with the description made and within the period prescribed by the Commission above.
- ii. Requests the Republic of Cameroon, failing a compensation in kind, to make the following payments to the Complainant:
  - an amount of 50,692,185 CFA francs corresponding to the total cost price for buying the plot of land;
  - an additional amount to be determined on the basis of the criteria stated by the Commission above and corresponding to the appreciated sales value of the plot of land on the date of this decision.

- iii. Further requests, in addition, the Republic of Cameroon to pay the Complainant damages assessed as follows:
- compensation for material damage, the amount of which shall be determined by mutual agreement between the parties under the conditions stated in this decision;
  - an amount of 15,391,460 CFA francs as financial compensation for the deprivation of enjoyment of the rights related to the right to property;
  - an amount of 5,000,000 CFA francs for non-material damages suffered as a result of the frustration and uncertainty experienced since the time the land was expropriated.
- iv. Further requests the Republic of Cameroon to report in writing, within one hundred and eighty (180) days of notification of this decision, on the measures taken to implement these recommendations.

**Adopted on 6 May 2015 during the 56<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held from 21 April to 7 May 2015 in Banjul, The Gambia**