

**MEMORANDUM OF THE BAKWERI PEOPLE ON THE PRESIDENTIAL
DECREE TO PRIVATISE OR SELL THE CAMEROON DEVELOPMENT
CORPORATION.**

Preamble

One's history is part of his present. The Cameroon Development Corporation ("CDC") is the history of Cameroon and of the Bakweri people, in particular. For them, if for no one else, this public institution remains an integral and vital part of their present, a poignant reminder of their long and arduous struggle to reclaim lands which were forcibly expropriated from them during a period of ruthless German imperial occupation (circa 1896-1914); of petitions, remonstrations and representations here and abroad.¹[1] This then is the context within which one can begin to understand and appreciate the shock waves that swept through every nook and cranny of Bakweri society following the recent announcement in the French language news of Government's intention to privatise or sell the CDC.

There comes a time when even the most compliant people must rise up in righteous indignation and declare "ENOUGH IS ENOUGH". Our silence in the face of persistent and systematic abuse and misuse of our patrimony by others has been mistaken for weakness, our generosity misconstrued as stupidity and our civility dismissed as docility. We, the signatories of this document, the accredited representatives of thousands of Bakweri, on whose rich and fertile soils the CDC has been operating for close to half a century, have been authorised to proclaim loudly and clearly that the dismantling of this core institution will have an adverse and disproportionate impact on the indigenes of Fako Division. Because we believe that this decision is wrong, it must be reversed, now. We reach this painful conclusion after sober reflection and exhaustive discussion among our people and only after they have convinced us that further silence over the continued assault on our individual

[1] See e.g., Petition of the Bakweri Land Claims Committee to the Trusteeship council, U.N.O. Doc. T/PET.4.3, Report of the Trusteeship Visiting Mission, 1949; Inglis Commission of Inquiry, Notice No. 90 West Cameroon Gazette No 13, 1st April 1967; the Endeley-Burnley-Mukete Memorandum on Land Tenure and Problems Resulting From Ruthless Alienation of Lands in Fako Division, Sept. 17, 1973.

and collective existence is no longer in our best interests, present and future. On their behalf, therefore, we shall attempt to present the Bakweri case for legal title over ancestral lands which since 1946 were taken over by the CDC on a tenancy for a period and to explain why the Bakweri now stand firm, resolute and united in their opposition to any attempt to dispossess them once again of these lands through legal maneuvers.

Privatisation in Context

In principle, the Bakweri have no quarrel with the idea of privatisation or sale of companies in which government enjoys majority control since we fully understand the logic behind such an exercise, i.e., the relocation of the management of inefficiently managed parastatals in more efficient hands. We recognise that Government, as the controlling shareholder in these companies, has an obligation to the majority shareholders and the Cameroonian taxpayer to ensure that their tax revenues are not wasted on failing parastatals. Should Government, in the discharge of its fiduciary obligations to these various constituencies, elect to dispose of its majority interests for fair consideration to private purchasers, in order to spare the ordinary Cameroonian the burden of subsidising these white elephants, we offer our full support.

While we believe that the medicine proposed to cure companies like SOTUC, Cameroon Airlines, SOCAPLM may be appropriate for their particular ailment, it is, however, most inappropriate for the CDC. Our strong opposition to the privatisation or sale of the CDC is two-fold. First, we remain unconvinced that as a disciplinary mechanism for correcting inefficiently managed companies, privatisation should be applied to a corporation, which by all objective indicators is efficiently managed. Moreover, even though the corporation has in the recent past gone through a period of severe economic strain, available evidence paint a portrait of an organisation on the rebound.

Privatisation or sale, as ordinarily understood, involves the transfer to new owners of all or substantially all of the property and assets of the target company;

airplanes, buildings, goodwill and so on. In the case of the CDC, a sale will result in its plantations and lands being taken over by private interests. The problem here is that the CDC does not own the lands on which its plantations occupy and cannot, therefore, transfer what it does not have. Herein lies our second objection to Government's announced privatisation policy as pertains to the CDC. The lands occupied by the corporation were forcibly expropriated by the Germans from their original owners, the Bakweri. With the end of German imperial rule, these former German Plantation Estates passed to the successor British colonial administration who held them as native [read: Bakweri] lands. The lands were subsequently leased to the newly-incorporated CDC in 1946 for a period of 60 years on terms which expressly provided for reversionary rights in the Administering Authority upon the expiration of the corporation's lease. That title to these lands never passed to the CDC and that the Administering Authority as well as the successor independent Cameroon Government was acting only as custodian, holding them in trust for present and future generations of Bakweri people, is so well known and memorialised in countless legal instruments and official documents²[2] that a detailed review is unnecessary. suffice to say that the Bakweris did not, could not and would not have transferred **395 square miles** (104, 000 hectares) of their most fertile parcels of land-- representing roughly two-thirds of their total land area³[3] -- to the CDC for nothing! Indeed, the CDC itself recognised that it had only temporary use and occupation of these lands and made provisions in its books for annual payment of ground rents. furthermore, the corporation willingly participated in exercises that resulted in the excising from the plantation areas it leased lands for use by land-squeezed indigenous inhabitants without as much asking for compensation.

²See e.g., Article 8 of the Trusteeship Agreement; sec. 4 of the ex-Enemy Lands (Cameroon) Ordinance, No. 38 of 1946; Ex-Enemy Lands (Likomba Estates) Ordinance, No. 22 of 1947; and sec. 3 of the Land and Native Rights Ordinance, cap. 96 of the 1958 edition of the Laws of Nigeria.

³See Annual Report of Cameroons Under United Kingdom Administration, 1956, p. 60, at para. 302.

It should be recalled that when the Bakweri dropped their long-standing land claims and gave their consent to the creation of the CDC, it was with the express understanding that while the lands would be developed for the common benefit of all English-speaking Cameroonians, the ground rents the corporation agreed to pay to Government would be used for the exclusive benefit of the Bakweri landowners. In its almost 50 years of operation the CDC has lived up to this mandate, developing the rich natural resources of Fako Division on a scale unprecedented in our nation's history. As we have already indicated, it is a matter of public record that the corporation set aside annually an amount it paid into the public treasury as ground rents though precious little ever reached the Bakweri!

Given its unique place in modern Cameroon history, the CDC cannot be, and has never been, equated with an ordinary business enterprise the likes of SOTUC, SOCAPALM, CAMAIR, etc. The CDC is no run-of-the-mill commercial operation but a public institution upon which was conferred an historical obligation to assume a leadership role, in partnership with Government, in the socio-economic development of our nation. In order not to compromise this mission, the statute setting up the CDC deliberately excluded private shareholders from equity-participation for fear that their single-minded pursuit of profits may push the corporation farther away from the broad social objectives it was by statute expected to fulfill. Thus, the attempt to twin SOTUC or CAMAIR and the CDC is misplaced and confuses their respective roles in our society. Indeed, to treat both as same is to invite ridicule or anger, as the case may be, from those who know what CDC has been to Cameroon's economic development. Clarity and good logic dictate that an ordinary profit-making enterprise like Cameroon Airlines must not be confused with a public institution like CDC whose presence is felt in all aspects of national life. It follows therefore that the criteria employed for rationalising the privatisation or sale of the assets of the typical commercial company do not apply *pari passu* to the CDC.

Direct Effects of the Dismantling of CDC on the Bakweri

The point bears repeating that in creating the CDC the colonial administration sought to strike a careful balance between two competing interests: on one hand, to protect the interests of the Bakweri in their lands while, on the other, ensuring that these lands can be properly and efficiently managed for the common good of all.⁴[4] It is clear to us that the proposed scheme to privatise the CDC conflicts with the original and enduring policy rationale for its establishment in the first place. Implementing this proposal would amount to a betrayal by Government of the undertakings it made to the community of nations at the time of independence. Moreover, allowing the CDC to be taken over by third parties would signal the abdication of the fiduciary duty Government owes to the Bakweri people in particular and all Cameroonians in general.

We note in passing that in the typical sale of assets of a business enterprise, its officers and directors have a fiduciary duty to take into account the best interests of the company, meaning its shareholders. And here, the calculation of 'best interests' is a simple arithmetic exercise as to whether the price offered for the company's stock exceeds its present market value. However, in the case of a public institution such as the CDC, the calculation of best interests goes beyond merely getting the best price for the corporation's stock. Government as the fiduciary, by virtue of its majority interests, has a clear duty to consider the effects of a sale-- short-term and long range, material as well as psychological-- on CDC employees, their families and the communities in which the corporation maintains a presence.

Above all, the interests of the Bakweri people without whose lands there would have been no CDC in the first place must forever remain paramount. These interests will surely be sacrificed by a sale which effectively transfers two-thirds of Bakweri land area to private non-native owners whose interests might not be in concert with ours. We have no illusions as to the likely consequences of the transfer of CDC to private ownership. If it goes through, it threatens to alter irrevocably

[4] See Cameroons Development Corporation Ordinance, No. 39 of 1946.

existing land holding arrangements and the pattern of natural resource exploitation in Fako Division. We face the very likely breakup of the large CDC plantations into small private plots under non-native control which may be operated under a different economic development logic. Deprived of, and denied access to, the ancestral lands, generations of Bakweri will never know or appreciate the meaning of land ownership. Given the cramped conditions under which Bakweris currently live-- where the CDC appropriated itself some 400 square miles the Bakweri, all 50,000 of them, are confined to less than 150 square miles of the land space-- a forced exodus of our members to other parts of Cameroon in search of more salubrious land for farming and housing is likely to follow in the wake of the sale or privatisation of the CDC. The likelihood that other compatriots may not be as charitable to these migrant Bakweri as we have been to immigrants who have settled in our communities is very real indeed. This, the risk of exporting the social tensions that have historically characterised settler-native relations in Fako Division cannot be ignored. Can the government in good conscience close its eyes to this imminent threat to public order and social tranquility?

International Implications

It is tempting to treat Government's announced intention to privatise or sell the CDC as a purely local affair but we believe that it has far-reaching implications that go well beyond our national borders. Progressive development and codification of international law has now reached the stage where collective or individual land ownership by indigenous minorities is recognised and protected as a fundamental human rights violation of which imposes on states a duty of reparation. Cameroon is a member of the United Nations [**admitted on Sept. 20, under charter Article 4**], a member of the Organisation of African Unity [**entered into force Sept. 13, 1963**], an aspiring member of the Commonwealth of Nations, and a signatory or party to all pertinent human rights instruments that address this question of minority land ownership rights. For instance the **1966 International Covenant on Economic Social and Cultural Rights**, to which Cameroon became a signatory on June 27, 1984 and which had earlier come into force on January 3, 1976, enjoins by its article

25 States parties from impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

In the same vein, Article 11 of the **1957 International Labour Organisation Convention ("ILO") (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries**, and Article 14 of the **1989 ILO Convention (No. 169) on Indigenous and Tribal Peoples in Independent Countries, revising the 1957 ILO Convention (No. 107)**, both recognise and protect the right of collective and individual ownership, possession and use, of an indigenous people, such as the Bakweri, of the lands or resources which their members have traditionally occupied or used and further provide for their right to compensation for lands expropriated by Government. [Article 15 ILO Convention (169)]. These international human rights instruments expressly bind governments to "respect the special importance for the cultures and spiritual values" of indigenous peoples "of their relationship with the lands and territories...which they occupy or otherwise use, and in particular the collective aspects of this relationship." [Article 13 ILO Convention (No. 169)] Although Cameroon was never a party to the 1957 ILO Convention (No. 107) and has not yet acceded to the 1989 ILO convention (169), their provisions have through the passage of time and the consistent practice of States entered through the body of customary international law and are binding even on those nations that have not yet signed them.

While we are not in the habit of issuing threats, we wish to serve notice of our resolve to pursue this matter in all fora open to us including, if necessary, the United Nations until we are vindicated. Towards this end, it is our intention to brief and instruct counsel to lodge an appeal on our behalf before the **U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities through its Working Group on Indigenous Populations (established by the United Nation Economic and Social Council-- ECOSOC-- in 1982 to promote and protect the human rights of indigenous people).**

Learning from the Experience of Other Nations

The Bakweri are not alone in this struggle to regain control over their ancestral lands. They are joined by numerous indigenous minority groups in other parts of the globe [**the Kikuyus in Kenya, the native Indians of North America, the Chiapas of Mexico, the Miskito of Nicaragua, the Mabo of Australia**, to mention but a few] who sought restitution of indigenous land whether taken by conquest, in violation of treaty obligations or through "legal" alienation and from whose valiant struggles they draw inspiration. While many of these earlier struggles resulted in the spilling of priceless blood and the loss of lives, we intend to conduct our campaign in a peaceful, non-violent and dignified manner taking our cue from the protracted negotiations between the Canadian Government and its minority native populations. In this regard, we wish to draw Government's attention to recent Canadian legislation pursuant to the James Bay and Northern Quebec agreement among the Crees, Inuit, the provincial government of Quebec, and the federal government. The **Cree-Naspaki Act of 1984** leaves basic ownership of Indian lands in the hands of Quebec, but the **exclusive use and benefit of the land and its natural resources** remains with the Indians. The agreement provides for an Indian entity to administer, manage and use these lands and resources as though it were the owner. Although the provincial government of Quebec owns all mineral and subsurface rights, it must secure Indian permission to exploit these resources and it must compensate the Indians for their use. Confronted with the vexing and sensitive issue of lands expropriated from its indigenous minority populations which threatened to shred to pieces the delicate tapestry of national unity, the Canadian government did not flinch but responded with an enlightened and humane policy carefully crafted to strike a happy balance among competing subnational interests. Because of our firm belief that our Government can do better, we now urge it to rethink its announced policy to privatise or sell the CDC drawing heavily from the recent experiences of Canada and Mexico (with respect to the Chiapa Indians).

Framework for Constructive dialogue between Government and the Bakweri

We would remiss in our duty and open to charges of unpatriotism if we ended this memorandum without advancing some concrete proposals to assist Government in formulating a wise and sound decision on the question of privatising the CDC. It is our belief that no government committed to the principles of justice, fairness and equality can, at this stage in the development of international human rights law, proceed by *fiat* to disposes a distinct segment of its population of two-thirds of its total land area without even the courtesy of discussing the matter with the leaders of that ethnic group. As a consequence, we insist that as a first step Government should meet with the accredited representatives of the Bakweri people-- and we stress accredited spokesmen not externally-imposed interlocutors out for their own selfish mercenary interests-- to work out the modalities of transferring the assets and property of the CDC, if it must come to this, to the rightful owners of the land.

Second, there must be explicit acknowledgment by Government that the lands occupied by the CDC having been declared native lands by virtue of the **Land and Native Rights Ordinance, the Ex-Enemy Lands (Cameroon) Ordinance, and the Ex-Enemy Lands (Likomba Estates) Ordinance**, reverted to the indigenous natives of Fako Division in 1946 and ownership legally vested in them.

Third, because the CDC is so vital to our economic life, it must be maintained at all costs. In this vein, we propose a creative and enlightened partnership between the owners of the land on which the corporation operates and the providers of finance capital without which it would not be possible to run a modern, technologically-sophisticated agro-commercial complex like the CDC. If for economic reasons private cash capital has to be attracted (one of the ostensible reasons for privatisation), it should be on terms which recognise the ownership of land as a distinct variable which together with the cash make plantation agriculture possible. Therefore, landowners deserve ground rent compensation in much the same way as the CDC was liable to pay ground rents for the use of the land. Furthermore, if the excuse for establishing a statutory public corporation in 1946 was the lack of available indigenous personnel competent to obtain maximum benefit from the

erstwhile German estates, that excuse is no longer tenable. There is now a surfeit of trained Fako indigenes from which to recruit competent technical and managerial experts who can profitably run the CDC.

Finally, since a renascent CDC will be jointly-owned and managed by the landowners and capital providers, it follows logically that the former must be represented on the policy-making organs of the corporation in numbers sufficient to reflect their equal contribution. History teaches us that only a significant presence of landowners in policy-making organs can prevent the ruthless discrimination against indigenes in matters of employment and promotion that has been the corporation's past practice.

**DONE AT BUEA THIS 27TH DAY OF JULY IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-FOUR**

ON BEHALF OF THE BAKWERI PEOPLE

H.R.H. SAM M. L. ENDELEY

H.R.H. BILLE F. MANGA WILLIAMS

Paramount Chief of Buea

Paramount Chief of Victoria

ON BEHALF OF THE BAKWERI LAND COMMITTEE

CHIEF PHILIP MOFEMA EWUSI

ON BEHALF OF THE AD HOC COMMITTEE

DR. S.N. LYONGA, Chairman ***PROF. NDIVA KOFELE KALE***, Secretary

© *Copyright 1994 by Bakweri Land Claims Committee [BLCC]. All rights reserved*