

**BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'  
RIGHTS**

**COMMUNICATION 260/2002 - BAKWERI LAND CLAIMS  
COMMITTEE/CAMEROON**

**Final Submission on Admissibility**

June 30, 2004

## **Table of Contents**

Introduction .....	3
Argument .....	4
1. Revisiting the “Cases Which Have Been Settled” Clause .....	4
1.1 Respondent misinterprets Article 56’s “cases which have been settled” clause .....	4
1.2 The Bob Ngozi Njoku interpretation controls.....	4
2. Respondent’s Assertions Before the U.N. Sub-Commission .....	5
2.1 Respondent fails to carry its burden with its domestic remedy assertion .....	5
2.2 Respondent’s amicable settlement assertion should not be taken seriously .....	7
Conclusion .....	9

## **Introduction**

By letter dated 17<sup>th</sup> June 2004, from the Secretary of the African Commission, Complainants were served with a copy of a “**Confidential decision relating to Cameroon**” adopted by the Working Group of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (“U.N. Sub-Commission”) on February 12 2002. This decision was in relation to a complaint submitted by BLCC in August 2001 to the U.N. Sub-Commission under the ‘**1503 Procedure**’. The Working Group on Situations to which this matter was referred concluded thus:

*“Noting the complexity of this long standing issue,  
Considering that local domestic remedies have not been exhausted and that the matter should be addressed through a national judicial process,  
Welcoming with appreciation the exemplary reply received from the Government of Cameroon,*

1. ***Encourages the Government of Cameroon to continue pursuing on-going efforts in this regard,***
2. ***Decides to discontinue consideration of the matter,***
3. ***Requests the Secretary-General to communicate this decision to the Government of Cameroon.”***

Respondent has taken a particular view of this confidential decision in concluding that the decision has had the effect of settling this matter thus obviating the need for a *de novo* examination by the African Commission on Human and Peoples’ Rights (“African Commission”). Complainants, of course, take a different view and have argued that it is both proper and correct for the African Commission to admit this matter for hearing on the merits since this was not done by the U.N. Sub-Commission. ***See Response of the Bakweri Land Claims Committee to Preliminary Objections Presented by the Government of Cameroon, March 4, 2003, Section 4.1, pages 11-13.***

## **Argument**

### **1. Revisiting the “Cases Which Have Been Settled” Clause**

#### **1.1 Respondent misinterprets Article 56’s “cases which have been settled” clause**

At the 34<sup>th</sup> Session of the African Commission Respondent, Government of Cameroon, took the position that since a Working Group of the U.N. Sub-Commission had decided not to entertain the BLCC Communication, it should therefore be declared inadmissible by this Commission. Complainants submit that this interpretation of the decision of the Working Group on Situations “*to discontinue consideration of the matter*” to mean a decision on the merits offends the plain meaning of Article 56, paragraph 7 of the African Charter on Human and Peoples’ Rights as captured in the jurisprudence of the African Commission.

#### **1.2 The Bob Ngozi Njoku interpretation controls**

Article 56, paragraph 7 of this Charter stipulates *inter alia* that “*communications shall be considered if they do not deal with cases which have been settled in accordance with the principles of the Charter of the United Nations or the Charter of the Organization of African Unity or the provisions of the present Charter.*”

This Commission has had occasion to give guidance on the “*cases which have been settled*” clause of Article 56, paragraph 7. Thus, for example, in ***Bob Ngozi Njoku v Egypt, Communication No. 40/90***, the Commission held that a decision of the United Nations Sub-Commission “*not to take any action and therefore not to pronounce on the communication submitted by the complainant does not boil down to a decision on the merits of the case and does not in any way indicate that the matter has been settled as envisaged under article 56 paragraph 7 on the African Charter on Human and Peoples’ Rights.*” *Id.*, at paragraph 56.

The circumstances of the present communication are not different from those of **Bob Ngozi Njoku**. In that case, the United Nations Sub-Commission was properly seised by the Applicant under the 1503 procedure. The matter was then referred to a Working Group which, after careful examination, declined to take any action on the complaint. This too is the situation in the present case as well. *See Response of the Bakweri Land Claims Committee to Preliminary Objections Presented by the Government of Cameroon, March 4, 2003, Section 4.1, pages 11-13.*

Complainants submit that there are important elements common between the two communications which suggest that the principle laid down by the Commission in **Bob Ngozi Njoku** would be appropriately applied in this case.

## **2. Respondent's Assertions Before the U.N. Sub-Commission**

Following the rules of procedure under the **ECOSOC Resolution 1503 Procedure**, not only do Applicants have no access to Respondent Government's submissions but they equally have no right of audience before the Sub-Commission, a right reserved only to States party to the United Nations Charter. However, by inference from the letter dated 18 July 2002 from the Governor of the South West Province to the BLCC (which letter was written on instructions from Respondent's Minister of External Relations), it would appear that Respondent made two critical assertions before the U.N. Sub-Commission on the basis of which that body concluded that the complaint before it was premature. Respondent's first assertion was that there were domestic remedies which Complainants had not availed themselves of; and second, that there was on-going dialogue between the parties with a view to reaching an amicable settlement of the dispute "*once and for all.*"

### **2.1 Respondent fails to carry its burden with its domestic remedy assertion**

Respondent has maintained all along that this matter is not ripe for discussion before the African Commission because Complainants have failed to exhaust all available domestic remedies. When the question was put to Respondent during the 34<sup>th</sup> Session, and again during the recently concluded 35<sup>th</sup> Session, to outline the domestic remedies which were open to BLCC, there was no response beyond saying that the matter should have been

taken to local courts, under a judicial system which Complainants have demonstrated to be over-burdened, corrupt, and not independent, being tele-guided by the executive branch of Government.

Respondent asserts (*See Réplique de l'Etat du Cameroun suite aux développements supplémentaires sur la recevabilité et sur l'épuisement des voies de recours internes faits par le Bakweri Land Claims Committee au sujet de la communication no. 260/2002 BLCC c/ Etat du Cameroun, at page 6*) and Complainants concede that there is a conflict between the 1974 Land Tenure Ordinance which protects the fundamental and constitutional right to private ownership of property and Ordinance No. 90-004 of 22 June 1990 as well as the 1994 CDC Privatization Decree which seek to alienate Complainants private property rights without consultation with, or compensation to, the Bakweri landowners. Under Article 46 of the Cameroon Constitution, it is only the Constitutional Council, to which BLCC has no access, that can interpret and resolve this conflict of laws, so for all intents and purposes, there is no effective and adequate domestic remedy available for BLCC to exhaust. Respondent has yet to refute this argument even when given that opportunity by one of the Commissioners at the recently concluded 35<sup>th</sup> session. *See Response of the Bakweri Land Claims Committee to the Reply Presented by the Government of Cameroon on the Exhaustion of Local Remedies, August 22, 2003, at pages 17-22.*

The African Charter on Human and Peoples' Rights is an international treaty incorporated in the Cameroon Constitution by virtue of Article 65. Pursuant to Article 5(2) of that Constitution, it is the President of Cameroon who is charged with ensuring compliance with all international treaties including the African Charter. Since BLCC maintains Bakweri rights under that Charter have been infringed, their petitioning the President of Cameroon over a period of 9 years for redress should be seen as invoking and exhausting the only domestic remedy open to Complainant. *See Communication No. 950/2000: Sri Lanka. 31/07/2003. CCPR/C/78/D/950/2000 (Jurisprudence).*

## **2.2 Respondent's amicable settlement assertion should not be taken seriously**

Respondent's assertion that there was on-going dialogue between the parties with a view to reaching a settlement of the dispute "once and for all" drew praise and encouragement from the U.N. Sub-Commission "to continue pursuing on-going efforts in this regard." Regrettably the conduct of Respondent since the decision of the Working Group on Situations was adopted on 12 February 2002 has not been that of a party in search of an amicable resolution of this matter. The facts do not lie:

- Barely six months after deliberately misleading the U.N. Sub-Commission by claiming, falsely, that discussions were under way with the Bakweri, Respondent quietly disposed of Tole Tea Estate in Complainants' heartland; entered into contract with a phantom South African company (Brobon Finex Pty Ltd.) which the South African Government attests does not exist (*See Certificate from the South African Registrar of Companies and Close Corporations of 13<sup>th</sup> November 2003*) and in which, contrary to Respondent's bold assertions during the 35<sup>th</sup> Session of the African Commission, the share capital of the company formed to manage the plantations, *Cameroon Tea Estate*, has been apportioned, to the total exclusion of the landowners while *granting a lease of 70 years to the operating company with all ground rent payable to Respondent. See Bakweri Land Claims Committee Submission on Admissibility, February 4, 2003, pages 7-9, 15, footnote 15.*
- Respondent has failed to acknowledge receipt of, and continues to flout,<sup>1</sup> this Commission's **May 2003 Urgent Appeal to President Biya** taken under Rule 113(3) of the Commission's Rules of Procedure, to halt further alienation of Bakweri ancestral lands under lease to the Cameroon Development Corporation

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<sup>1</sup> At the 34<sup>th</sup> Session, Commissioner Melo raised the issue of Respondent's failure to acknowledge receipt of the Commission's Urgent Appeal but got no response from Respondent's Agent.

(“CDC”) pending a final resolution of this dispute, by openly courting foreign investors and putting up for sale the remaining CDC plantations.<sup>2</sup>

- Respondent’s has maintained a deafening silence to BLCC’s valiant and repeated overtures to have this matter resolved amicably as evidenced in letters Complainants have addressed to the Minister of State in charge of Territorial Administration and Decentralization and the President of the Republic himself between 2003 and now. *See Attachment 2: BLCC Correspondence with President Biya*
- Finally, Respondent has engaged in determined attempts to persecute and silence BLCC leaders by creating a rival organization to speak for the Bakweri, encouraging and financing this fake organization to tie up the BLCC leadership in the local courts through nuisance law suits in an effort to discredit BLCC before this Commission as not being the authentic and accredited voice of the dispossessed Bakweri people.

In February 2002, the Government of Cameroon made a solemn pledge before the U.N. Sub-Commission to open up dialogue with the BLCC with a view to resolving once and for all the Bakweri lands matter. A Government eager to bring closure to this age-old matter took its time, precisely 4 months, to communicate the decision of the Sub-Commission to the Complainants. It then waited another seven months before sending out a Commission of Inquiry, headed by M. Edmond Ayissi, to meet with the leaders of BLCC. After hearing them, the Ayissi Commission returned to Yaounde and recommended to the Government of Cameroon to do everything possible to settle this matter before the 33<sup>rd</sup> Session in Niamey. Although this was precisely the outcome the Government of Cameroon had led the U.N. Sub-Commission to expect, it nevertheless

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<sup>2</sup> During the recently concluded 35<sup>th</sup> Session, Commissioner Nyanduga offered Respondent’s Agent an opportunity to refute counsel for BLCC’s assertions that the Government of Cameroon entered into direct negotiations with foreign investors back in November 2003, even though the Commission has not lifted its Urgent Appeal of May 2003, with a view to disposing the CDC palm estates and had in May 2004 put out a public call for bids for the remaining CDC plantations. The record of those proceedings will show that Respondent’s Agent did not take up Commissioner Nyanduga’s offer!

ignored the Ayissi Commission recommendation. Instead, Respondent dispatched a 5-member delegation to Niamey to contest the admissibility of the BLCC Communication against Cameroon and has continued to send delegations to subsequent sessions. This is hardly the conduct expected of a party committed to dialogue and negotiation.

It is clear, therefore, that the Government of Cameroon deliberately misled the U.N. Sub-Commission into believing that it was interested in finding an amicable resolution to this matter. This Commission has maintained that the main goal of the communication procedure is *“to initiate a positive dialogue, resulting in an amicable resolution between complainant and the State concerned, which remedies the prejudice complained of. A prerequisite for amicably remedying violations of the Charter is the good faith of the parties concerned, including their willingness to participate in a dialogue.”* *See Free Legal Assistance Group et al. /Zaire, Communication Nos. 25/89, 47/90, 56/91, 100/93 (joined), at paragraph 39 (Emphasis added).* Judging from Respondent’s pattern of conduct, one is compelled to conclude that the Cameroon Government has not embraced the dialogue and negotiation option with any particular fondness.

## **Conclusion**

Complainants believe that Respondent has no intention of resolving the Bakweri land problem amicably and has simply latched on to this stratagem to buy precious time to shop around for suitable buyers for the remaining CDC plantations. *See Response of the Bakweri Land Claims Committee to the Reply Presented by the Government of Cameroon on the Exhaustion of Local Remedies, August 22, 2003, Section 2.2.1, at page 15.* One fact is certain, the longer it takes to reach a decision on admissibility which would then pave the way for an expeditious exploration of the merits of this case, what is left of Bakweri ancestral lands under CDC occupation would have been alienated to foreign interests without their consent and without any compensation.

By virtue of the foregoing, Complainants humbly request the Commission to declare Communication 260/2002 admissible.

Respectfully submitted.

**FOR AND ON BEHALF OF THE BAKWERI LAND CLAIMS COMMITTEE**

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Attachments