BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Communication Under Articles 55, 56, and 58 of the African Charter on Human and People's Rights Concerning Violation of Land Rights of an Indigenous Ethnic Minority in Cameroon

October 4, 2002

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Introduction

On behalf of the Traditional Rulers, Notables and Elites of the indigenous minority peoples of Fako Division (the "Bakweri"), in the Republic of Cameroon, through their accredited agent, the Bakweri Land Claims Committee ("BLCC"), and at their request, I address this complaint to the Commission as their **Communication Under Articles 55, 56 and 58 of the African Charter on Human and Peoples' Rights (the "Banjul Charter") Concerning Violation of Land Rights in Cameroon**.

While the core of this Communication centers on the persistent violation of the protected right to property, other fundamental human rights are also implicated. As Special Rapporteur Erica-Irene Daes correctly observed in her excellent study, commissioned by and for the United Nations Sub-Commission on the Promotion and Protection of Human Rights (formerly the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities), entitled "***Relevant Legal Standards and Materials Concerning Indigenous Lands and Resources,***" land and resource issues, particularly the dispossession of an indigenous peoples from the lands they have historically owned and occupied, are issues of fundamental nature that implicate all the existing international human rights instruments. The Commission will see that this Communication and the accompanying documents reveal a pattern of gross violations of human rights and fundamental freedoms by the Government of Cameroon. The People whom I represent are, individually and collectively, direct victims of these violations and all have reliable knowledge that enables them to present clear evidence of their violations.

The object of this Communication is to seek implementation of relevant principles of the United Nations Charter, of the Universal Declaration of Human Rights, of the Banjul Charter and other applicable human rights instruments. Among the human rights that have been and are being repeatedly violated in Cameroon are these:

- The right to equal protection against discrimination that violates the
- Universal Declaration of Human Rights ***(U.N. Doc. A/810, 71 (1948))***;

- The right to own property alone as well as in association with others and the right to be protected from arbitrary deprivation of such property by the State in accordance with Article 17 of the Universal Declaration of Human Rights and Article 14 of the Banjul Charter **(*ratified by Cameroon on 20 June 1989)*** which provides 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";

- Article 21 of the Banjul Charter which enjoins States Parties from impairing the inherent right of all peoples to enjoy and utilize fully and freely their wealth and natural resources and guarantees their right to adequate compensation for lands expropriated by the State;

- Article 22 of the Banjul Charter which protects the right to economic, social and cultural development and obligates States Parties to ensure the exercise of this right; and

- Article 7(1)(a) of the Banjul Charter which stipulates that "Every individual shall have the right to have his cause heard [which includes]... the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force."

Background

- By **Presidential Decree No. 94/125 of 14th July 1994**, the Government of Cameroon

listed the Cameroon Development Corporation ("CDC"), the crown jewel of Cameroon's economy, as among fourteen state-owned companies earmarked for privatization or sale to foreign third parties. The effect of such a sale will be the alienation of approximately 400 square miles (104,000 hectares) of lands which the Bakweri have traditionally owned or otherwise occupied or used. This transfer of two-thirds of this minority group's total land area to private purchasers will forever extinguish Bakweri title rights and interests in these lands. ***See Attachment 1.***

· The lands and territories in question were forcibly, arbitrarily, and illegally, in contravention of all the principles governing land tenure in Bakweriland, seized from the Bakweri landowners between 1887 and 1905 during the period of German colonial occupation and handed over to private German companies and individuals. ***See e.g. Lord Hailey, An African Survey, p. 775 (1945)(Fifty estates, about 258,000 acres in all, were alienated to German private individuals.)*** This large scale expropriation of private property would later be acknowledged by the British colonial authorities and the United Nations General Assembly **(*See* U.N. Document 189, paragraph 16)** and in a Report submitted to the Trusteeship Council by a Visiting Mission sent out to the then British Southern Cameroons in November 1949. The Report states in its paragraph 63:

> *That these customary principles in the strictest sense– particularly the prohibition against absolute alienation– were contravened at least in the early stages of German development of the Territory is apparent from events after 1884. During the German administration of Kamerun, some 460 square miles of land in the Victoria and Kumba Divisions were alienated by the German Government to plantation companies, missions, and individuals. Available records of the methods by which this was done are not complete, but on the whole, the evidence that is available suggests that during the first 12 years of the*

> *occupation, there was no regular procedure, and that land was taken by whatever means seemed most convenient in each locality concerned– whether by purchase at small sums from local chiefs, or by simple ex-propriation. The German Government in turn sold estates into private hands or in a minority of cases, granted leases. The United Kingdom Authorities have pointed out, however, that demarcation of Crown Land was never done systematically nor did a Land Commission ever deal generally with all unoccupied land in Kamerun. When land was required for plantation purposes, the Commissioner was convened; if any claims were established the owners would be compensated by the planter or plantation company, this compensation being set off against the purchase price paid to Government. If the owners were actually settled within the area, they would be required to move to reserves outside the area, on the basis, under an agreement of 1904, that 'apart from land built and farmed upon by natives each hut is to be given six hectares.'*

This dispossession and expropriation were met with fierce resistance from the Bakweri who in the end lost out to the superior German military power.

- As punishment for resisting, the Bakweri were forcibly relocated to 'native reserves' ("*reservats"*). However, with help from some foreign missions, the Bakweri protested directly to the German Imperial Government in Berlin about their inhumane treatment at the hands of the local German colonial administration. Although Berlin attempted some corrective measures to ease the plight of the Bakweri, these were aborted at the outbreak of the First World War in 1914.

- In the period between the first and second World Wars, these alienated Bakweri lands continued to be developed into large plantation estates by their German 'owners'. At the end of the Second World War, the British Colonial Government, the

successor government to the defeated German imperial government, pressured by the Bakweri people through their agent, the Bakweri Land Committee, forerunner of BLCC, (which continued the fight for the return of all expropriated Bakweri lands, carrying it all the way to the United Nations Trusteeship Council), bought back all of the German estates, declared them "Native Lands" and placed them under the custody of the Governor of Nigeria to hold in trust for the Bakweri people.

- The lands were subsequently leased in 1947 to a newly created statutory corporation, the Cameroon Development Corporation, for a period of 60 years with effect from January 1947, to administer and develop these lands until such time that the Bakweri people were competent to manage them without outside assistance.

- The CDC was created as a public corporation (without private shareholders) with broad socio-economic objectives which, in partnership with Government, would develop the rich and fertile lands of Fako Division for the common benefit of all English-speaking Cameroonians.

- By the terms of the 1947 lease the CDC was required, and it agreed, to pay ground rents to the landowners. Throughout this leasehold, the corporation set aside each year a sum of money as rent for the use of Bakweri lands. However, in breach of the terms of the lease, the rents were paid into the public treasury rather than to the local councils in Fako Division.

- In 1994, the Bakweri addressed a Memorandum to the President of the Republic concerning the proposed sale or privatization of the CDC. ***See Attachment 2.*** As no acknowledgment was received to that Memorandum, a second petition dated 3rd March 1999 signed by some 360 Bakweri traditional rulers, notables and elites was again sent to the President. ***See Attachment 3.*** This petition was subsequently

endorsed by 139 Bakweri in North America and other parts of the world, by their letter dated 1st October, 1999 addressed to the President of the Republic. ***See Attachment 3a.*** Amidst this flurry of memoranda, BLCC also contacted the International Monetary Fund and the World Bank, the main sponsors of the Privatization Program in Cameroon, advising them of the need to resolve the explosive land issue before going through with the privatization of CDC. ***See Attachment 4.*** BLCC also got in touch with prospective buyers of CDC assets to alert them of the unresolved land problem and to invite them to convince the Government of Cameroon to fully involve the Bakweri landowners in the ongoing negotiations. ***See Attachments 5 and 5a.***

· On 4 October 2000, some three months after a written request for audience, the Prime Minister and Head of Government finally met with a delegation of BLCC leaders to discuss issues relating to the privatization of the CDC and other related matters. Also present at this meeting was the Assistant Secretary General at the Presidency. During their discussions, the BLCC delegation voiced Bakweri support for privatization and expressed the hope that the exercise *"will be carried out in a transparent and impeccable manner and that it would result in increased productivity, profitability, poverty alleviation and greater economic and social prosperity for the nation and its people."* ***See Attachment 6.*** These leaders also reiterated the position of the Bakweri people on the land question: that the lands now occupied by the CDC are private native lands, so declared before independence by the British Colonial Administration, and contained in the German Land Register or *Grundbuch.* The BLCC delegation left this meeting guardedly optimistic that a resolution to the Bakweri land problem was in the horizon. Subsequent Government action would jolt them from this reverie and dash any hopes that an end was in sight.

· Less than two years after the breakthrough meeting with the Prime Minister,

Government unilaterally decided, without even the courtesy of notifying the BLCC leadership, to privatize the tea estates of the Cameroon Development Corporation.. To date there has been no response from the Government of Cameroon to Bakweri demands to be consulted over the fate of their ancestral lands nor has Government rescinded Decree No. 94/125 of 1994. Government, however, continues to put out tenders for bids on the remaining CDC estate.

Discussion of Relevant Banjul Charter Violations

Violation of Article 14. This article provides 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.*" Bakweri peoples' right to private property and their right not to be deprived of it arbitrarily has been violated by the Government of Cameroon. The lands occupied by the CDC were repurchased from the Custodian of Ex-Enemy Property by the British colonial administration and declared private native lands long before Cameroon became an independent nation. These facts cannot be challenged. On 9 June 1948 while forwarding to the U.N. Secretary General a Petition from the Bakweri people, the United Kingdom government made the following observations which were reported in the Journal of the Royal African Society (***See Attachment 7)***: "that **ALL [the repurchased ex-enemy] LANDS HAD BEEN DECLARED NATIVE LANDS** and had been placed under the control of the Governor of Nigeria **TO BE ADMINISTERED FOR THE USE AND COMMON BENEFIT OF THE NATIVES**; that the Nigerian government had repurchased 14, 851 acres of plantation land for the benefit of the natives, and that **THE CAMEROON DEVELOPMENT CORPORATION HAD BEEN SET UP TO ADMINISTER AND DEVELOP THE PLANTATIONS UNTIL SUCH TIME AS THE BAKWERI PEOPLE WERE COMPETENT TO MANAGE THEM WITHOUT ASSISTANCE....**" ***See AFRICA [Journal of the Royal African Society], Vol. 18, No. 4, October 1948, p. 307).***

There has been some discussion respecting the quantum of legal rights the Bakweri retained when their lands were acquired by the British administering authorities: whether title to these lands passed to the British Crown through the Governor of Nigeria or remained with the indigenous land owners. This issue was expertly handled by Dr. C.K. Meek, the foremost authority of his time on land law in British colonial Africa, in his 1957 study: **Land Tenure and Administration in Nigeria and the Cameroons.** Meek opined that in situations such as this, existing titles were never extinguished. As he put it "*where the Government had itself assumed the position of landlord, it had done so only to protect native interests: the vesting of land in the Governor had not implied a transfer of ownership of the land of the territory to the Governor but had merely conferred on him a power of supreme trusteeship.* ***Nor did it affect the existing titles, whether community or individual."*** (at pages 355-356. Emphasis added). Meek was in no doubt that Bakweri title to these lands was never extinguished and that the Governor of Nigeria held them in trust for the indigenous landowners: ***"Indeed, the United Nations at its 6th meeting of the Council in March 1950 states that increased effort should be made to explain to the Bakweris that Ex-Enemy Lands had in fact reverted to them and that ownership was now legally vested in them."*** *Id*. at page 407 (Emphasis added).

Meek's conclusion reflects the weight of legal opinion that indigenous title to land was a right predating the colonial state and not dependent for its existence upon treaty or statute. These antecedent rights and interests survived the change of sovereignty, in our case, the change from the British Crown to the Cameroon State. ***See Amodu Tijani v. Secretary of Southern Nigeria 1 [1921] 2 A C 399, 407, 410; Oyekan v. Adele [1951] 2 All ER 785. See also T. Olawale Elias, British Colonial Laws: A Comparative Study of the Interaction Between English and Local Laws in British Colonial Dependencies (1962) and T. Olawale Elias, Nigerian Land Law and Custom (1951).*** This position is consistent with the view that the colonial territory was not *terra nullius* (land belonging to no-one) at the time of European settlement. In the landmark case of ***Mabo v. Queensland (No. 2)(1992) 175 CLR 1***

***(Mabo (No. 2*)**) the High Court of Australia rejected the doctrine of *terra nullius* as repugnant and inconsistent with historical reality.

That the CDC-occupied lands are private lands and Bakweri title was never extinguished finds confirmation even under Cameroon's own **1974 Land Tenure Act (Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure)**. The 1974 Law classifies lands that were entered in official German land registers, the Ground Book or ***Grundbuch***, as private property. As many as 23 German plantations met this description and were entered in the *Grundbuch.* These are the plantations that were subsequently re- purchased by the British colonial administration from the Custodian of Enemy Property in 1946, declared as Native Lands, and then leased to the newly-created statutory corporation, the CDC.

The 1974 Land Tenure Law takes great pain to distinguish between "National Lands"and Private Land. The former are lands which *"are not classed into the public or private property of the State and other public bodies.... which the State can administer in such a way as to ensure rational use and development,"* and can be *"allocated by grant, lease or assignment on conditions to be pursued by decree."* Private Lands, on the other hand, guarantee their owners the right to freely enjoy and dispose of them. Part II, Article 2 of the Land Tenure Act identifies 5 categories of land subject to the right of private property. These are: "(a) Registered lands; (b) Freehold lands; (c) Lands acquired under the transcription system; (d) Lands covered by a final concession; (e) ***Land entered in the Grundbuch***." (Emphasis added).

It should be noted that before land could be entered in the Ground Book it had to be mapped and demarcated. The CDC-occupied lands were surveyed before being registered in official records as private property and all this took place prior to the entry into force of the 1974 Land Tenure Law. Since these lands were only *leased* to the CDC, only the true owners, i.e., the Bakweri, have the right under the Land Tenure Act to dispose of these lands.

Consequently, the sale or privatization of the assets of CDC does not include the lands on which these plantations stand. The position of the Bakweri on this point has not wavered in 50 years. In their 1999 Memorandum to the President of the Republic, they insisted that "*upon Cameroon attaining independence, the role of the State in continuing to act as trustee over Bakweri lands, effectively ended. Existing contracts, e.g., the original 60 years granted by the Governor General of Nigeria, should be allowed to run its full course. Any subsequent extension of that lease by a Government of Cameroon, however called, is invalid, as the trustee relationship terminated when Cameroonians assumed political independence and were not subject to control by a foreign imperial power."*

Violation of Article 21. The first paragraph of Article 21 provides that "*All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it."* The process of extinguishment set in motion by Decree No. 94/125 severely undercuts this right. Government has ignored repeated requests for a full and complete public disclosure of the terms of the sale or the lease of Bakweri lands to foreign purchasers. In this and in other respects, Decree No. 94/125 is in clear breach of a trust responsibility by the Cameroon Government (that is, of undivided loyalty to the Bakweri landowners who are the real beneficiaries) or, at the very best, an abuse of the State's power to control or dispose of lands held in sacred trust for an indigenous minority people. In ***Guerin v. The Queen [1984] 2 S.C.R. 335***, the Supreme Court of Canada held the Crown in breach of a trust or, at a minimum, fiduciary duties with respect to the manner in which the Crown disposed of reserve lands held by it for the use and benefit of an indigenous Indian tribe. ***Guerin*** involved the voluntary surrender by the Musqueam Indian Band to the federal Crown, "in trust," of some of its reserve land for the purpose of lease to a private club. The Crown subsequently concluded a lease on terms that were not authorized by the Indians and were less advantageous to them. Just as the Bakweri agreed to the British colonial government's proposal to lease their land to the CDC on terms which clearly recognized their reversionary

rights, any subsequent attempt by the successor government to lease this land to another party must be on terms acceptable to the Bakweri.

The contemplated extinguishment of Bakweri land rights equally violates the second paragraph of Article 21 (2): *"In case of spoliation, the dispossessed people shall have the right to lawful recovery of its property as well as to an adequate compensation."* The privatization of CDC and with it the likelihood of transferring Bakweri private lands to third parties is being carried out without any discussion about fair compensation to the Bakweri, the principal stakeholders. The Commission has traced the origin of the rights contained in Article 21 of the Banjul Charter to the period when the continent was under colonial domination; a period:

> *during which the human and material resources of Africa were largely exploited for the benefit of outside powers, creating tragedy for Africans themselves, depriving them of their birthright and alienating them from the land. The aftermath of colonial exploitation has left Africa's precious resources and people still vulnerable to foreign misappropriation.* ***The drafters of the Charter obviously wanted to remind African governments of the continent's painful legacy*** *and restore co-operative economic development to its traditional place at the heart of African Society.* ***See*** **The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria, Communication No. 155/96, para. 56, African Commission on Human and Peoples' Rights [**Emphasis added]**.**

Apparently this reminder has been lost on the Government of Cameroon who, faced with the opportunity to right a historical wrong– one traceable to a period when the country was under foreign domination-- has chosen instead to behave no differently from its German colonial predecessors!

Provisions for compensating victims of human rights abuses can be found in other regional human rights instruments including the 1969 American Convention on Human Rights whose Article 21 parallels the Banjul Charter's Article 21 under discussion here. The Inter-American Commission on Human Rights has addressed the question of compensation for State violation of the right to property which the Inter-American Commission has described as an "inalienable right." Article 21 of paragraph 2 of the American Convention reads: "*No one shall be deprived of his [her] property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases according to the forms established by law."* In ***Haydee A. de Marin et al., Case No. 10.770, Inter-Am. C.H.R. 293, OEA/ser. L/V/II.85, doc. 9 rev. (1994)(Annual Report 1993)***, the Inter-American Commission found Nicaragua in breach of its duty under the Convention for "depriving the petitioners of their property without any form of compensation or for no reason of public utility" and recommended that the Government of Nicaragua return the confiscated properties to their legitimate owners and pay the injured parties the amounts owed in damages and compensation for the time the properties in question were held in usufruct. ***See also Carlos Martínez Riguero, Case No. 7788, Inter-Am. C.H.R. 89, OEA/ser. L/V/II.76, doc. 9 rev. 1 (1987)(Annual Report 1986-1987)****(Compensation recommended for Nicaragua's wrongful confiscation of the dividends earned on shares owned by the complainant).*

Remedies for human rights abuses have also been tackled by the Inter-American Court of Human Rights. The landmark case of ***Velásquez Rodríguez*** was the first to articulate a framework for calibrating the type of reparations and compensation that may be awarded by the Court to victims of human rights violations and the criteria to be applied in making these assessments. The Court, in its jurisprudence, has acknowledged a preference for restitution although it will consider compensation in cases where restitution is not possible. ***Velásquez Rodríguez*** called for flexibility in the application of these criteria and on a case-by-case

basis so as to "arrive at a prudent estimate of the damages, given the circumstances of each case." ***See Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights) Judgment of July 21, 1989, Inter-Am. Ct. H. R. (Ser. C), No. 7 (1989).*** Using this formula, the Court proceeded to award 'moral damages' to the Velásquez Rodríguez family as indemnification for the psychological harm it had suffered as a result of the disappearance of their loved one.

Applicants respectfully urge the Commission to follow the jurisprudence of the Inter-American Commission and the Inter-American Court and recommend that the Bakweri be indemnified in an amount sufficient to remedy the entire scope of the adverse consequences that have resulted from the century-old expropriation of their most fertile lands. The award of compensation will also be upholding both the letter and spirit of Cameroon's own Constitution which proudly proclaims "*the right guaranteed every person by law to use, enjoy and dispose of property. **No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law"*** (Emphasis added).

Violation of Article 22. Article 22 of the Banjul Charter stipulates that:

> "1. *All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually and collectively, to ensure the exercise of the right to development."*

Privatizing CDC without first resolving the underlying land problem poses a serious threat to the right of Bakweri people to their economic, social and cultural development. The Bakweri have for close to a century been confined to a space less than one-third the size of the land they occupied prior to German colonization. The large-scale agro-industrial

development that has been taking place on the other two-thirds of their lands has benefitted all Cameroonians and not the Bakweri exclusively. While other minority groups in Cameroon have been able to exercise continuous dominion over their ancestral lands, the bulk of Bakweri ancestral lands have always been under non-native control. And while these groups have been left to develop their ancestral lands without external interference, that has not been the Bakweri experience.

The total area of Fako Division where the Bakweri have traditionally lived is roughly 838 square miles. Two hundred square miles of this consist of rocky barren hilly slopes, another 30 square miles of mangrove swamps or bogs which are unsuitable for cultivation leaving approximately 588 square miles of arable land. Out of this total land area, existing settlements (towns and villages) take up no more than 100 square miles while the CDC occupies some 400 square miles or approximately 60 per cent of the total arable land. Missions and other commercial interests take up about 50 square miles, leaving barely 38 square miles of arable land for the indigenous peoples of Fako Division.

The heavy concentration of private Bakweri lands in non-native hands undermines this group's Article 22 rights in three ways. First, it irrevocably alters existing land holding arrangements and the pattern of natural resource exploitation in Fako Division. Future generations of Bakweri who have been deprived of, and denied access to, their ancestral lands, will never know or appreciate what it means to own land in close proximity to fellow culture-carriers and on territory where their ancestors once farmed, fished and hunted. Secondly, the confinement of the total Bakweri population in Fako Division to less than 40 square miles of territory will in the not too distant future trigger a forced exodus of Bakweri to other parts of Cameroon in search of available land for their agricultural and other development needs. Finally, as these Bakweri begin to move in large numbers to other parts of Cameroon, the risk of exporting the social tensions that have historically blighted settler-native relations in Fako Division cannot be overlooked.

Violation of Article 7(1)(a). The process by which the Government of Cameroon has chosen for extinguishing Bakweri land rights violates Article 7, paragraph 1(a) of the Banjul Charter. The approach has been discriminatory, without due process of law and totally lacking in fundamental fairness in many respects. Although the Bakweri have made representations to the highest decision-making organs of the State-- the President and Head of State and the Prime Minister and Head of Government-- Government has simply refused to meet face-to-face with Bakweri leaders; to include proper representation of the Bakweri stakeholders in the negotiations on the sale or privatization of CDC despite repeated calls for their inclusion; and to provide adequate notice and an opportunity for the accredited agents of the Bakweri people, the BLCC, to be heard.

This 'No-Talk" policy adopted by the Government of Cameroon is in marked contrast to the solicitude shown the Bakweri by the British colonial authorities when the decision to create the CDC was taken in 1946. Recognizing that this decision was directly related to the petition of the Bakweri Lands Committee to the Trusteeship Council in 1946, the British Government made sure that the Bakweri were fully consulted and gave their consent before the proposal to create the CDC was put into effect. An entry in UN Trusteeship Council Document No. 1/182 attests to this point: *"The proposal to acquire the ex-enemy owned plantations by the Nigerian government from the Custodian of Enemy Property at a cost which will be in the neighbourhood of {850,000 [Eight Hundred and Fifty Thousand pounds sterling] and their declaration to be Native Lands was welcomed by the Bakweris."*

The Cameroon Government has refused to do for its *own citizens* what the colonial administration was only too eager to do for them when they were a *subject* people, i.e., consult and seek their approval on how best to develop *their* lands. Government has chosen to ignore the pleas and representations from the Bakweri or treated them with indifference.

Exhaustion of Local Remedies

In submitting this Communication, Applicants are mindful of the rule in Article 56 (5) of the Banjul Charter requiring the pursuit and exhaustion of domestic remedies before Commission proceedings may be instituted. Article 56(5) also waives this rule where it is obvious that the procedure for exhausting domestic remedies is "unduly prolonged." In its jurisprudence, the Commission has also cautioned against a mechanical application of the domestic remedies rule particularly in "cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each violation." ***See Free Legal Assistance Group et al. vs. Zaire, African Comm. Hum. & Peoples' Rights, Comm. No. 25/89, 49/90, 56/91, 100/93 (not dated), para 37.***

As a guide to petitioners, the Commission has articulated three pragmatic reasons why the requirement to exhaust domestic remedies is a necessary first step before international proceedings are engaged. **See *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria,* Communication No. 155/96, paras. 37-39, African Commission on Human and Peoples' Rights.** The first of these rationales for the local remedies rule is the need to "*give domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgments of law at the national and international level."* Secondly, that a government against whom a complaint has been brought "*should have notice of a human rights violation in order to have an opportunity to remedy such violation, before being called to account by an international tribunal.... The exhaustion of domestic remedies requirement should be properly understood as ensuring that the State concerned has ample opportunity to remedy the situation of which applicants complain."* Finally, the requirement that domestic remedies be exhausted before seizing the Commission is intended to ensure that the Commission does not become a "*tribunal of first instance for cases which an effective domestic remedy exists."* ***See The***

***Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria,* Communication No. 155/96, paras. 37-39, African Commission on Human and Peoples' Rights.**

Applicants confidently assert that the foregoing public policy imperatives that underpin the exhaustion of domestic remedies rule have been fully respected in this case. We respectfully draw the Commission's attention to the fact that the Government of Cameroon has had ***four decades*** during which to redress these grievances within the framework of its domestic legal system -- as broadly defined in the ***Ambatielos Case (Greece vs. United Kingdom), 1951, 12 R. Int'l Arb. Awards 91, 120, 122*** -- but elected not to. During this period, Government has vacillated, equivocated and engaged in delaying tactics to avoid taking a principled position on the Bakweri land problem; perhaps in the hope that the problem will simply go away. That has not happened. Applicants believe that if after forty years of first-hand knowledge of a continuing human rights violation, the Government of Cameroon has taken no concrete steps to remedy the situation, then it has no intention of ever resolving it. We believe that given an additional 40 years, Government will still temporize on this issue unless prodded to act affirmatively by some external *deus ex machina*.

Indeed, the position which the Government of Cameroon finds itself in this case is no different from that of the Nigerian Government described in Communication No. 155/96. The Federal Government's conduct in that case prompted the observation that where a State has lived with an ongoing human rights violation for a reasonable period of time then the notice requirement is obviated. In that case, the Nigerian government not only had knowledge of but actively condoned and facilitated for decades the destruction of Ogoniland by privately-owned oil companies. It was therefore no stranger to the allegations raised in the Communication. Here too, the Government of Cameroon has known for a very long time about the violations of Bakweri land rights and thus had "ample opportunity" to reverse the situation consistent with its obligations under the Banjul Charter. Sadly, it has chosen not to do so.

Bakweri attempts at dialogue with their governors, colonial as well as post-colonial, are not of recent vintage. Close to a century, this beleaguered minority group has remonstrated for the return of its ancestral lands. This struggle for restitution was too open and notorious to have escaped the notice of the Cameroon Government. The creation of the Bakweri Land Committee ("BLC"), predecessor to the Bakweri Land Claims Committee, marks the beginning of the modern phase of this historic struggle. Organized in 1946, BLC's principal mission was the reclamation of all Bakweri lands that had been expropriated by the Germans in the 19th century. Indeed its very first letter on this subject is dated 18 June 1946 and was addressed to the colonial administration. ***See Attachment 8.*** This was but the first in a long series of petitions, memoranda, and statements that BLC sent to the colonial authorities in Nigeria, the Colonial Office in London, and the United Nations Trusteeship Council in New York. After independence in 1960 and the reunification of the two Cameroons in 1961, the BLC (and its successor BLCC) continued the campaign for restitution and compensation through another spate of memoranda, position papers, and petitions to successive Cameroonian Governments. The 1994 Memorandum which came on the heels of the announcement of Government's intention to privatize CDC was but the opening volley in the most recent wave of the Bakweri's unrelenting campaign for restitution and compensation.

During this entire period, successive Governments have remained stubbornly unyielding to even the most basic of the Bakweri demands: an acknowledgment that CDC-occupied lands are private native lands belonging to the Bakweri. Worse, in spite of requests to continue dialogue following the ***only*** meeting with the Prime Minister on 4 October 2002 -- a meeting which BLCC lobbied for months to have-- these requests of the BLCC have been persistently ignored. Having remonstrated with the President of the Republic, having met with his Prime Minister and other Government Ministers including the Assistant Secretary-General at the Presidency, to no avail, the conclusion is inescapable that any further efforts to seek domestic relief will merely prolong the resolution of the Bakweri Land Problem.

Even if the exhaustion of domestic rule is given its most restrictive meaning, requiring Applicants to go through the courts of Cameroon, Applicants would argue the futility of this route. It is our strong belief that no judge in Cameroon will risk his career, not to mention his/her life, to handle this politically sensitive matter. In its 1999 Human Report on Cameroon, the United States Department of State described Cameroon's judiciary as one that "cannot act independently and impartially, since all judges and magistrates are directly nominated by the President." The Report goes on to observe that ***"politically sensitive cases never are heard."*** [Emphasis added]. The Bakweri land question falls in this category of cases for at least three reasons: First, because it implicates the crown jewel of a Privatization Program that Government is determined to see through. Secondly, it pits the Bakweri people against a Prime Minister and Head of Government as well as an Assistant Secretary-General at the Presidency, both of whom are Bakweri, but, not being elected officials, hold their offices at the pleasure of the President. Finally, it places Government in a face off with a politically-conscious minority tribe that has refused to stay quiet and watch its ancestral lands being sold to non-natives. Experience has taught us that this is not the kind of politically-sensitive litigation that a judiciary firmly under the control of the President of the Republic would like to handle and it is a contest which Applicants are not likely to receive a fair hearing.

Under these circumstances, asking the Bakweri to seek domestic relief will merely prolong the agony of the Bakweri in seeking a resolution to their Land Problem.

Conclusion

The Bakweri have been protesting against the forcible alienation of their ancestral lands for close to a century. The accompanying document: ***Bakweri Land Problem***, sets forth the evidence of the various attempts by the Government of Cameroon to dispossess the Bakweri people of their ancestral lands and territories and summarizes the valiant efforts by leaders of

this ethnic minority in Cameroon and in the Diaspora to persuade Government to put a halt to these violations.

In their letter of 30 October 2000 to the Prime Minister and Head of Government, the BLCC signatories reminded him that, as a people, the Bakweri "have suffered in silence for long as a result of the large-scale alienation of their land which can only be compared to that in Zimbabwe, South Africa and Namibia.... and have borne their hardship with fortitude and equanimity in the hope that one day justice will prevail." The dispensation of that justice, the Bakweri now hope, will come from the African Commission on Human and Peoples' Rights. The Bakweri have suffered a grave historical wrong, Applicants think it is now time to put things right.

Accordingly, the purpose of this Communication is to secure the intervention of the Commission for a resolution of this matter. Applicants believe that the foregoing facts describe a situation that has affected, and continues to affect, a large number of people over a protracted period of time. Therefore, Applicants respectfully request that the Commission take whatever steps may be appropriate to help bring this matter to a satisfactory conclusion.

REQUEST FOR RELIEF

From the foregoing, we respectfully pray that, generally, the Commission should find that the Government of Cameroon is in breach of the cascading layers of obligations it voluntary assumed when it became a party to the Banjul Charter as well as other relevant human rights instruments: to wit, the obligation to refrain from interfering in the enjoyment of all fundamental rights; the obligation to protect right holders against other subjects by legislation and provision of effective remedies; the obligation to promote the enjoyment of all human rights; and the obligation to fulfill the rights and duties it freely undertook under various human rights instruments. ***See*** ***The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria,*** **Communication No. 155/96, paras. 44-48,**

African Commission on Human and Peoples' Rights. More specifically, we pray that the Commission should find that there has been a violation of Articles 7(1)(a), 14 , 21 and 22 of the Banjul Charter, and will recommend that:

- The Government of Cameroon affirm that lands occupied by the CDC are Private Property as defined in Part II of the 1974 Land Tenure Act of Cameroon;

- The Bakweri be fully involved in the CDC privatization negotiations to ensure that their interests are effectively protected following the privatization of this corporation;

- Ground rents owed the Bakweri people dating back to 1947 be paid to a Bakweri Land Trust Fund for the benefit of the dispossessed indigenes;

- The Bakweri acting jointly and severally be allocated a specific percentage of shares in each of the privatized companies;

- The BLCC be represented in the current and all future policy and management boards as was the case in colonial times.

Respectfully submitted,

FOR AND ON BEHALF OF THE BAKWERI LAND CLAIMS COMMITTEE

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Attachments