Bakweri Land Claims Committee (BLCC)

BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Before the African Commission on Human and Peoples' Rights
Communication 260/2002 –
Bakweri Land Claims Committee/Cameroon

Submission on Admissibility

February 4, 2003

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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, and their accredited agent, the Bakweri Land Claims Committee ("BLCC"), and at their request, the undersigned Counsel, presents this Submission on Admissibility as a supplement to **Communication 260/2002 - Bakweri Land Claims Committee/Cameroon** which the Commission considered and decided to be seised at its 32nd Ordinary Session that held in Banjul, The Gambia from 17th - 23rd October 2002..

A. *ADMISSIBILITY OF COMMUNICATION*

1. Compliance with the Requirements of Article 56

Complainants approach the Commission having fulfilled all the conditions of Article 56 of the African Charter on Human and Peoples' Rights (the "Banjul Charter"): BLCC is the accredited agent of the Bakweri people on whose behalf this Communication is filed ***See*** **Attachment 1**; the complaint is not pending before any other international tribunal; the allegations contained herein are backed by documentary evidence; the language used in the Communication has been courteous, respectful and not insulting or disparaging of the OAU or the Government of Cameroon; the Commission was seised of the matter at its 32nd Ordinary Session in Banjul, The Gambia, last year.

1) Particular focus on paragraph 5 of article 56. Complainants incorporate herein their arguments on "Exhaustion of Local Remedies" contained in Communication 260/2002, of 4th October 2002, pages 11 through 14.

Since the 5th condition in Article 56 which provides: "*Communication ... shall be considered if they: ...5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,...*" is usually the first considered by the Commission, before any substantive consideration of communications, Complainants will now address this 'gate-keeper' provision.

The thrust of Article 56 (5) boils down to this single question: Whether an effective legal remedy exists in Cameroon of which Complainants could avail themselves? Complainants submit that no such remedy exists and that special circumstances excuse them from compliance with the exhaustion requirement.

In this vein, they advance two specific arguments. First, that in Cameroon the judiciary is neither free nor impartial with the result that justice tends to be dispensed in a discretionary manner.

This makes recourse to domestic avenues of redress uncertain, impractical and undesirable. Second, that the Government of Cameroon has had ample time to resolve the Bakweri Land Claims problem but has not only failed to do so but has effectively blocked inferior decision-making organs from taking on the matter.

The Commission has in its own jurisprudence urged a contextual analysis of Article 56 (5), having recognized that local remedies are *sui generis*. This was the approach followed in five decisions the Commission took concerning Nigeria in which this article was analyzed in terms of the Nigerian context. ***See*** **International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. And Civil Liberties Organization vs. Nigeria, African Comm. Hum. & Peoples' Rights, Comm. No. 137/94, 139/94, 154/96 and 161/97 (not dated)**. A sister human rights tribunal, the European Human Rights Court, has equally recognized that the exhaustion of domestic remedies rule is neither absolute nor capable of being applied automatically. As a consequence, that Court has consistently taken the view that in reviewing whether the rule has been observed "it is essential to have regard ***to the particular circumstances of each individual case. This means amongst other things that [the Court] must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate*** as well as the personal circumstances of the applicants." ***See*** **Akadivar et al. V. Turkey, (1996) Eur.Ct.H.R., Reports 1996-IV** (Emphasis added).

In deciding whether Complainants have made full use of available legal remedies, attention ought therefore be focused on what in the Cameroon context passes for effective remedies. The legal and political context in which justice is administered in Cameroon is one where the President wields extraordinary powers. From the origin of the republic, the constitutional draftsman set out to create an "*imperial presidency*"[1] by making this institution the font of a vast array of judicial and non-judicial powers. Appointment to and removal from high office under this constitutional scheme is by Presidential decree. The President appoints the Prime Minister and other members of Government (Article 10).[2] However, none of these executive officers

[1] *See e.g.*, Mbu Etonga, *An Imperial Presidency: A Study of Presidential Power in Cameroon*, in AN AFRICAN EXPERIMENT IN NATION BUILDING: THE BILINGUAL CAMEROON REPUBLIC SINCE REUNIFICATION 133-158 (Ndiva Kofele-Kale, ed., 1980).

[2] Article 10, paragraph 1 provides: "The President of the Republic shall appoint the Prime Minister and, on the proposal of the latter, the other members of Government. He shall define their duties. He shall terminate their appointment. He shall preside over the Council of Ministers." Article 27 delegates to the President the power to legislate texts outside a range of subjects that fall within the legislature's competence. Outside this range of activities, the President virtually has *carte blanche* to enact legislation on just about anything. Interestingly, this delegation of legislative competence to the Executive is unaccompanied by any built-in safeguards to check against presidential excesses. *See* **Law No. 06 of 18 January 1996 to amend the Constitution of 2 June, 1972 ["1996 Constitution"];** *See also* Ndiva Kofele-Kale, LEGISLATIVE POWER IN CAMEROON'S SECOND REPUBLIC: ITS NATURE AND LIMITS 65-66 (1999).

exercise any independent authority since their authority is merely delegated. The prime minister who is the head of government has been described by one publicist as someone who functions only as a "subordinate to assist the President in the exercise of *his* executive power. He is not a co-beneficiary with the President and his appointment in charge of any departments does not imply an abdication by the President of his power over those departments."[3]

[3] *See* Etonga, *supra* note 1, at 136. [Emphasis in original]

In this system of a single unified Executive, arguably, the last word on domestic remedies whether of an administrative or legal nature in the Cameroonian context is the President of the Republic.[4] Presidential decisions carry a kind of *res judicata* effect on other state institutions and organs.[5]

Part I. The Lack of an Independent Judiciary

Government's representations about the competence of the Cameroon judicial system in handling this matter should be discounted. The one striking feature about Cameroon's judiciary is its total lack of independence. A ***1999 Human Rights Report on Cameroon*** produced by the United States Department of State described the country's judiciary as one that "cannot act independently and impartially, since all judges and magistrates are directly nominated by the President." The 2001 edition of the same ***Human Rights Report*** observed that:

> Corruption and inefficiency in the courts remained serious problems. Justice frequently was delayed or denied before reaching the trial stage.... ***Political bias often brought trials to a halt or resulted in an extremely long process, punctuated by extended court recesses. Powerful political or business interests appeared to enjoy virtual immunity from prosecution; some politically sensitive cases were settled with a payoff and thus never were heard.*** [Emphasis added].

This view of a highly compromised judiciary was recently echoed by the publisher of one of Cameroon's leading English-language newspaper, ***The Herald***, who states: "*The other point of reform is the judicial system.* ***The courts are not free and cannot render judgments when the government is standing and watching over magistrates' shoulders.*** *Human rights is yet another*

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[4]Although the Constitution provides for a separation of powers among the three branches of government, in reality the Executive overshadows the other two branches. This is how the U.S. State Department describes Executive power in Cameroon: **"The 1972 constitution as modified by 1996 reforms provides for a strong central government dominated by the executive. The president, without consulting the National Assembly, names and dismisses cabinet members, judges, generals, provincial governors, prefects, subprefects, and heads of Cameroon's parastatal (about 100 state-controlled) firms; obligates or disburses expenditures; approves or vetoes regulations to implement newly enacted laws; declares states of emergency; and appropriates and spends profits of parastatal firms. The president is not required to consult the National Assembly. *The judiciary is subordinate to the executive branch's Ministry of Justice*. The Supreme Court may review the constitutionality of a law only at the president's request." Available at www.state.gov/r/pa/ei/bgn/2822.htm [Emphasis added].**

[5]It is at this level that some nine years ago the Bakweri victims of uncompensated land expropriation lodged their petition for presidential relief.

sore point of reform." [Emphasis added] ***See*** **Attachment 2.**

A. A Judiciary Under the Firm Control of the President of the Republic

Judicial officers owe their appointments to the President (Article 37(3))[6] and serve at his pleasure. This power of appointment and removal can become a veritable sword of Damocles. In theory though, the President is assisted by a Higher Judicial Council in the appointment of members of the bench and officials of the legal department. It is this body, sitting-in-council, that decides the fate of all judicial officers from judges, magistrates, procureurs of the republic down to senior court registrars. However, this organ which is responsible for all appointments, promotions and dismissals in the judiciary is completely under the control of the President who appoints the majority of its members and presides over all its meetings. This background is critical in reviewing Complainants submissions on the question of admissibility.

1. Presidential 'Preemption' of Judicial Decision-making

The supremacy of the Presidency and its dominance of the judiciary give rise to a peculiar form of *de facto* Executive 'preemption' of decision-making by subordinate state organs, regardless of whether there is an actual conflict between them or not.[7] Presidential 'preemption' of decision-making at all levels and in all areas, judicial as well as non-judicial, operates in much the same way as an ouster clause which bars *"the ordinary courts from taking up cases placed before the special tribunals or entertaining any appeals from the decisions of the special tribunals."****See*** **International Pen, Constitutional Rights Project Interights on behalf of Ken Saro-Wiwa Jr. And Civil Liberties Organization vs. Nigeria, African Comm. Hum. & Peoples' Rights, Comm. No. 137/94, 139/94, 154/96 and 161/97 (not dated).** After examining the legal effect of "ouster" decrees in that Communication, the Commission concluded that they tend to "*render local remedies non-existent, ineffective or illusory*" because they create a "*legal situation in which the judiciary can provide no check on the executive branch of government*."
Complainants are confronted with a legal situation not entirely dissimilar to that described in

[6] "The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and of the legal department. He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers...."Article 37(3), 1996 Constitution.

[7]Peculiar for two reasons. First, because it is *implied* since the Constitution is noticeably silent on the exercise of such authority. Second, because the underlying constitutional objective of the preemption doctrine is to avoid conflicting regulation of conduct by various official bodies that might have some authority over the same subject matter. In the Cameroon scheme, however, presidential 'occupation' of the judiciary and the legislature has nothing to do with jurisdictional conflicts. Rather, it reflects the wide range of powers – legislative as well as judicial – that the Constitution confers on the President.

Communication No. 137/94 et al., but in this case, as a result of *de facto* presidential override of the functions of the courts, the judiciary has been reduced to impotence, incapable of playing its traditional role of providing a check on the executive branch. In practice, a presidential preemption ousts the jurisdiction of the ordinary courts thus depriving complainants of effective domestic relief.

Complainants respectfully remind the Commission to keep in focus the relief that Complainants are seeking is for Government to acknowledge in writing their legal title to the lands registered in the Imperial German land registers (*Grundbuchs),* occupied by CDC since 1947, and defined as Private Property under Cameroon's 1974 Land Law. Such an acknowledgment that binds the State can only come from the authority that issued the 1994 CDC Privatization Decree in the first place or given on its instructions. That authority is none other than the President and Head of State. Although the President has been reluctant to make such a declaration in nine years, he can, in theory, be compelled by court order to do so. But such an order is not likely to come from a court system that is under the President's total control and whose judges are personally appointed, promoted or removed, by him. Waiting for the courageous judge to issue such an order would be like waiting for Beckett's *Godot*!

B. An Implied Power of Discretion Built into the Judicial System

In Cameroon, justice is exercised in a discretionary manner through a process of *de facto* ousting of the jurisdiction of courts. This procedure manifests itself through legal decisions made by ministers and law officials without reference to the courts.

1. Executive-controlled Organs including Ministers Can and Do Make Judicial Decisions By-passing the Courts

In theory as in practice, the President is the Supreme Magistrate with the power to delegate some of his executive cum judicial powers to subordinate officials who act in his name.[8] For instance, sometime in February 2002 the Minister of External Relations represented before another international body that Government was favorably disposed towards a friendly settlement of this matter. This undertaking was clearly meant to signal Government's preference for a non-judicial resolution. Complainants in good faith relied on this stated preference for a resolution through dialogue to their own detriment.

[8]Article 10(2) of the 1996 Constitution provides: "The President of the Republic may delegate some of his powers to the Prime Minister, other members of Government and any senior administrative officials of the State, within the framework of their respective duties."

Their reliance was informed by the realities of Cameroon's system of Government. In Cameroon's highly centralized presidential system, the executive branch is the preponderant institution.[9] It is simply inconceivable that Cameroon's Foreign Minister, an official with no independent authority and whose authority is merely delegated, could have taken such a binding obligation without explicit directives from the presidency. However, the effect of the minister's decision was to preempt other organs of government, including the courts, from looking into the Bakweri land question.

2. Inordinate Control in the Dispensation of Justice Exercised by Law Officials

Legal developments in the aftermath of the sale of CDC Tole tea estate to the South African Brobon Finex Pty Ltd. and its Cameroonian subsidiary, Cameroon Tea Estates ("CTE"), underscore the *de facto* discretionary powers enjoyed by law officials other than sitting judges and magistrates. In the exercise of this power of discretionary, a procureur of the republic, an official of the legal department, can order law enforcement officers to either enforce a court judgment or ignore it. This is precisely what happened only too recently when the Fako High Court judge issued an interlocutory ruling reinstating the dismissed general manager of CTE.

1) Background to the CTE Management Crisis. The Brobon Finex/Cameroon convention was touted as the very model of privatization. ***See*** **Attachment 3.** However, recent revelations have bared it as nothing more than a sweetheart deal designed to enrich a few high-ranking, well-connected barons of the regime who conveniently chose to hide behind a South African corporate shield. ***See*** **Attachment 4.**

One of these privileged barons, John Niba Ngu, a former General Manager of CDC and former Minister of Agriculture and the man who had brokered the deal was appointed General Manager of CTE in October 2002. Barely three months later Ngu was relieved of his position by the board of directors of Brobon Finex, the majority shareholder of CTE, and replaced by his vice. ***See*** **Attachment 5.**

On January 8th 2003, John Ngu sought and obtained injunctive relief from the Fako High Court in the South West Province by way of an *ex parte* order temporarily suspending his dismissal and reinstating him as the "*legally appointed General Manager"* of CTE. ***See*** **Attachment 6**. Like all court rulings in Cameroon, the High Court order carried the following instructions to law enforcement officials: "WHEREFORE the President of the Republic of Cameroon commands and enjoins all Bailiffs and Process Servers to enforce this Ruling, ***the Procureur General and***

[9] *See* note 1 *supra* and accompanying discussion.

the State Counsel to lend them support and all Commanders and Officers of the Armed Forces and Police Forces to lend them assistance when so required by Law."[Emphasis added]

2) Discretionary Exercise of Judicial Power. Two days later, the same Procureur General of the South West Province ("SW Procureur General") charged in the High Court Order to lend support to bailiffs and process servers executing the order, issued countermanding instructions **[*See* Attachment 7]** ***overturning*** the ruling, after it had actually been executed! Not surprisingly this highly unorthodox conduct by a judicial officer has to date not drawn any rebuke from his superiors because it is reflective of the attitude the Executive has exhibited toward the Bakweri land question. It explains why after nine years Government has taken no serious steps to bring the matter to a close.

The management feud in CTE was a simple commercial dispute, a purely civil matter pitting two private litigants that could have been, and was temporarily resolved by a properly constituted court pending a full hearing on the merits. Yet, the State found it necessary to step in to block its execution. It is worth asking what exactly Ngu was asking the court to do. Nothing really extraordinary, only that his business associates should be compelled to respect the internal law of their company: that as an appointee of the CTE Board of Directors, only that board and not the Board of Directors of Brobon Finex, even though it holds the majority shares in CTE, can lawfully dismiss him as the general manager.

In a judicial system worthy of its name, the SW Procureur General, as Government's lead lawyer, when faced with an *interlocutory* ruling the execution of which, in his judgment, could have serious immediate and irreparable consequences on the public order, has the option of asking the same trial court that issued the offending order to lift it. If, on the other hand, the SW Procureur General was convinced that there was trial court error with respect to the manner in which the *ex parte* order was made or that the order completely ignored a compelling public interest that had to be protected, the SW Procureur General still had the option of appealing the ruling in the Court of Appeals. But he chose not to exercise these options.

Given the *provisional* nature of the high court order, the SW Procureur General was still left with a third option– this, from a procedural standpoint, would have been his first option – which was to ask to be joined as a necessary party so that when the matter eventually came up for hearing on the merits he would then be able to argue the State's interest (after all, his client, the State, is a 35 percent shareholder of CTE). Again, for reasons still to be divined, the SW Procureur General decided against this course of action.
This much is undeniable: the one option that was *not* available to the SW Procureur General, in a properly functioning and professionally-managed judiciary, was that of *disobeying* a High Court order regardless of how repugnant he may have found it to be! The SW Procureur General's attempt to subvert the judicial process, maladroit as it is indefensible, is however an accurate portrait of how justice is dispensed in Cameroon. His action has succeeded in publicly exposing what heretofore has been a well-kept secret about a judiciary where the rule of law is observed more in the breach and where the pursuit of justice has been transformed into an unrelenting

Sisyphean struggle.

The action of the SW Procureur General which failed to draw a rebuke from the Minister of Justice clearly indicates that the line separating the executive and judicial branches of government in Cameroon's peculiar brand of republicanism is a blurry one. More importantly, as between the two, the executive, represented in this equation by the Minister of Justice *qua* Procureur General, is clearly the dominant branch. The courtroom almost always yields to the boardrooms of Ministers of the Republic where decisions on issues of great political sensitivity are taken. It was in the office of a minister that the transfer of Tole tea estates was negotiated and finalized and it will be in that same office rather than the courts of the republic that the management crisis that has rocked CTE will be ultimately resolved.[10]

3) Implications of the Discretionary Exercise of Judicial Power on the Exhaustion Rule. It is important and necessary to situate the SW Procureur General's action, the overturning of a court order in the CTE management crisis, in the context of Complainants' brief on the exhaustion of domestic remedies. The feud within CTE management is directly related to the CDC privatization exercise. This exercise cannot be separated from the Bakweri land question because the two are linked symbiotically. The crops owned by the CDC including the tea in the former Tole estates do not grow in the air but on land the Bakweri have historically occupied long before the advent of German colonial rule. It follows, therefore, that the discretionary exercise of judicial power by the SW Procureur General to resolve a management dispute within CTE foreshadows the fate of Complainants if a court were to exercise jurisdiction in rem over the disputed lands. The uncertainty introduced into the CTE management crisis by the SW Procureur General's intervention undermines confidence in the court system.

Where justice has been found to be discretionary, this Commission has not hesitated to declare the Communication admissible in order to give Complainants a forum denied them in the home state to be heard. ***See*** **Constitutional Rights Project vs. Nigeria, African Comm. Hum. &**

[10]That process is already engaged. Reeling from weeks of embarrassing press exposure of the odious nature of this privatization exercise, the Minister of Finance and Budget summoned the feuding management of CTE to meet in his office to work out a solution. ***See*** **Attachment 8.**

Peoples' Rights, Comm. No.60/91 (not dated). The issue in **Constitutional Rights Project** was a provision in the Robbery and Firearms (Special Provisions) Act which conferred on the State Governor the power to confirm or disallow a conviction for violations of this law by a Special Tribunal. The Commission described the Governor's power as "*discretionary extraordinary remedy of a nonjudicial nature"* and ruled that "*it would be improper to insist on the complainants seeking remedies from sources which do not operate impartially and have no obligation to decide according to legal principles."* As a consequence, any remedy provided through this source would be neither adequate nor effective.

Complainants submit that the *de facto* power exercised by the SW Procureur General to enforce or ignore a high court judgment is no different from that conferred on the Governor in the Robbery and Firearms Act. The SW Procureur General's instructions setting aside a court order were not based on any sound legal principles. Rather they were influenced by reasons of political expediency.

Part II: Adequate Notice Given to Government and Ample Opportunity to Remedy Harm

More than nine years have passed since this matter was referred to the President of the Republic. Within weeks following the publication of the privatization decree of 1994, the Bakweri immediately submitted a Petition to the Head of State asking for Government's protection of their ancestral lands. Again in 1999 the President received another memorandum from the Bakweri landowners. The Bakweri were obliged to pursue this course of action because of primacy of the Presidency in our constitutional scheme.

Complainants again stress the need to have this dispute situated in the particular context of Cameroon. Here presidential preemption of decision-making at all levels and in all areas, judicial as well as non-judicial, has already been noted. Preemption operates in much the same way as ouster clauses by ousting the jurisdiction of the courts. ***See*** **International Pen, Constitutional Rights Project Interights on behalf of Ken Saro-Wiwa Jr. And Civil Liberties Organization vs. Nigeria, African Comm. Hum. & Peoples' Rights, Comm. No. 137/94, 139/94, 154/96 and 161/97 (not dated).**

A. Policy Objectives of the Exhaustion Doctrine

The exhaustion requirement serves at least two policy goals. The first one is to ensure that the government against which a complaint has been lodged has had notice of the human rights violation and an opportunity to correct the harm and to do justice before being called before an international body. ***See*** **Communications Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah/Zaire, African Comm. Hum. & Peoples' Rights, Comm. No. 25/89, 47/90, 56/91,**

100/93 (Joined)(not dated). A second policy goal of the exhaustion doctrine is to preserve Complainant's right to first seek redress from domestic remedies since these are normally quicker, cheaper and arguably more effective than international ones.

The first of these goals is particularly relevant in this submission on admissibility.

1. Sufficiency of Notice to Government

With respect to the goal of providing Government an opportunity to redress the complained wrong, Complainants respectfully submit that (1) the Bakweri land problem has been around for several decades, and (2) nine years have passed since the of Government of Cameroon was seised of the matter.[11] More recently, sometime in January 2003, a special envoy of the President of the Republic dispatched to meet with some Bakweri chiefs assured them of Government's intention to "***provide a sustainable and durable solution***" to the Bakweri land problem. ***See*** **Attachment 9.** The foregoing together with Government's own representations[12] before the U.N.

[11]A memorandum was first submitted to the President of the Republic in 1994 and again in 1999. After several attempts to meet with the Prime Minister, he finally agreed to meet with a delegation from BLCC in his office on 4th October 2001. Following that meeting and at the request of the Prime Minister, BLCC prepared yet another memorandum on the Bakweri land problem which it submitted to him. Between February and June 2001 an exchange of correspondence took place between BLCC and Mr. Ahmadou Oumarou, Legal Adviser to the National Privatization Commission, the organ responsible for implementing government's privatization policy. This was following a telephone call Oumarou placed to BLCC's Counsel on Monday, February 28, 2001. There has been no positive response as of this date to this flurry of activity.

[12]This undertaking must have been given by Cameroon's Minister of External Relations or his representative. In the event, the pledge binds the Government of Cameroon.

Sub-Commission in February 2002 of its readiness to resolve the Bakweri land problem amicably vitiate the lack of notice defense.

1) A Lack of follow through on public pledges. Respondent's approach to this matter has been colored by bad faith. Its failure to involve the Bakweri landowners in the October 2002 sale of the Tole/Bwiyuku tea estate which stands on the disputed land flies in the face of avowals before an international body of its preparedness to resolve the Bakweri land problem "***once and for all.***" It is also indicative of Respondent's bad faith. Complainants are convinced that in its determination to permanently dispossess the Bakweri of their ancestral lands, Government is not shy about misleading third parties as to its real intentions. Government's tendency to double-speak– saying one thing to an international human rights body while doing the opposite– makes it all but impossible to engage it in constructive dialogue!

The Commission has spoken approvingly of the role of positive dialogue in the communications procedure and has stressed the need for the parties concerned to approach this process in good faith. ***See*** **Free Legal Assistance Group.** Complainants have unhesitatingly and always in good faith taken advantage of every opportunity presented them to press for a friendly settlement. They have never received an affirmative response from Government. Respondent for its part has consistently avoided making good use of these opportunities. It would appear that Government's avowed commitment to dialogue is nothing but a well crafted stratagem to lull Complainants into complacency.

The opportunity to remedy Complainants human rights violations has been staring at Government for at least nine years! Government has temporized during this time leaving Complainant with no choice other than to drag it before this Commission. Where an opportunity to redress has been offered and then squandered, as in this case, and where there has been unwarranted delay and the State's response has been extremely slow in coming, Complainants should not be compelled to exhaust local remedies.

Part III. Remedies Inadequate and Unduly Prolonged

A. Inadequacy of Domestic Remedies.

Domestic remedies need not be exhausted if there has been an unwarranted delay in the courts. In Case 11.218 (Nicaragua), the Inter-American Commission of Human Rights explained this exception in detail:"*If a case is not resolved before the local courts within a reasonable time, complainant, petitioner, or victim is released from the obligation to exhaust domestic remedies (Article 46(2)©) of the American Convention). In effect, the rule of prior exhaustion of domestic remedies has been established to the benefit of the states party to the Convention, as the petitioner is obliged to demonstrate that he has exhausted them, except, as in the instant case, where there is a manifest delay in the administration of justice."* ***See Case 11.218 (Nicaragua)***

Arges Seqeira Mangas, Annual Report of the Commission 1997, OEA/Ser.L/V/II.98 Doc.7 rev, April 13, 1998, at 720, para. 120.

Although this matter never went to court but was instead referred to the President of the Republic for a political/administrative solution, the principle of Case 11.218 still applies. Government by its own conduct has implicitly admitted the impracticality or undesirability for Complainants' to seise the courts of Cameroon. This tacit admission can be inferred from the representations made before an international human rights body of Government's willingness to bring this matter to a satisfactory conclusion. Thus the unwarranted delay complained of is at the level of the Presidency where this matter has been pending for nine years.

After these many years without a response from the President of the Republic, considerable time will still pass before he renders a decision on this matter, if any. In the interim, much effort has been expended in vain by Complainants to pressure Government to take a position: meeting with the Prime Minister, corresponding with the Bretton Woods institutions, prospective purchasers of CDC plantations, and the National Privatization Commission. ***See*** **Attachment 10**. The lack of progress seems to suggest that remedies either do not exist or cannot be effective in Complainants' situation and in any event their application is being increasingly prolonged.

1. Establishing a 'Reasonable Time-frame'

Reviewing its own jurisprudence as well as that of the European Commission of Human Rights, the Inter-American Commission found that a "reasonable time" in the context of undue delay is determined by reference to four factors**:** the complexity of the case; complainant's disposition toward the respondent; the investigative phase; and action taken by judicial authorities. ***See Case 11.218 (Nicaragua) Arges Seqeira Mangas, Annual Report of the Commission 1997, OEA/Ser.L/V/II.98 Doc.7 rev, April 13, 1998, at 721, para. 122.***

1) The complexity of the case. The Bakweri land claims case is a relatively straightforward matter. It concerns the rightful ownership of vast tracts of land that were forcibly taken from their Bakweri owners by German colonial authorities in the 19th century and transferred to private German owners who developed these into profitable plantations. These lands were subsequently purchased by a successor colonial administration, declared native lands and then leased to statutory corporation, the CDC. The Bakweri who were never compensated for their expropriated lands nor received any ground rents from the lessee have for almost fifty years been petitioning Government and the United Nations to have their right of ownership over these lands formally recognized by Respondent. But for Government intransigence this matter would have been put to rest years ago.

2) **The conduct of the damaged party in terms of cooperating with the process as it evolves.** Though Complainants are the victims of an historic wrong, they have nevertheless been the ones exercising remarkable forbearance in this matter. They have always been the ones

pressing for a friendly settlement only to be rebuffed by Government. Complainants have repeatedly demonstrated not only their good faith but patience in the face of Government intransigence and provocation. Government, on the other hand, has consistently failed to make good use of opportunities for an amiable resolution. The record of this asymmetrical commitment to dialogue is well-documented in **Communication 260/2002 - Bakweri Land Claims Committee/Cameroon**.

(i) Complainants' demonstrated willingness to cooperate*.** In August 2000 BLCC filed a Communication under the **"1503 Procedure"** with 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)("U.N. Sub-Commission") citing the Government of Cameroon for violating the land rights of the Bakweri people by seeking to sell CDC plantations on those lands without involving the indigenous landowners. On the 8th of July by a letter from the Governor of the South West province, who was writing on instructions from Cameroon's Minister of External Relations, BLCC was informed of the U.N. Sub-Commission's decision to discontinue further consideration of the matter. ***See **Attachment 11.**

The letter from the Governor gave two 'reasons' for this decision. Since the U.N. Sub-Commission's rules of procedure do not allow Petitioners (BLCC) to be served with a copy of the Government's Response nor to be present during commission deliberations, a right only extended to States Party,[13] Complainants are of the view that the 'reasons' contained in the Governor's letter were actually the arguments advanced by the Cameroon Government. These were that "*petitioners did not fully exploit local avenues available to solve the problem and the Cameroon judicial system was deemed competent to handle the petition*;" Second, that "*the Commission commended government's position on the issue and encouraged government's*

[13] *See* Rule 69, GUIDELINES FOR THE APPLICATION OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS OF THE RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL AND OTHER DECISIONS AND PRACTICES RELATING THERETO (Sub-Commission resolution 1999/114, annex).

efforts in her continuous willingness to resolve once and for all, this matter of Bakweri Lands." The second 'reason' given was a significant development in the BLCC struggle to reclaim expropriated Bakweri lands as it was the first and only time Government was acknowledging the existence of a Bakweri Land Problem and its willingness to see the matter resolved amicably.

On receiving the July 8th letter, BLCC's President, Chief Peter Moky Efange, wrote back to the Governor acknowledging receipt and to request an "*unabridged copy of the Commission's decision.*" ***See*** **Attachment 12.** Buoyed by Government's representations before the Sub-Commission committing itself *"to resolv[ing] once and for all, this matter of Bakweri Lands,"* BLCC also wrote to the Prime Minister and Head of Government ***[See*** **Attachment 13]** expressing its readiness to join Government in a "meaningful dialogue" over this matter.[14]

(ii) Government's history of bad faith. Complainants assert that Government is not really interested in resolving this problem at all. Two examples. First, Government's response to BLCC's overture to the Prime Minister following receipt of the Governor's letter of 8th July 2002 was to dispose the Tole/Bwiyuku tea estate to a phantom South African company known as Brobon Finex Pty Ltd on October 18th 2002.[15] ***See*** **Attachment 14.** This high-handed unilateral

[14]Incidentally, neither BLCC's request to the Governor for a copy of the U.N. Sub-Commission's decision nor its letter of August 27th 2002 to the Prime Minister was ever acknowledged.

[15]With the sale of the assets of Tole as well as two other state-run tea estates (Ndu and Djutissa) a new corporate entity, Cameroon Tea Estates ("CTE") was formed. Sixty-five percent of CTE's shares are claimed by Brobon Finex to be held by them, of which 5% thereof would be ceded to workers, while the State of Cameroon was allotted 35 percent. ***The Bakweri landowners were, as if by spite, not included in the deal.***.

sale, it would appear, was Government's answer to BLCC's plea to the Prime Minister for dialogue and was a complete *volte face* on promises it made to the U.N. Sub-Commission.

Although this estate sits on roughly 454 hectares of *private* Bakweri land, the transfer was done without reference to the Bakweri communities located in the area, without regard to their rights under the Banjul Charter, the Constitution of Cameroon and the 1974 Land Tenure Law, without notification or consultation (or any semblance of due process) with their accredited agent, BLCC , and without compensation.[16]

[16]Neither Government nor the purported purchasers have been willing to disclose to BLCC the terms of the sale, particularly those that concern the future use of Bakweri ancestral lands.

Second, the management crisis in Cameroon Tea Estates, which exposed the unorthodox methods by which Tole tea estate was transferred to third party purchasers, presented Government with a golden opportunity to make good its undertaking to the U.N. Sub-Commission. What did Government do instead? It adopted a policy of splitting the Bakweri people by attempting to buy the silence of some of their traditional rulers.[17] ***See*** **Attachments 9 and 15**.

3) How the investigative stage of the process unfolds. This case does not call for any investigation as the facts are well-known to all the parties concerned having been in the public domain for close to fifty years. Even if there were still some new facts to be discovered, there have been no visible moves on Government's part to conduct such an investigation. Respondent's indifference to 'due diligence' extends even to the foreign companies it has allowed to bid for the CDC properties. As incredulous as this may sound, Respondent was unaware that Brobon Finex, the purported South African company that bought the CDC tea estates, is a phantom corporation until press reports exposed the company for what it is or is not! ***See*** **Attachments 4** and **14**.

4) The action of the judicial authorities. Of the four factors identified by the Inter-American Commission for measuring "reasonable time" this is the only one that directly speaks to the response from judicial authorities. The quantum of delay which may exempt a complainant from exhaustion has been explored in the jurisprudence of the Human Rights Committee ("HRC") in its decisions on admissibility under Article 5(2)(b) of the Optional Protocol to the Civil and Political Rights Convention. HRC case law reveals that the average minimum period of delay, which may, depending on the circumstances of each complaint, exempt a complainant from the exhaustion rule, appears to be around four years (***Eric Hammel v. Madagascar,***

[17]Unfortunately for Government this ploy failed as the overwhelming majority of Bakweri Chiefs denounced this hackneyed policy of 'divide-and-conquer' uncannily reminiscent of German colonial times and publicly dissociated themselves from this poorly disguised effort to turn them into quislings to their own people! ***See*** **Attachment 16**. The Bakweri Chiefs not only reaffirmed their support for BLCC as their accredited agent on this land question but reiterated point-by-point the relief sought by BLCC in its October 2002 Communication to this Commission.

Communication No. 155/1983 (3 April 1987), U.N. Doc. CCPR/C/OP/2 at 179 (1990)) to four and a half years (***Luciano Weinberger Weisz v. Uruguay*, Communication No. 28/1978 (29 October 1980), U.N. Doc. CCPR/C/OP/1 at 57 (1984)).**

The Committee has also excused complainants from the exhaustion requirement for delays that were much shorter, such as two years in ***Collins v. Jamaica*, Communication No. 356/1989, U.N. Doc. CCPR/C/47/D/356/1989 (1993)** or three years in the case of ***Fillastre, Bizouarn v. Bolivia*, Communication No. 331/1988, U.N. Doc. CCPR/C/43/33/1988 (1991)** and three and a half years between arrest and trial and acquittal in ***del Cid Gomez v. Panama*, Communication No. 473/1991, U.N. Doc. CCPR/C/54/D/473/1991 (1995).**

The President of the Republic, the highest ranking official in the country, was seised of this matter nine years ago. By any objective standards, this period far exceeds the minimum period of delay the HRC has allowed respondent States to claim in order to defeat an applicant's failure to exhaust domestic remedies arguments. Complainants respectfully urge this Commission to endorse the HRC benchmark and to excuse them from the exhaustion requirement on the ground that nine years of presidential inaction amounts to an unreasonably prolonged delay.

B. Unavailability of Domestic Remedies

The availability of domestic remedies to Complainants must be analyzed in the circumstances of Complainants' case and the reasonable prospect that such remedies would be effective. What we have here is a politically charged case which involves lands leased to a *State-owned* corporation from which Government has for over forty years been receiving ground rents meant for the landowners, i.e., Complainants in this case. The prospect of losing this steady source of revenue is clearly not lost on Government. Furthermore, the CDC plantations up for privatization would not be as attractive to potential investors if stripped of the rich, fertile lands they occupy. Respondent *must* know this which may partly explain its policy of deliberately withholding public recognition of Complainants' right to ownership of these lands. Such recognition would serve notice to prospective purchasers that Complainants represent one of the major stakeholders in the privatization exercise who must be involved in all the negotiations regarding the sale of CDC plantations.

Because Government is not prepared to allow an indigenous *minority* people to exercise dominion over the most valuable asset held by the CDC, it continues to refer to the lands in question as State property contrary to its own 1974 Land Tenure Act. This position was expressed publicly by the Finance Minister, a co-signatory of the Brobon Finex-Cameroon convention, in an interview he granted the Government-owned news daily, ***Cameroon Tribune***, the very day Tole tea estate was sold to the South African company. ***See*** **Attachments 17 and 17a.** It is worthy of note that the terms of this agreement have never been made public and a request to Brobon Finex for a meeting with BLCC representatives to clarify these issues has gone unanswered. ***See*** **Attachment 18.**

The continued classification of private Bakweri lands as State property affords Complainants no basis for legally challenging Government's acts or omissions that violate their ownership rights. Therefore, the inescapable conclusion is that a domestic remedy is unavailable as it does not exist and thus cannot be used and exhausted.

Complainants rely on the Inter-American Court of Human Rights' Advisory Opinion on the exhaustion rule in the American Convention on Human Rights where the court opined that when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused. ***See Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights),*** **Inter-American Court of Human Rights, Advisory Opinion No. OC-11/90 of August 10, 1990, Series A No. 11, at para. 33.**

Furthermore, Complainants submit that domestic remedies to the extent that they exist are ineffective. The rule of exhaustion of domestic remedies does not require the invocation of remedies where this offers no possibility of success***. See Exceptions to the Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights),*** **Inter-American Court of Human Rights, Advisory Opinion No. OC-11/90 of August 10, 1990, at 32.** It is not enough for Government

to merely assert as she did in the U.N. Sub-Commission that domestic remedies exist. Under the European Human Rights Court's analysis of the division of the burden of proof between contending parties articulated in **Akadivar et al. v. Turkey, (1996) Eur.Ct.H.R., Reports 1996-IV**, the respondent party has the *initial* burden of satisfying the international tribunal that the domestic remedy was an effective one, available in theory and in practice at the relevant time. In other words, that the remedy was accessible, was capable of providing redress in respect of the complainant's complaints, and offered reasonable prospects of success. Complainants submit that the Government of Cameroon will not be able to satisfy this burden.

The CTE management crisis has revealed that in matters where Government has a particular interest, such as the Bakweri lands problem, the judiciary cannot be trusted to act responsibly and impartially. Since the SW Procureur General can set aside a court order displeasing to the Government and instruct the forces of law and order to ignore it, Complainants have no rational basis for believing that their fate will be any different. Certainly any recourse to the local judiciary would be en exercise in futility since the SW Procureur General can overturn any decision favorable to Complainants!

Under these circumstances, it is hardly unreasonable nor speculative to place little faith in the judiciary. This lack of faith is not founded on Complainants' mere doubts about the success of domestic remedies, mindful as they are that doubts alone will not absolve them from pursuing and exhausting these remedies.

Complainants wish to draw the Commission's attention to the particular *extra-judicial* act taken by the SW Procureur General, a law official who was not the trier of facts nor the judge who reviewed the ruling on appeal: First, that it is not an isolated occurrence but emblematic of how "discretionary extraordinary power" is routinely exercised by law officials other than sitting judges; this has contributed immensely in making the administration of justice in Cameroon so undependable.[18]Second, the SW Procureur General's action cannot be divorced from the issues raised in this complaint. The lands in dispute are all in Fako division, in the jurisdiction of the SW Procureur General. Should Complainants seek a declaratory judgment to have the lands declared as private Bakweri property, that writ will be filed in the Fako High Court. This is the same court whose order temporarily staying the dismissal of the general manager of CTE was unilaterally set aside by the SW Procureur General.

[18]Here is another example of a high court order that was blithely ignored by a high- ranking Executive branch official in the Ministry of Economy and Finance. This time all that the Procureur General could do was to offer the lame advise to the official to the release the impounded vehicle. The facts of this case are these: sometime in January 2001, plaintiff sued the State of Cameroon for wrongfully detaining his official vehicle which he drove as the Representative in Cameroon of British Executive Service Overseas. The Fako High Court awarded judgment in favor of the plaintiff. ***See*** **Attachment 19.** When he attempted to have it enforced against the Paymaster General who was detaining the vehicle, the latter refused to obey the Court Order. The Paymaster General continued to disobey the high court order even when it was later fortified by an Order from the Administrative Bench of the Supreme Court, and even by an Administrative Order from the Governor of the South West Province. In these circumstances, plaintiff's reasonable expectations were that the SW Procureur General would move the high court to cite the Paymaster General for contempt of Court and have a warrant for his arrest issued. Contrary to expectations, the SW Procureur General only advised him to release the vehicle, which advise was promptly ignored. ***See*** **Attachment 19a**. The plaintiff was left to pursue the Paymaster General personally for damages.

Finally, the SW Procureur General as the Government's lawyer will be expected to appear before this court to defend the State's interest in this matter. This would set the stage for a lawsuit in which the SW Procureur General *qua* Minister of Justice *qua* Government will be a defendant, prosecutor and judge in its own cause. If the court rules in a manner displeasing to the SW Procureur General, he will as he did in the CTE/Ngu case, exercise his discretionary power and instruct law enforcement officers *not* to enforce that judgment.

Complainants' reasonable prospect of success turns on the availability and effectiveness of domestic remedies. That is not the case here.

Conclusion

The African Commission on Human and Peoples' Rights has ruled against a too literal and mechanical application of the Exhaustion of Local Remedies rule stressing that where it proves impractical or undesirable for a complainant to seise the domestic courts then resort to the rule is waived. Such flexibility in applying the requirement of Article 56(5) and (6) of the Banjul Charter was very much evident in the Commission's decision to admit the complaint in ***Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia, Communication No. 157/96.*** Despite the complainants failure to exhaust domestic remedies, given the number of states against whom the complaint was lodged, the Commission proceeded to waive this procedural bar in the higher interest of protecting human rights.

In a similar vein, the European Human Rights Court has also recognized the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism. ***See*** **Akadivar et al. v. Turkey, (1996) Eur.Ct.H.R., Reports 1996-IV.** These cautionary words are intended to ensure that the exhaustion rule does not become an unjustified impediment to access to international remedies, itself a right under international human rights law:

> *the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective. This is why Article 46.2 of the [American] Convention sets out exceptions to the requirement of recourse to domestic remedies prior to seeking international protection, precisely in situations in which such remedies are, for a variety of reasons, ineffective. See* **Velásquez Rodríguez Case, Preliminary Objections**, para. 93.

Complainants pray that in applying the exhaustion rule in this case, the Commission should not lose sight of its mission as stipulated in Article 45(2) of the Banjul Charter: the ***protection of the fundamental human rights of the African peoples.*** To this end, the Government of Cameroon should be denied the use of procedural technicalities to prevent a case of gross human rights violations from being heard by this Commission.

Complainants respectfully submit to this Commission that an insistence on the pursuit and exhaustion of domestic remedies will only prolong the application of the Bakweri people. In Cameroon's system of justice, the President of the Republic has the last word and his word on politically sensitive cases, such as this one, carries more weight than a judgment of any domestic tribunal. This President has long been seised of this matter but he has chosen to ignore it. Complainants urge this Commission to prevail on the President of Cameroon to resolve the Bakweri land problem "once and for all."

Prayer

For the foregoing reasons, Complainants respectfully pray that the Commission should declare **Communication 260/2002 - Bakweri Land Claims Committee/Cameroon** admissible in relation to the violations alleged of Articles 7(1)(a), 14 , 21 and 22 of the Banjul Charter; to find that there has been such violations; and to recommend that:

1. 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;

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

3. 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;

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

5. 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