Before the African Commission on Human and Peoples' Rights

Communication 260/2002 –

Bakweri Land Claims Committee/Cameroon

Response of The Bakweri Land Claims Committee to the Preliminary Objections Presented by the Government of Cameroon

March 4, 2003

Table of Contents

The Bakweri Land Claims Committee ("BLCC") (hereinafter "Complainants") hereby responds to the Rejoinder submitted by the Government of Cameroon (hereinafter "Respondent") with respect to BLCC's Communication filed with the African Commission on Human and Peoples' Rights (hereinafter "the Commission") on October 4, 2002, relating to various violations of the African Charter on Human and Peoples' Rights (hereinafter "the African Charter"). In this response, BLCC incorporates by reference and, where relevant, arguments contained in its October Communication (hereinafter "Pleadings on the Merit") and its February 3, 2003, Submission on Admissibility (hereinafter "Submissions").

II - Summary

On October 4, 2002, after nine long years of waiting on Respondent to resolve the Bakweri Land Problem, Complainants submitted a Communication to the Commission asserting that Respondent had violated its obligations under the African Charter. Complainants requested that the Commission resolve the problem and grant them appropriate relief.

By written pleadings dated February 3, 2003, Respondent raised several preliminary objections (hereinafter "Preliminary Objections") under Article 56 of the African Charter and Rule 114, section 3 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (hereinafter "the Rules of Procedure").

II - Argument

In its **Preliminary Objections**, Respondent invokes five separate grounds upon which Complainants claims should be declared inadmissible: first, that Complainants lack standing to bring the complaint; second, that they failed to exhaust local remedies; third, that the Communication is framed in insulting and abusive language; fourth, that the matter had already been dismissed by another international tribunal; and finally, that the allegations contained in the complaint are vague

and indeterminate.

1. Locus Standi

Respondent argues that Complainants lack standing to bring this matter before the Commission for three reasons: 1) that the author of the communication has failed to provide proof that he is an alleged victim of the harm complained of; or 2) offer proof that the victims on whose behalf the communication has been submitted are unable to speak for themselves; and 3) not being a victim himself and since the violations are neither serious nor excessive, the author should have but failed to marshal detailed evidence of the alleged violations. On all three grounds, Respondent is wrong as a matter of fact and law.

1.1 The legal standard for standing

The jurisprudence of the Commission and its rules of procedure taken together prescribe three conditions under which a communication would be declared admissible pursuant to Article 56, para. 1, of the African Charter. These are that: 1) the author of the communication is a victim of the alleged violations; or 2) the communication is submitted on behalf of an individual victim or individuals who are victims of the alleged violation and are unable to act on their own; or 3) when not submitted in the name of a specific victim, that the communication allege grave and massive violations. The overall goal of these requirements is to ensure that communications submitted to the Commission contain "adequate information with a certain degree of specificity concerning the victims"**,** to permit the Commission to make informed decisions concerning the matter before it**.** ***See Centre for the Independence of Judges and Lawyers vs. Algeria, African Comm. Hum.& Peoples' Rights, Comm. No. 104/94, 109/94, 126/94 (not dated), para. 5.*** That goal has been met in this complaint.

1.2 Respondent applied the wrong standard

Complainants meet the standing requirements on all counts. Respondent's claim that Complainants

have failed to meet all three of these conditions is wrong as a matter of fact and relies on questionable legal authority. Nothing in the Commission's jurisprudence suggests that the three conditions for meeting the standing requirement are aggregative and must all be satisfied or risk having the communication declared inadmissible. Complainants read these requirements as separate and that an author need only satisfy one of them to have his/her communication declared admissible. Be that as it may**,** ***Communication 260/2002*** satisfies all three of these conditions.

1.3 Standing requirement met by complainants

To begin with, the author of ***Communication 260/2002*** is himself a Bakweri as are all the members of the Bakweri Land Claims Committee, Complainants in this case. They are all victims of the violations asserted in the **Pleadings on the Merit.**

The Commission's decision to declare inadmissible the communication in ***Centre for the Independence of Judges and Lawyers,*** which Respondent cites with approval, is understandable inasmuch as its author was not an alleged victim nor was the communication submitted in the name of a specific victim. That is not the case here. ***Communication 260/2002*** has been submitted by the BLCC on behalf of the Bakweri chiefs, notables and elites, all of them, jointly and severally, are victims of the uncompensated expropriation of their lands dating back to German colonialism. Though able to speak for themselves as they have been doing for the last fifty years[1], they have knowingly and willingly authorized BLCC to represent them in this cause. Respondent is not unaware of this fact. BLCC's authority to speak for the Bakweri people is backed by a resolution unanimously adopted by the custodians of Bakweri lands. **Submissions, Attachment 1.**

1.4 Respondent's position is inconsistent with its prior conduct and statements

[1] ***See generally*** Shirley Ardener, E.W. Ardener and W.A. Warmington, VILLAGE AND PLANTATION IN THE CAMEROONS, Ch. 16 (1960).

It is somewhat disingenuous for Respondent to contest Complainants locus standi in this matter at this time when its own conduct toward them establishes the contrary. Respondent has consistently dealt with Complainants as the agent accredited by the Bakweri victims to speak for them on their land expropriation claims. Respondent's recognition of BLCC as the *porte parole* of the Bakweri chiefs, notables and elites can be traced back to the meeting with the Prime Minister in October 2000 when he met and discussed at great length with a delegation from BLCC led by its President, Chief Moky Efange. This aside, there are numerous other instances where Respondent has dealt with BLCC as the accredited agent of the Bakweri:

- telephone and email contacts with, and initiated by, the attorney of the National Privatization Commission– the Government agency charged with monitoring the privatization of state corporations including the CDC whose plantations sit on Bakweri lands;
- the July 18, 2002 letter from the Governor of the South West Province addressed to the ***President of BLCC*** conveying the decision of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter "U.N. Sub-Commission") and Respondent's undertaking before this body of its willingness to resolve the Bakweri land problem "once and for all";
- the invitation of January 29, 2003 from the same Governor to the Secretary-General of BLCC to attend a meeting in his office to discuss the human rights situation in the province including the Bakweri land problem **[Attachment 1]**; and
- the meeting itself which took place on January 31, 2003 where the President and the Secretary General of BLCC, Chief Moky Efange and Mola Njoh Litumbe, respectively, met with a government delegation from the Ministry of Territorial Administration and Decentralization and where the BLCC representatives were informed that the government delegation was in the province to monitor progress made in the resolution of the Bakweri Land Problem. This was in keeping with Respondent's undertaking to the U.N. Sub-Commission in Geneva last year that it was ready to seek a friendly settlement with the Bakweri.

For Respondent to now turn around and challenge the *bona fides* of BLCC as the legitimate representative of the Bakweri people, even though it has been dealing with it in that capacity for the last couple of years, clearly indicates that Respondent comes to this dispute with unclean hands. Respondent should therefore be estopped from contesting Complainants standing in this case as the objection is inconsistent with its previous statements and prior conduct.

1.5 Respondent's objections are unsubstantiated

As its third objection to Complainants' standing to bring this complaint, Respondent suggests there is some deficiency in Complainants' pleadings relative to the requirement that violations of a "serious and excessive" nature must be actual and not potential. Respondent hangs this argument on the following statements:

> *[T]he author mentions 'the probable transfer of Bakweri private lands to a third party,' and the fact that 'the privatization of the CDC without prior resolution of the crucial land problem constitutes a serious threat to the rights of the Bakweri people...'; in other words the damage that will make the group on whose behalf the author is speaking a victim is merely probable and not real. The Commission cannot entertain virtual or potential violations of the Charter but only violations that have actually occurred.* **Preliminary Objections at para. 1.**

In fact, pages 2-4 of Complainants' **Pleadings on the Merits** meet the requirement of sufficiency of evidence with respect to human rights violations that have ***"actually occurred"*** and not those that are ***"virtual or potential"*** or speculative. To recapitulate these actual violations, Complainants point to the vast network of plantations owned by Respondent's corporation, the Cameroon Development Corporation (hereinafter "the CDC"), that are presently occupying almost 400 square miles (104,000 hectares) of lands Respondent's own internal law classifies as ***private*** property. Respondent has occupied these lands for the last fifty years without paying any ground rents to the Bakweri

landowners as was originally agreed in 1947. These are actual violations of specific provisions of the African Charter as Complainants have demonstrated in their **Pleadings on the Merit**.

If the foregoing somehow fails to meet Respondent's test of an 'actual violation,' then what occurred in October 2002, when Respondent sold tea plantations sitting on 454 hectares of ***private*** Bakweri land– land over which Respondent is a ***fiduciary***– without bothering to inform or consult the Bakweri landowners, cannot by any stretch of the imagination be characterized as a "virtual or potential" violation. **Submissions at page 15.** With all due respect to Respondent's objections, the sale of the Tole tea estate followed immediately by a public declaration by Cameroon's Minister of Finance that the land on which it stood was State Land scuttles any argument that ***Communication 260/2002*** fails to allege "***violations that have actually occurred***." The harm is real and the damage has been done; a dispossession of the Bakweri of their ancestral land has occurred. Respondent would have this Commission believe that the sale of tea bushes which have a life-span of some 80-100 years, growing and nurtured on land belonging to the Bakweri, without their approval, does not infringe their property right over their patrimony!

Given the Minister's claim that CDC-occupied lands are National Lands, can it be argued, as Respondent is attempting to do in its Rejoinder, that the reach of the African Charter stops short of protecting victims of an existing violation that is likely to continue in the foreseeable future? Complainants submit that the forcible taking without compensation and the continued occupation of Bakweri ancestral land is precisely the kind of human rights violation the African Charter proscribes and which this Commission was established to ***"entertain."***

2. Exhaustion of Local Remedies

2.1 Respondent has failed to prove the availability of effective remedies

Respondent is dismissive of Complainants' nine year uphill struggle to obtain a pacific settlement to this dispute from the highest authorities of the State. Undisputably, the local remedies rule exists; however, the circumstances of this case exempt Complainants from complying with it. **Submissions at pages 12-19.** Even assuming ***arguendo*** that Complainants failed to satisfy the exhaustion rule, Respondent bears the burden of proving that effective remedies are available in domestic courts. ***See Rencontre Africaine pour la Defense des Droits de l'Homme vs. Zambia, African Comm. Hum. & Peoples' Rights, Comm'n No. 71/92 (not dated***). Respondent has failed to sustain its burden of showing that, ***in the Cameroon context***, other remedies are available to Complainants that are far more effective than one coming from the President of the Republic and Head of State.

Remedies that require exhaustion are those that are available, adequate and effective. These three essential conditions are intimately linked and frequently overlap and have been described in these terms: "a remedy is ***available*** if it can be pursued by complainants without impediment, it is deemed ***effective*** if it offers a prospect of success, and it is ***sufficient*** if it is capable of redressing the complaint."[2] In ***Rencontre Africaine,*** the Government of Zambia failed to prove that its immigration and deportation legislation which provides for appeal of expulsion provided an adequate and effective remedy to complainants expelled from Zambia. As a consequence, the Commission rejected its objections to the admissibility of the communication. Here Respondent has not even bothered to cite a single remedy at the disposal of Complainants other than to make light their valiant attempts to seek redress from the highest State institution, the Presidency of the Republic.

3. Form of Complaint

3.1 The complaint is in proper form

Respondent objects to the language used in the complaint and relies on a decision by this

[2] *See* Tom Zwart, THE ADMISSIBILITY OF HUMAN RIGHTS PETITIONS: THE CASE LAW OF THE EUROPEAN COMMISSION AND THE HUMAN RIGHTS COMMITTEE 88 (1998).

Commission for legal support. ***See Ligue Camerounaise des Droits de l'Homme vs. Cameroon, African Comm. Hum. & Peoples' Rights, Comm. No. 65/92 (not dated).*** Communication No. 65/92 is easily distinguishable from the instant one. ***Ligue Camerounaise*** was declared inadmissible on two grounds: first, because it contained "insulting language." ***Id., para. 13;*** second, and equally important, because it did not contain sufficient "specificity, such as will permit the Commission to take meaningful action." ***Id., para. 14.*** Neither of these factors is present in this complaint.

Since Respondent has framed its objection to admissibility on the first ground, Complainants will accordingly address this specific objection. ***Ligue Camerounaise*** is perhaps the only communication this Commission has declared inadmissible for offending the letter and spirit of Article 56, paragraph 3 of the African Charter. The case thus serves as the litmus test of the kind of language the Commission considers "disparaging or insulting" within the meaning of Article 56, paragraph 3. In declaring the communication inadmissible, the Commission focused on four statements it found to offend paragraph 3 of Article 56. These were: "Paul Biya must respond to crimes against humanity;" "30 years of the criminal neo-colonial regime incarnated by the duo Ahidjo/Biya;" "regime of torturers;" and "government barbarisms." Admittedly, this kind of language is in poor taste and culturally inappropriate. However, nothing in Complainants' written pleadings rise even remotely to the language reproached by the Commission in ***Ligue Camerounaise.***

Respondent also finds objectionable references, unkind perhaps but accurate nevertheless, to Cameroon's judiciary as well as Complainants' description of the role of the Prime Minister and that of the Assistant Secretary General at the Presidency. Respondent's ire with respect to statements made concerning the latter is that they tend to "strip them of any legitimacy to represent the Bakweri..."[3] Complainants are in no position to confer "legitimacy to represent the Bakweri" on

[3]Complainants suspect that the Prime Minister and the Assistant Secretary General at the Presidency would be surprised, to say the least, to learn that Respondent considers them as nothing more than ***tribal interlocutors*** and not the high-ranking Republican officials appointed to serve as spokesmen for ***all*** Cameroonians that Complainants have always thought they were!

anyone and cannot therefore strip any putative representative(s) of such authority. That power is reserved to the Bakweri people who, in their collective wisdom, have conferred legitimacy on Complainants to speak for them before any forum, national or international, on all matters associated with their long and difficult struggle to reclaim expropriated ancestral lands now occupied by Respondent's plantations.

3.2 Respondent's public embarrassment defense is untenable

In answer to Respondent's objections to admissibility on account of Complainants' alleged breach of Article 56, paragraph 3, Complainants can only plead how circumspect they have been in situating the various branches of government on the country's constitutional map: an elected President on whom the constitution vests ***extraordinarily*** broad powers; an ***unelected*** Prime Minister and an ***appointed*** Assistant Secretary General at the Presidency who constitutionally owe their respective offices to the President and who therefore serve at his pleasure[4]; a judiciary whose independence is more theoretical than real since all of its judges pursuant to the Constitution are ***appointed*** by the President-- ***promoted, transferred, disciplined*** and ultimately ***removed*** by him. There is nothing "insulting or disparaging" in this description of how power is distributed and exercised in Cameroon.

Understandably, Respondent might be embarrassed at being haled before the Commission but Respondent brought this on itself. It cannot now hide behind the fig leaf of "insulting and disparaging language" to avoid answering to the human rights violations asserted in Complainants'

[4]It is a fact not even Respondent can refute that both the Prime Minister and the Assistant Secretary General at the Presidency are not elected to their posts by the Bakweri. They are appointed on their personal merit by the President, and hold their office entirely at his pleasure. The Bakweri have nothing to say in their appointment or dismissal and it cannot in all truthfulness be stated, as Respondent is attempting to do here, that because these high-ranking State officials are Bakweri who have been nominated by the President, they automatically represent the Bakweri in the exercise of the duties assigned them by the President.

written pleadings.

Complainants submit that Respondent's objections to the complaint on grounds that it is couched in insulting and abusive language is nothing but a smokescreen. Apparently Respondent is trying to plead embarrassment at seeing its dirty linen publicly displayed as a defense for impermissibly derogating from its obligations under the African Charter. Such an extraordinary defense, if entertained, would clearly insult the intelligence of the Commission. It would also deny this Commission an opportunity to determine the existence of a duty on Respondent's part to cease its unlawful behavior and comply with its African Charter obligations. It would be unusual indeed for a body, that is expressly authorized under the African Charter to safeguard human rights, to be deprived of the opportunity to hear this complaint because Respondent's feathers have been ruffled. There is no basis for accommodating such an extraordinary defense.

Complainants are pursuing their rights in strict accordance with the provisions of the African Charter, which designates the Commission as the forum with jurisdiction over complaints such as the present. Complainants are entitled to hold Respondent to its obligations under the African Charter, vindicating the relevant principles of human rights law through the present complaint, without any obligation to be nice to Respondent for the sake of being nice. The African Charter expects Complainants to be respectful to Respondent; that they have been and will continue to be. But the Charter does not demand obsequiousness from those who seek its protection, particularly when, as in the present case, they are confronting a powerful Respondent that is prepared to ride roughshod over their Charter-protected rights. The protection of individual and collective rights of the peoples[5] of Africa flows from the language, purpose, structure and spirit of the African Charter.

[5]To Respondent's astonishing claim that the scope of the African Charter does not extend to minorities, **Preliminary Objections at para. 2**, Complainants refer it to the language of Articles 19 to 23 which address the ***rights of peoples***. The Bakweri are a "people" within the meaning of these provisions and a minority group in Cameroon's sociological make-up. They are a minority even on their home turf, Fako Division, outnumbered 17 to1 by immigrants from other parts of Cameroon. Ironically, this immigrant population was originally brought in to work

Complainants are before this Commission to vindicate these rights that are guaranteed them under this instrument.

4. Procedural History

4.1 Respondent fails to distinguish pending claims from settled cases

Respondent has also objected to the admissibility of Complainants' communication because it falls under the prohibition of Article 56, paragraph 7 of the African Charter. The fundamental problem with this particular objection is that Respondent fails to distinguish complaints before this Commission that are pending before another international tribunal from those where the tribunal was seised of the matter but declined to take action. As a result the legal authority Respondent relies on, ***Mpaka-Nsusu Andre Alphonse vs. Zaire, African Comm. Hum. & Peoples' Rights, Comm. No. 15/88 (September 12, 1988)***, undercuts, rather than support, its argument.

Respondent erroneously equates a tribunal's decision not to take any action with a decision on the merits. A communication *pending* before an international body, which was the case in ***Mpaku-Nsusu Andre Alphonse***, is not the same thing as one where that tribunal has elected not to take any action or has rendered a ruling on the merits. The Commission has addressed this distinction in its ruling in ***Bob Ngozi Njoku vs. Egypt, African Comm. Hum. & Peoples' Rights, Comm. No. 40/90 (not dated),*** a case that is on all fours with the instant one**.** Communication 40/90 was referred to the Commission by the Secretary General of the Organization of African Unity on behalf of Bob Ngozi Njoku, a Nigerian student in transit from New Delhi to Lagos who was arrested in the Cairo airport

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on the German plantations and later with the CDC. Their families were allowed to settle in the Bakweri villages close to these plantations, eventually outnumbering the indigenous population whose birth rate began experiencing a precipitous decline in the early 1950's, from which it never recovered. ***See*** E.W. Ardener, COASTAL BANTU OF THE CAMEROONS (1956); Shirley Ardener, E.W. Ardener and W.A. Warmington, VILLAGE AND PLANTATION IN THE CAMEROONS (1960); E.W. Ardener, *Social and Demographic Problems of the Southern Cameroons Plantation Area*, in SOCIAL CHANGE IN AFRICA 86 ff. (1961).

while he was waiting for his connecting flight. The arrest followed the discovery of drugs in Mr. Njoku's suitcase.

Not satisfied with the treatment he received from the Egyptian judicial system, Njoku seised the United Nations Sub-Commission on the Prevention and Protection of Minorities ("U.N. Sub-Commission"), much like Complainants in the present case. The U.N. Sub-Commission decided not to take any action in respect of Njoku's communication. Njoku then seised this Commission. The Government of Egypt, respondent in that matter, objected, much as Respondent has in this case, to the admissibility of the communication on the ground that a Working Group of the U.N. Sub-Commission had decided not to entertain the complaint. Unpersuaded by this argument, the Commission proceeded to clarify the "***cases which have been settled***" clause in Article 56, paragraph 7 of the African Charter. The Commission's declaration merits recitation in detail:

> *The Commission in considering the provisions of the above-mentioned article, observes that the said text talks about "cases which have been settled...." It is therefore of the view that* ***the decision*** *of the United Nations sub-commission* ***not to take any action and therefore not to pronounce on the communication submitted by the complainant does not boil down to a decision on the merits of the case and does not in any way indicate that the matter has been settled as envisaged under article 56 paragraph 7*** *of the African Charter on Human and Peoples' Rights. The Commission therefore rejected the arguments of the defendant* [Emphasis added].

Complainants respectfully urge the Commission to adopt the position it staked out in ***Bob Ngozi Njoku*** by rejecting the arguments of Respondent and declaring this communication admissible. Complainants are in the same position as Mr. Njoku. They too first submitted their communication, under the Rule '1503' Procedure, to the U.N. Sub-Commission which decided not to take any action. This decision was in fact conveyed to Complainants by none other than the Respondent in a letter dated July 18, 2002 from the Governor of the South West Province to the President of BLCC!

Submissions at page 14.

In its Preliminary Objections, Respondent asserts that Complainants' petition was ***"dismissed***" by the U.N. Sub-Commission. **Preliminary Objections at para. 6.** However, the letter conveying that body's decision to BLCC described the action taken as a ***"decision to discontinue further consideration of the matter."*** It is unclear whether Respondent views these two actions– dismissal and discontinuance– as one and the same thing. What is clear though is that Respondent incorrectly interprets the decision taken by the U.N. human rights body as having met the "cases which have been settled" test of Article 56, paragraph 7.

Be that as it may, the sub-commission's decision was taken in reliance, and this point bears emphasizing, on Respondent's expressed "***willingness to resolve once and for all, this matter of Bakweri Lands.***" If, as Respondent now contends, the U.N. Sub-Commission "dismissed the petition," then it is for Respondent to explain also that the decision was made on the basis of an obviously mistaken belief that Respondent would return home to resolve the issues in dispute to the mutual satisfaction of the contending parties. Respondent has yet to honor its word. This failure to respect its sovereign undertaking leads to one of two possible conclusions: either Respondent was sincere in its pledge but has not had time to follow through or Respondent was using it to buy time while it stealthily disposed of the disputed lands. The latter conclusion is more plausible because it was not long after its submissions before the sub-commission that Respondent sold the Tole tea estate which sits on disputed territory.

Without delving into Respondent's motives for assuring the U.N. body that an amicable resolution for the Bakweri land problem would be forthcoming, this Commission has noted in ***Bob Ngozi Njoku*** that a decision by an international body not to take action is not the same thing as a decision on the merits of case. Only the latter action would bar the matter under Article 56, paragraph 7. The complaint submitted to this Commission is not *pending* before any other international body. Complainants recognize that the principal objective of the Article 56, paragraph 7 requirement is to

avoid jurisdictional clashes[6] and conflicting judicial results which are the likely consequences when the same matter is being handled simultaneously by two different bodies. Their pursuit of justice has in no way compromised this objective.

5. Vagueness

5.1 Complainants have presented a *prima facie* case

Respondent objects to the admissibility of this complaint because "it is deliberately vague about the illicit act of which the State of Cameroon is being accused: is it privatization or sale." It is neither and Respondent has been put on notice to this effect. Complainants in their several memoranda to Respondent have carefully separated the privatization/sale of CDC plantations from the land on which they stand, well aware that the former involves the disposition of State-owned property while the latter implicates private rights.

For the purpose of seizure and admissibility, the conditions laid down in Article 56 are satisfied by the presentation of a *prima facie* case.[7] Complainants in meeting this burden have provided the Commission with precise allegations of facts supported by relevant documents. In ***Centre for the Independence of Judges and Lawyers vs. Algeria, African Comm. Hum.& Peoples' Rights, Comm. No. 104/94, 109/94, 126/94 (not dated),*** an authority Respondent relies on elsewhere, admissibility was denied because the communication failed to specify which facts it regarded as violations nor did it indicate the specific remedy sought:

> *[T]he present report submitted by CIJL does not give specific places, dates, and times of alleged incidents sufficient to permit the Commission to intervene or investigate. In some*

[6] ***See*** The African Commission on Human and Peoples' Rights, **INFORMATION SHEET NO. 3: COMMUNICATION PROCEDURE 6 (undated).**

[7] *Id.*, at 7.

cases, incidents are cited without giving the names of the aggrieved parties. There are numerous references to 'anonymous' lawyers and judges." ***Id., para. 6.***

Such lack of specificity was an open invitation to a declaration of inadmissibility, particularly for a complaint alleging harassment and persecution including murder, torture, intimidation and various kinds of threats directed at individuals. This, however, is not the complaint before the Commission.

5.2 Respondent has failed to meet its burden of proof

The facts asserted in ***Communication 260/2002*** are as precise as they are specific and backed by evidence of a sufficiency to permit the Commission to take meaningful action. Under the Commission's division of burden of proof between contending parties, once Complainants have made a ***prima facie*** case, the burden then shifts to Respondent to submit specific responses and evidence refuting each and every one of the assertions contained in Complainants' written pleadings[8]. To meet this burden, it is not enough for Respondent to simply reject Complainants allegations[9]; it must rebut them with evidence.

Here are just a few of the crucial facts pled by Complainants which Respondent must refute with evidence in order to carry forward its burden of proof, that:

- at the turn of the 20th century, lands traditionally occupied by the Bakweri and located principally in Fako Division, in the English-speaking part of Cameroon, were expropriated by German colonizers and developed into plantations;
- the Bakweri were never compensated for their expropriated lands;
- these lands were registered in the German land registers, the ***Grundbuchs;***

[8]Id., at 7.

[9]Id.

- at the end of the second World War, when Cameroon was placed under the United Nations Trusteeship system and jointly administered by France and the United Kingdom, the British colonial administration repurchased these plantations from their German owners then passed enabling legislation declaring them ***"Native Lands" to be held in trust for the indigenous Bakweri by the British colonial Governor;***
- these 'native' lands were subsequently leased to the CDC for a sixty year term with reversionary rights to the 'natives';
- for consideration CDC ***agreed*** to pay ground rents to the native landowners but this steady flow of revenue was routinely diverted to the State treasury;
- under well-recognized principles of international law[10], Respondent, upon becoming an independent sovereign State, succeeded to the fiduciary obligations over these native lands previously assumed by the British colonial administration;
- Respondent's 1974 land law distinguishes National Lands from private ones and recognizes all lands registered in the ***Grundbuchs as private property!***

III. Conclusion

Respondent's first argument that Complainants lack standing to bring these claims because they are not themselves victims within the meaning of Article 56 (3) and Rule 114 of the Rules of Procedure is factually incorrect, as proven by **Attachment 1, Submissions.** In addition, the argument is disingenuous as it contradicts Respondent's own pattern of conduct *vis-à-vis* Complainants.

Respondent's second argument– that Complainants' claims should first have been litigated in local

[10] ***See e.g.,*** Daniel P. O'Connell, STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW 442-443 (1967).

courts– is equally unavailing because the doctrine on which it relies, the 'exhaustion of local remedies rule' does not apply to cases such as the present where Respondent has had ample notice of a continuing wrong and failed to take appropriate action to make it right. In addition, Respondent has not been able to carry forward its burden of proving that, in the Cameroonian context, adequate and effective remedies are available to Complainants.

Respondent's third argument for dismissal– that the complaint contains insulting and abusive language– must also fail for three reasons: first, because great care was taken in framing the allegations against Respondent which are all supported by evidence; second, because the language used does not rise to the precedent in ***Ligue Camerounaise;*** and third, because dismissal on this ground has been so rare that the Commission should resist being dragged down this slippery slope.

Respondent's fourth argument is not only pled in bad faith but it is factually flawed and misstates the applicable legal standard for declaring a communication inadmissible under Rule 114, paragraph 3 of the Rules of Procedure. It too must fail.

The final objection raised by Respondent– that the complaint is vague and lacks specificity– is entirely unfounded in fact or law. The Commission's jurisprudence places on Complainants the initial burden of presenting a *prima facie* case which they have done. Thereafter, the burden of proof shifts to Respondent to submit specific responses and evidence to refute Complainants allegations. Respondent has not even made a good faith effort to meet this burden of proof.

For the reasons set forth above, Complainants respectfully request that the Commission:

1. Reject the propositions of Respondent's Preliminary Objections and declare ***Communication 260/2002*** admissible.

2. Find for Complainants that Respondent has violated their protected rights under the African Charter.

Respectfully submitted,

FOR AND ON BEHALF OF THE BAKWERI LAND CLAIMS COMMITTEE

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Attachments