23 November – 7 December 2004
Communication No. 260/02

Thirty-Sixth Ordinary Session
November – 7 December 2004

BAKWERI LAND CLAIMS COMMITTEE
v.
CAMEROON

DECISION

BEFORE: CHAIRPERSON: Salamata Sawadogo
VICE CHAIRPERSON: Yassir S.A. EI Hassan
COMMISSIONERS: Mohamed A. Ould Babana, Kamel Rezag Bara,
Andrew R. Chigovera, Vera M. Chirwa, Emmanuel V.O. Dankwa,
Jainaba John, Angela Melo, Sanji Mmasenono Monageng, Bahame Tom Mukirya Nyanduga
Citation: Bakweri Land Claims Comm. v Cameroon, Comm. 260/02, 18th
ACHPR AAR Annex III (2004-2005)
Publications: (2004) AHRLR 43 (ACHPR 2004)

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

SUMMARY OF FACTS

1. The complaint is filed by the Bakweri Land Claims Committee (BLCC) on behalf of traditional rulers, notables and elites of the indigenous minority peoples of Fako division (the Bakweri) against the government of Cameroon.

2. The complaint follows Presidential Decree 94/125 of 14 July 1994 where the government of Cameroon listed the Cameroon Development Corporation (CDC), which will allegedly result in the alienation, to private purchasers, of approximately 400 square miles (104 000 hectares) of lands in the Fako division traditionally owned, occupied or used by the Bakweri. The complainant alleges that the transfer would extinguish the Bakweri title rights and interests in two-thirds of the minority group's total land area.

3. The complainant states that the land in question was seized from Bak-weri landowners between 1887 and 1905 by German colonial occupiers, which was acknowledged by the British colonial authorities and the United Nations General Assembly (UN document 189, paragraph 16) in November 1949, and that the land in question was

bought back by the British colonial government following WWII, and declared 'native lands' and placed under the custody of the Governor of Nigeria to hold in trust for the Bakweri. In 1947, the lands were later leased to a newly created statutory corporation, the Cameroon Development Corporation (CDC) for a period of 60 years to administer and develop same until such time that the Bakweri people were competent to manage them without outside assistance.

4. The complainant alleges that the Bakweri's antecedent rights and interests to this land survived the change of sovereignty from the British crown to the State of Cameroon. The complainant states that the Bakweri title to this land has never been extinguished, confirmed by Cameroon's 1974 Land Tenure Act 74-1 which states that land entered in the Grundbuch is subject to the right of private property, and that the lands held in trust were leased in 1947 for a period of 60 years to the CDC, until that time that the Bakweri people were competent to manage them without assistance, and that during this time the rents paid for the land were to be paid to the local councils in Fako division.

5. The complainant alleges that the process of extinguishment set in motion by Decree 94/125, the privatisation of CDC and with it the likelihood of transferring Bakweri private lands to third parties is in violation of the Bakweri people's right to private property and the freedom to dispose of their wealth and natural resources, which are guaranteed in the African Charter. The complainant further alleges that this process is being carried out without any discussion of fair compensation for the Bakweri in a violation of the African Charter and Cameroon's own Constitution.

6. The complainant alleges that the concentration of private Bakweri lands in non-native hands undermines the Bakweri people's right to development, by irrevocably altering existing land holding arrangements and pattern of natural resource exploitation and by forcing a future exodus of the Bakweri population to other parts of Cameroon who will need to relocate for more land for their agricultural and development needs, and thereby risk aggravating social tensions. The complainant further alleges that the government of Cameroon has adopted a discriminatory approach toward the Bakweri that has totally lacked in fundamental fairness and has failed to include proper representation of the Bakweri stakeholders in the negotiations with regard to the future of the CDC.

COMPLAINT

7. The complainant alleges violations of articles 7(1)(a), 14, 21, 22 of the African Charter on Human and Peoples' Rights.

8. The complainant prays for the Commission to recommend that:

- The government of Cameroon affirm the lands occupied by the CDC are private property;

- The Bakweri be fully involved in any CDC privatisation negotiations;

• Ground rents owed to the Bakweri dating back to 1947 be paid to a Bakweri Land Trust Fund;

• The Bakweri, acting jointly and severally, be allocated a specific percentage of shares in each of the privatised companies;

• The BLCC be represented in the current and all future policy and management boards.

PROCEDURE

9. The complaint was dated 4 October 2002 and received at the Secretariat on 8 and 15 October 2002.

10. At its 32nd ordinary session held from 17 to 23 October 2002 in Banjul, The Gambia, the African Commission considered the complaint and decided to be seized thereof.

11. On 4 November 2002, the Secretariat wrote to the complainant and respondent state to inform them of this decision and requested them to forward their submissions on admissibility before the 33rd ordinary session of the Commission.

12. On 31 January 2003, the respondent state forwarded its written submission on the admissibility of the communication, which was forwarded to the complainant.

13. On 3 February 2003 (received on 6 February 2003), the complainant forwarded its written submission on the admissibility of the communication as requested by the African Commission. The Secretariat forwarded a copy of the same to the respondent state on 17 February 2003.

14. On 4 March 2003, the complainant forwarded its response to the submissions by the respondent state. The former also requested for leave to appear before the Commission at its 33rd ordinary session for the purpose of making an oral submission.

15. On 8 May 2003, the Secretariat received the written submission of the respondent state on the admissibility of the complaint.

16. At its 33rd ordinary session held in Niamey, Niger from 15 to 29 May 2003, the African Commission considered the communication and deferred its decision on admissibility to the next ordinary session allowing the complainant more time to forward written response to the respondent state's reply on admissibility, which was handed to the complainant on 24 May 2003. Pending the final decision of the African Commission on the issue, the latter also requested its Chairman to forward an urgent appeal letter to His Excellency, President Paul Biya of the Republic of Cameroon respectfully urging him to ensure that no further alienation of the land in question takes place.

17. Accordingly, the Chairman of the African Commission forwarded the said letter to His Excellency, President Paul Biya of the Republic of Cameroon on 20 May 2003.

18. The complainant forwarded its written response to the respondent state's reply on 23 August 2003.

19. At its 34th ordinary session held in Banjul, The Gambia, from 6 to 20 November 2003, the African Commission heard oral submissions of the parties and decided to defer its consideration on admissibility to the 35th ordinary session. The parties were also requested to avail the Secretariat with copies of the Constitution of the Republic of Cameroon and relevant legislation cited in their respective submissions.

20. On 10 December 2003, the Secretariat wrote to the parties informing them of this decision.

21. At its 35th ordinary session held in Banjul, The Gambia from 21 May to 4 June 2004, the African Commission deferred its decision on admissibility to the 36th ordinary session due to lack of time.

22. On 17 June 2004, the Secretariat wrote to the parties informing them of this decision.

23. During its 36th ordinary session that took place from 23 November to 7 December 2004 in Dakar, Senegal, the African Commission considered the communication.

THE LAW ADMISSIBILITY

24. In its initial complaint dated 4 October 2002, the complainant notes that it is mindful of the requirement of exhausting local remedies under article 56(5) of the African Charter. This rule is waived, however, where it is obvious that the procedure for exhausting domestic remedies is 'unduly prolonged' and further, the complainant holds, that the African Commission, in its jurisprudence, has cautioned against the mechanical application of the domestic remedies rule particularly in 'cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each violation'.[FN1] The complainant also cited the African Commission's jurisprudence on the need to exhaust local remedies.[FN2] The complainant drew the Commission's attention to the fact that the government of Cameroon has had four decades during which it could have redressed these grievances within the framework of its domestic legal system. It further argues that the government instead was engaged in delaying tactics to avoid taking a principled position on the Bakweri land problem. It has known, for very long time, about the violations of Bakweri land rights and thus had 'ample opportunity' to reverse the situation consistent with its obligations under the Banjul Charter.

[FN1] Free Legal Assistance Group and Others v Zaire [(2000) AHRLR 74 (ACHPR 1995)] para 37.

[FN2] Social and Economic Rights Action Centre (SERAC) and Another v Nigeria [(2001) AHRLR 60 (ACHPR 2001]

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25. The complainant further argues that during this entire period, it petitioned the successive Cameroonian governments for restitution. It met with the various officials of the Republic, including the Prime Minister and the Assistant Secretary-General at the Presidency, but to no avail. The complainant holds thus that any further negotiations to seek domestic relief will merely prolong the resolution of the Bakweri land problem.

Free Legal Assistance Group and Others v Zaire [(2000) AHRLR 74 (ACHPR 1995)] para 37. Social and Economic Rights Action Centre (SERAC) and Another v Nigeria [(2001) AHRLR 60 (ACHPR 2001)].

26 The complainant alleges that even if the exhaustion of domestic remedies rule is given its most restrictive meaning, requiring it to go through the courts of Cameroon would be futile. No judge in Cameroon will risk his/her career, not to mention his/her life, to handle this politically sensitive matter, as the matter implicates the crown jewel of a privatisation programme the government is determined to see through; pits the Bak-weri people against a Prime Minister and head of government as well as an Assistant Secretary-General at the Presidency, both of whom are Bakweri but non-elected officials holding their offices at the pleasure of the President; and places the government in a face off with a politicallyconscious minority tribe that has refused to stay quiet and watch its ancestral lands being sold to non-natives. The complainant claims that experience has shown that such is not the kind of politically-sensitive litigation that a judiciary firmly under the control of the President would like to handle and it is a contest in which the complainant is not going to receive a fair hearing.

27. The complainant concludes that, under the circumstances, asking the Bakweri to seek domestic relief will merely prolong the agony of the Bak-weri in seeking a resolution to their land problem.

28. In its 4 February 2004 further written submissions on the admissibility of the complaint, the complainant contends that BLCC is the accredited agent of the Bakweri People on whose behalf it filed the present communication, that the complaint is not pending before any other international tribunal, that the allegations contained therein are backed by documentary evidence, and that there is no insulting language used. In elucidating further on article 56(5) of the African Charter, the complainant alleges that the thrust of the provision therein is to check whether an effective legal remedy exists in Cameroon of which the complainant could avail itself. The complainant alleges that no such remedy existed and that special circumstances excused it from compliance with the exhaustion requirement.

29. First, the complainant alleges that in Cameroon, the judiciary is neither free nor impartial with the result that justice tends to be dispensed in a discretionary manner thereby making recourse to domestic avenues of redress uncertain, impractical and undesirable. Second, the complainant alleges that the government of Cameroon has had ample time to resolve the Bakweri land claims problem but has failed to do so. Instead it has effectively blocked inferior decision-making organs from taking on the matter.

30. The complainant proceeded to argue that in deciding whether BLCC has made full use of the available legal remedies, attention ought to be focused on what in the Cameroon context passes for effective remedies. It alleges that the legal and political context in which justice is administered in Cameroon is one where the President wields extraordinary powers.

It is a unified executive wherein the last word in domestic remedies, whether of an administrative or legal nature, in the Cameroonian context is the President of the Republic. Presidential decisions carry a kind of res judicata on other state institutions and organs.

31. The complainant argues that Cameroon's judiciary lacks independence. To substantiate this, it cites the 1999 and 2001 human rights reports on Cameroon produced by the United States Department of State, and a newspaper report. Although the President is assisted by a Higher Judicial Council in the appointment of members of the bench and officials of the legal department, judicial officers serve at the President's pleasure. Besides, the Judicial Council is completely under the control of the President who appoints the majority of its members and presides over all its meetings.

32. The complainant avers that the supremacy of the Presidency and its dominance of the judiciary give rise to a peculiar form of de facto executive 'pre-emption' of decision making by subordinate state organs, regardless of whether there is an actual conflict between them or not. Presidential 'pre-emption' 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 from entertaining any appeals from the decisions of the special tribunals.'[FN3] The Bakweri case is not entirely dissimilar to International Pen and Others v Nigeria as the presidential 'preemption' ousts the jurisdiction of the ordinary courts thus depriving the complainant of effective domestic relief.

[FN3] International Pen and Others (on behalf of Saro-Wiwa) v Nigeria [(2000) AHRLR 212 (ACHPR
1998)] para 75

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33. The complainant further reminds the Commission that the relief it is seeking is for the government to acknowledge in writing its legal title to the Bakweri lands, which can only come from the authority that issued the Privatisation Decree of 1994, which is non-other than the President of the Republic. The later can theoretically be ordered to do so by the courts. Yet, that would not be possible as the court system remains under the President's total control, whose judges are personally appointed, promoted or removed by him.

34. The complainant avers that in Cameroon, justice is exercised in a discretionary manner through a process of de facto ousting of the jurisdiction of the courts. Executive-controlled organs including ministers can and do make judicial decisions by-passing the courts. Besides, there is inordinate control in the dispensation of justice exercised by law officials, like the Procureur de la Re´publique [public prosecutor], who as an official of the [justice] department, can order law enforcement officers to either enforce a court judgment or ignore it. For this, the complainant cites the procur-eur's discretionary action not to enforce a court judgment in the Cameroon Tea Estates (CTE) (which plants tea on disputed Bakweri lands) management dispute, where it was ordered that the Board of the CTE reinstate the general manager whom they dismissed. The complainant further alleges that there is also a discretionary exercise of power evident in the judiciary. This has implications

on the requirement of exhaustion of domestic remedies by the complainant as the procureur's refusal to enforce the decision in the management dispute foreshadowed the fate of the BLCC if a court were to exercise jurisdiction in rem over the disputed Bakweri lands, which also introduced uncertainty undermining confidence in the court system. The complainant draws the Commission's attention to its decision in the Constitutional Rights Project (in respect of Akamu and Others) v Nigeria [(2000) AHRLR 180 (ACHPR 1995)]. The issue in that communication was a provision in the Robbery and Firearms Act (Special Provisions) which conferred on the State Governor the power to confirm or disallow a conviction for violations of this law by a special tribunal. The African Commission held that the Governor's power was a' discretionary, extraordinary remedy of a non-judicial nature' and that '[i]t 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.'

35. In expounding further on its claim that the government of Cameroon had adequate notice and opportunity to remedy the violations, the complainant argues that more than nine years have passed since they referred the matter to the President of the Republic, following the privatisation decree of 1994 affecting the Bakweri lands. The President was also sent another memorandum from Bakweri landowners in 1999. The complainant argues that these were done in light of the primacy of the Presidency under the Repubilc's Constitution and the existent presidential pre-emption of decision-making at all levels. The government of Cameroon has been duly notified of this problem as the Bakweri lands problem has been around for several decades, nine years have passed since the government was seized of it, that in January 2003, a special envoy of the President met and assured the Bakweri chiefs that the government intended to 'provide a sustainable and durable solution' to the Bakweri lands problem, and that the government's own representatives before the UN Sub-Commission in February 2002 had expressed the government's readiness to resolve the problem amicably. The complainant argues that where the republic has been aware of the problem for at least nine years and that where the opportunity to redress the problem has been squandered due to unwarranted delay and slow state response, it should not be compelled to exhaust local remedies.

36. The complainant further avers that the remedies in Cameroon are inadequate and unduly prolonged and hence need not be exhausted. It, however, admits that although the matter never went to court but was referred to the President of the Republic for a political/administrative solution, the government's own conduct in the matter implicitly admitted the impracticality or undesirability for complainant to seize the courts of Cameroon as demonstrated by the declaration made by the representatives of the government to the UN Sub-Commission to resolve the matter satisfactorily. Still, the complainant maintains that it tried to engage pressure authorities through various means but to no avail. The lack of progress, it holds, meant to suggest that remedies either do not exist or cannot be effective in the complainant's situation and in any event, their application is being increasingly prolonged.

37. The complainant also argues that remedies in Cameroon are unavailable and to the extent they exist ineffective. The continued classification of the Bakweri lands as state property afforded complainant no basis for legally challenging the government's acts or omissions that violate its ownership rights. Besides, the rule of exhaustion of remedies

should not be invoked where it offers no possibility of success, which the government will not be able to prove. An insistence on the pursuit and exhaustion of domestic remedies will only prolong the application of the Bakweri people.

38. In its submission on admissibility, dated 31 January 2003, the respondent state requested the Commission to declare it inadmissible. It raised the following preliminary objections, that:

- The author of the communication does not show any proof that it is the victim of a violation of the Charter;

- The object of the communication is unclear as it interchangeably speaks about the violation of the 'right to own land in Cameroon', 'the dispossession of indigenous peoples of lands that they have historically owned and occupied', and 'the violation of the right of an indigenous ethnic minority in Cameroon to own land';

- The communication is improper as the author deliberately remains imprecise about the actual illicit act for which the State of Cameroon is blamed: privatisation or sale;

- The author did not exhaust local remedies as all the actions the BLCC took certainly do not correspond to remedies mentioned by the African Charter;

- The communication casts such suspicions and aspersions on the Ca-meroonian judicial system and hence could be considered insulting per article 56 of the Charter; and

- The UN Sub-Commission has already settled the case brought before the African Commission, Mpaka-Nsusu v Zaire [(2000) AHRLR 71 (ACHPR 1994)].

39. In its further submission of 5 May 2003, the respondent state avers that there is no provision under Cameroonian law that excludes any form of appeal against acts of the executive. It argues that 'it must not hastily be concluded that a state party to the convention has neglected to act in compliance with its obligation to provide effective local remedies'.[FN4] The BLCC should not be allowed to transform the African Commission into a court of first instance. The rule of exhaustion of local remedies implies legal action brought before the courts and not just political actions. Since 1994, the BLCC has never taken any action against the State of Cameroon before the courts. Seizure of judicial bodies cannot be avoided on the basis of subjective suspicions or because of allegations that it is a politically charged case or a politically sensitive case.

[FN4] Velasquez Rodriguez case, Inter-American Court of Human Rights judgment of 29 July 1988, Inter-Am Ct HR (Ser C) 4 (1988).

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40. In its 4 March and 22 August 2003 memorials, the complainant rebutted the preliminary objections raised by the respondent state.

41. At its 34th ordinary session held in Banjul, The Gambia from 6 to 20 November 2003, the African Commission granted audience to the parties to complement their respective written submissions orally.

42. In its oral submission, the complainant stated that since it has come forward with a prima facie case, the burden should shift to the respondent state to prove that domestic remedies are available, effective and adequate. There are no such remedies, including the Constitutional Council before which BLCC has no standing. BLCC has attempted to settle the matter amicably; yet, the respondent state was not willing and has resorted to harassment, and intimidation. BLCC has been sued and an injunction been issued against it declaring it an illegal body, to curtail it from representing the victims and to generally frustrate the efforts of the victims to exercise their rights under the African Charter. Should the matter be deferred to local procedures, the complainant requested an indication from the respondent state to where it may be directed.

43. The respondent state, in its turn, stated that BLCC has the right to bring its case before the competent bodies in Cameroon. The government respected its own institutions and that it would not accept arguments that its legal system is incompetent to receive or deal with any case from anyone, while it is evident that there are thousands of cases being entertained by its courts. The government respects the African Commission and hopes that it won't admit the present matter when no attempt has been made to seize its courts. The UN SubCommission has ruled that the petitioners need to seek local remedies. The Commission could open a floodgate by admitting the present communication despite the fact that no attempt was made to exhaust local remedies. The Commission should thus declare it inadmissible. BLCC should be directed to vindicate itself before local courts. Indeed BLCC is sued in the local courts, but it is not by the government but a private entity. But as an advice, all the BLCC had to do was to seek a declaratory judgment from the High Court to the effect that 'XYZ are the beneficiaries or residual title holders of the disputed land'.

44. The Commission has examined the respective written and oral submissions on admissibility of the parties and rules as follows.

45. To the respondent state's objection that the complainant does not have standing (locus standi), the complainant avers that the complainants (including the counsel representing them) are all Bakweri and hence victims of the violation. BLCC represents the Bakweri and has authority to speak for them as backed by a resolution adopted by the custodians of the Bakweri lands (resolution attached in the file).

46. The African Commission notes that the locus standi requirement is not restrictive so as to imply that only victims may seize the African Commission. In fact, all that article 56(1) demands is a disclosure of the identity of the author of the communication, irrespective of him/her being the actual victim of the alleged violation. This requirement is conveniently broad to allow submissions not only from aggrieved individuals but also from other individuals or organisations (like NGOs) that can author such complaints and seize the Commission of a human rights violation. The existence of direct interest (like being a victim) to bring the matter before the Commission is not a requirement under the African Charter. The clear rationale here for allowing a broad gateway for complaints under the

Charter is the practical understanding, in Africa, that victims may face various difficulties impairing them from approaching the African Commission. That notwithstanding, in the present communication, the present complainants are themselves Bakweri, who allege violation of their ownership of historical lands, and that the counsel himself and the BLCC has been duly authorised, by a resolution of chiefs, to further the interests of the Bakweri, which fact has not been denied by the respondent state. The Commission adds that one may be represented, through express consent or by the self-initiative of the author who speaks for him/her, irrespective of the fact that it is known to the Commission that one is soundly capable of representing oneself. The Commission holds, thus, that the present complainant has locus standi and is entitled to bring this communication before the African Commission.

47. To the objection that the complainant failed to show a prima facie case (the respondent state alleging that the communication is unclear, interchangeably spoke of various matters, and is improper as it remained deliberately imprecise about the illicit acts), the complainant avers that it has provided precise allegations of facts supported by relevant documents. The Commission examined the original complaint and its supporting documents. Contrary to the respondent state's objections, it is evident in the file that the complainant is indeed clearly alleging the alienation of the Bakweri lands, which was triggered by the Presidential Decree 94/ 125 of 14 July 1994 where the government of Cameroon listed the Cameroon
Development Corporation (CDC) which is situated on Bakweri lands. It has alleged that this development will in effect result in the alienation, to private purchasers, of approximately 400 square miles (104 000 hectares) of lands in the Fako division traditionally owned, occupied or used by the Bakweri. The complainant alleges that the transfer would extinguish the Bakweri (who are a particular ethnic group whose status is never any where disputed by the respondent state) title rights and interests in two-thirds of the minority group's total land area in violation of articles 7(1)(a), 14, 21, 22 of the African Charter. In deciding to be seized of this matter at its 32nd ordinary session held from 17 to 23 October 2002 in Banjul, The Gambia the African Commission had found this presentation/narration of violation of rights protected under the Charter to be sufficiently clear to be taken up by the Commission, and hence, finds the present objection of the respondent state untenable.

48. To the objection that the communication casts such suspicions and aspersions on the Cameroonian judicial system and hence could be considered insulting per article 56(3) of the African Charter, the African Commission finds that there is nothing in the various submissions of the complainant to warrant the invocation of article 56(3) of the African Charter so as to declare the complaint inadmissible on the grounds of its being written in disparaging or insulting language. The complainant can allege, among others, and as it did with a view to be exempted from exhausting local remedies, that the President of the Republic wielded extraordinary powers so as to influence the judiciary and that the judiciary is impartial and lacked independence. This would be nothing but a mere allegation depicting, as it perceives it, the complainants comprehension of the offices that it thought would not provide it with any remedies as the African Commission would demand. Whether the allegations are true is another matter. At best, the respondent state may, if it so wishes, employ other means to acquaint the African Commission that the situation is indeed otherwise. The African Commission notes, however, that such a rebuttal is not necessary for purposes of examination under article 56(3). Accordingly, thus, the African Commission finds the respondent state's objection per article 56(3) of the African Charter unsustainable.

49. To the objection that the UN Sub-Commission has settled the matter and hence the African Commission should not entertain the matter per article 56(7) of the African Charter, the complainant responded saying that the respondent state failed to distinguish complaints before the African Commission that are pending before another international tribunal from those where the tribunal was seized of the matter but declined to take action. It alleges that the African Commission has indeed addressed this distinction in Njoku v Egypt [(2000) AHRLR 83 (ACHPR 1997)] which the UN Sub-Commission had decided not to entertain. The African Commission had held that the rejection by the UN Sub-Commission '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(7)'.

50. Desirous of getting to the bottom of this issue in the present communication, the African Commission requested for the copy of the decision by the UN Sub-Commission as relates to the Bakweri lands dispute from both parties. None of them, however, was able to furnish the Commission with a copy of the same. The complainant, however, had availed the African
Commission a copy of a letter, dated 18 July 2002, from the Governor of the South West Province of Cameroon, on behalf of the Minister of External Relations, to the President of the BLCC on the 'Decision of the UN High Commission on Human Rights on Bakweri Claim', the relevant contents of which are summarized as follows (during its oral submissions at the 34th ordinary session, the respondent state has claimed that, not denying the fact, the Governor had no right to write such a letter):

On matters of procedure, the Commission felt that the petitioners did not fully exploit local avenues available to solve the problem and the Cameroon judicial system was deemed competent to handle the petition. Concerning the content of the petition, the Commission commended the government's position on the issue and encouraged government's efforts in her continuous willingness to resolve once and for all, this matter of Bakweri Lands. Considering the above, the Commission considered itself incompetent to handle the matter, and therefore asked the matter to be closed.

51. The African Commission also heard the parties at its 34th ordinary session on this and other issues. Regarding the veracity of this particular claim on the decision of the UN SubCommission, both parties seemed to be on all fours that it was in fact so decided. Given that, thus, and although a copy of the said decision was not made available to the African Commission to examine, the Commission notes that the content of that letter adequately reflected the outcome of the complainant's petition to the UN Sub-Commission.

52. As alleged by the complainant, thus, the African Commission notes that the UN SubCommission did not decide on the merits of the case so as to warrant the discontinuance of the consideration of this matter by the African Commission as per article 56(7) of the African Charter. The principle behind the requirement under this provision of the African Charter is to desist from faulting member states twice for the same alleged violations of human rights. This is called the ne bis in idem rule (also known as the principle or prohibition of double jeopardy, deriving from criminal law) and ensures that, in this context, no state may be sued or condemned for the same alleged violation of human rights. In effect,

this principle is tied up with the recognition of the fundamental res judicata status of judgments issued by international and regional tribunals and/or institutions such as the African Commission. (Res judicata is the principle that a final judgment of a competent court/tribunal is conclusive upon the parties in any subsequent litigation involving the same cause of action.)

53. The parties before the African Commission have not disputed the fact that they were the very same parties at loggerheads before the UN Sub-Commission disputing the same issues as before the African Commission. They both, however, admit that there has been no final judgment on the merits of their dispute by the UN Sub-Commission. The contents of the excerpts of the letter reproduced above have not been contested either, thereby buttressing the fact that the matter was not conclusively dealt with by the UN Sub-Commission. This means that the provision of article 56(7) incorporating the principle of ne bis in idem does not apply in the present case as there has been no final settlement of the matter by the UN Sub-Commission. Therefore, the African Commission holds that the respondent state's allegation that the communication be declared inadmissible per the provision of article 56(7) is unmaintainable.

54. Finally, to the objection that the complainant did not exhaust local remedies as all the actions the BLCC took certainly do not correspond to remedies mentioned by the African Charter, the complainant claimed that local remedies in Cameroon were unavailable, ineffective and inadequate. Both in writing and orally before the African Commission, the complainant admitted that it has not exhausted local remedies. Besides, it claimed that the circumstances in Cameroon warrant that it be granted waiver of this requirement. It argued, among others, that:

- It has been trying to seek relief for the matter from the Cameroonian authorities, including from the President of the Republic, for over nine years, but to no avail;

- The judiciary is not independent;

- The government has had ample time and opportunity to resolve the matter but failed to do so;

- The executive and other organs can pre-empt the decisions of courts thereby rendering approach to the courts futile;

- To approach the courts under the present circumstances means merely prolong the agony of the Bakweri; etc.

55. The African Commission notes that the exhaustion of local remedies requirement under article 56(5) of the African Charter should be interpreted liberally so as not to close the door on those who have made at least a modest attempt to exhaust local remedies. Under this article, all the African Commission wishes to hear from the complainant is that it has approached either local or national judicial bodies.[FN5] As can be seen from the set of facts adduced before the African Commission by both parties in writing and orally, the complainant, not even once, has seized any local or national court. For this, it explained that

the courts are not independent and are likely to decide in favour of the respondent state whose President has a say on their appointment. The African Commission, however, holds that the fact that the complainant strongly feels that it could not obtain justice from the local courts does not amount to saying that the case has been tried in Cameroonian courts. Besides, the complainants assertions are merely subjective assessments on which the African Commission cannot base itself in holding that there indeed lacks an effective remedy in Cameroon to resolve the matter.6 The African Commission is of the view that it is the duty of the complainant to take all necessary steps to exhaust, or at least attempt the exhaustion of local remedies. It is not enough for the complainant to merely doubt the ability of the domestic remedies of the state to absolve it from pursuing the same.

[FN5] Cudjoe v Ghana [(2000) AHRLR 127 (ACHPR 1999)].
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56. The African Commission would be setting a dangerous precedent if it were to admit a case based on a complainant's apprehension about the perceived lack of independence of a country's domestic institutions, in this case the judiciary. The African Commission does not wish to take over the role of the domestic courts by being a first instance court of convenience when in fact local remedies remain to be approached.

FOR THESE REASONS, THE AFRICAN COMMISSION declares the communication inadmissible.