

MISSION PERMANENTE
DE LA RÉPUBLIQUE DU CAMEROUN
AUPRÈS DE L'OFFICE DES NATIONS UNIES,
DE L'ORGANISATION MONDIALE DU COMMERCE
ET DES AUTRES
ORGANISATIONS INTERNATIONALES
GENÈVE



PERMANENT MISSION
OF THE REPUBLIC OF CAMEROON
TO THE UNITED NATIONS OFFICE,
THE WORLD TRADE ORGANIZATION
AND TO OTHER
INTERNATIONAL ORGANIZATIONS
GENEVA

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Genève, le

29 JUL. 2019

N° 205 /NV/MPCG/MC/S3

La Mission Permanente de la République du Cameroun auprès de l'Office des Nations Unies et des autres Organisations Internationales à Genève, présente ses meilleurs compliments au Haut-Commissariat des Nations Unies aux droits de l'homme (HCDH) et,

Se référant à la lettre N°AL CMR 3/2019 du 29 mai 2019 adressant à la Mission Permanente de la République du Cameroun la Communication conjointe du Groupe de travail sur la détention arbitraire ; du Groupe de travail sur la question des droits de l'homme et des sociétés transnationales et autres entreprises ; du Rapporteur spécial chargé d'examiner la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable ; de la Rapporteuse spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires ; de la Rapporteuse spéciale sur le droit à l'alimentation ; du Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ; du Rapporteur spécial sur la situation des défenseurs des droits de l'homme,

A l'honneur de le prier de bien vouloir transmettre le **Mémoire de défense de l'Etat du Cameroun**, ci-joint, à ces détenteurs de mandats spéciaux.

La Mission Permanente de la République du Cameroun saisit cette occasion pour renouveler au Haut-Commissariat des Nations Unies aux droits de l'homme, les assurances de sa parfaite considération./-

P.J. : Mémoire de défense + 03 annexes



Haut-Commissariat des Nations Unies aux
droits de l'homme

Palais Wilson
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REPUBLIQUE DU CAMEROUN
Paix – Travail - Patrie

REPUBLIC OF CAMEROON
Peace – Work – Fatherland

**JOINT COMMUNICATION OF MANDATE
HOLDERS OF SPECIAL PROCEDURES OF THE
UNITED NATIONS HUMAN RIGHTS COUNCIL
RELATING TO MR JAN JORIS CAPELLE,
VINCENT AWAZI AND OTHERS**

- 1- By Note Verbale of 29 May 2019, the United Nations High Commissioner for Human Rights forwarded to the Government of Cameroon, the Joint Communication of the Working Group on arbitrary detention, Working Group on the issue of Human Rights and transnational corporations and other business enterprises, Special Rapporteur on the issue of Human Rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the Right to Food, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on the situation of Human Rights defenders.
- 2- The Communication is based on a number of allegations, including the unlawful expulsion on 13 May 2016 from Cameroon, of Mr **Jan Joris CAPELLE** who had been helping farmers of a group called Organic Farming for Gorillas Cameroon (OFFGO) in Tudig in the North West Region. The allegations further comprise threats against Mr **Vincent AWAZI** (co-founded of OFFGO) and **Mr Elvis BROWN**, the kidnap of the brother of Mr **BROWN**, and forceful expulsion of farmers from their land. These allegations are said to be related to the denunciation of Human Rights violations by the enterprise of Mr [REDACTED]
- 3- Cameroon is called upon to make observations on a number of issues including the expulsion of Mr **Jan Joris CAPELLE** and his possible return to Cameroon, investigations into Human Rights violations alleged committed, measures taken by the Government to guarantee the right to liberty and security, right to physical and moral integrity of Mr **Vincent AWAZI** and **Mr Elvis BROWN** and their families, investigations into land conflicts between villagers and the enterprise of Mr [REDACTED] the protection of Human Rights defenders, preventing, investigating and punishing Human Rights violations by enterprises
- 4- In response to these allegations, the State of Cameroon wishes to make observations thereto under the headings that follow.

A: Mr Jan Joris CAPELLE's Stay in Cameroon and Expulsion

- 5- Cameroon is a land of legendary hospitality where foreigners including refugees (384,260 refugees) live, are guaranteed Human Rights and carry out their day to day activities in tranquility. For their part foreigners have to respect the laws and regulations of the country.

- 6- Freedom of association which is proclaimed by the Constitution is governed by the provisions of Law No.90/53 of 19 December 1990. A plethora of associations are registered under this law and are functional. The organization OFFGO was neither declared nor authorized as required by the law, thus the organization was operating clandestinely. To show the tolerance of the Government, OFFGO continued to function even under these circumstances.
- 7- With regard to the issue of Mr **CAPPELLE**'s possible return to Cameroon, he is free to submit an application for re-entry which shall be examined according to the laws in force. Under international law, each country has the prerogative to decide on who it admits into its territory.

B : Investigations into Offences including the Infringement of the Right to Liberty and Security, Right to Physical and Moral Integrity, as well as the Fight against Impunity.

- 8- In furtherance of its resolve to respect, protect and fulfil Human Rights within its territory, the State has taken a number of measures.
- 9- The guarantee of the right to liberty and security as well as the right to physical and moral integrity of the individual provided for by legislation, in particular in the Penal Code and the Criminal Procedure Code (CPC) are, under the conditions laid down by the laws and regulations of the State, applicable to all persons living in Cameroon without distinction.
- 10-Combating illegal detention is reflected through constant checks of places of detention by judicial authorities and the mobilisation of judicial mechanisms including habeas corpus provided for by the CPC. In a bid to ensure the effectiveness of one of the guarantees provided for in the Criminal Procedure Code, the Chief Justice of the Supreme Court acknowledged, by Ruling No. 115 of 16 February 2016, the composition of the Commission for Compensation of Victims of Illegal Detention. Persons claiming that they have been illegally detained can thus seise the said Commission for compensation. The Penal Code adopted on 12 July 2016 has consolidated the protection of the physical integrity of the person. Hence, the scope of the criminal responsibility of the author of torture has been extended to include traditional leaders (section 277-3).
- 11-Instructions have constantly been given to Defence and Security Forces to show a responsible attitude and respect Human Rights and particular emphasis has been laid on torture. An example of such instructions is the Minister of Defence's Circular-Letter No. 190256/DV/MINDEF/1 of 18 January 2019 to all the defence and security

services under his responsibility, (**Appendix A**) in which it is stated: *Torture is strictly prohibited in Cameroon as per the Penal Code (...) whosoever commits such acts, orders their commission, is an accomplice to their commission or tacitly allows them to be committed shall be held personally accountable before the law.* The Circular was focused among others on:

- ensuring investigations and prosecution against authors of torture and ill treatment, arbitrary detention and death in detention, including persons in positions of command;
- stopping any practice of arbitrary detention or secret detention; and
- enabling access of Human Rights Observers to all places of deprivation of liberty.

12-As regards the fight against impunity, disciplinary and judicial sanctions are metted against agents of the State including the Police and Gendarmes for the violation of Human Rights.

13-As concerns training, Human Rights courses are intergrated in the initial training of Defence and Security Forces and continuous training is also organised in the said field. The Robben Island Guidelines of the African Commission on Human and Peoples' Rights, and Istanbul Protocol were also widely distributed to Police Officials in 2018.

14-From the above analysis, be it Mr **Elvis BROWN, Vincent AWAZI** or any other person in the territory of Cameroon, appropriate measures are taken when their rights are violated.

C : Investigating and Settling of Land Disputes between Farmers and Graziers

15-There is a mechanism for the settlement of land disputes between farmers and graziers governed by Decree No. 78/263 of 3 July 1978 on the modalities for the settling of agro-pastoral disputes.

16-As per Section 1 of the said Decree, when the Land Consultative Board is called upon to settle agro-pastoral disputes, its composition shall include the Divisional Officer (President), a representative of the Ministry in charge of lands, a representative of the Ministry in charge of agriculture, a representative of the Ministry in charge of livestock, a representative of the department in charge of surveys, the traditional ruler and 2 notables of the village concerned, a breeder or the head of the breeding community.

17-When a complaint is received, the Board carries out an investigation into the case and comes out with a decision. If the case necessitates that the Divisional officer takes any provisional measures including the issuance of an Injunction, this is done.

18-In suit No.CRM/01/CFI/2018 of the Court of First Instance Mbengwi : **The People v [REDACTED] and NDONG Vincent AWAZI (Appendix B)**, the 3 accused persons were prosecuted for having on 17 November 2016 infringed the Order of the Divisional Officer of Mbengwi No. 053/SPDBALPA/2015 of 17 October 2015 restraining activities by farmers over a piece land at Tudig in dispute between graziers and farmers **(Appendix C)**. Infringing any legally made and published regulation of an administrative authority is an offence punishable under Section R 370(12) of the Penal Code.

19-During the hearing of the case, the prosecution stated that in August 2015, Mr [REDACTED] and **NDONG Vincent AWAZI** carried out farming activities on a piece of land said to be grazing land at Tudig in the Momo Division over which one [REDACTED] has a grazing permit. A complaint was lodged against them to the Land Consultative Board and the latter opened investigations into the matter. It is in the cause of these investigations that the Divisional Officer of Mbengwi issued the above-mentioned Order on 17 October 2015 restraining activities by farmers on the said land. At the end of the trial, the accused persons were convicted.

20-It should thus be noted that measures were already underway to settle the farmer/grazier dispute before the offence was committed. **It is also important to highlight that the accused persons were prosecuted because they infringed the law and not because of their Human Rights activism.**

D : Protection of Human Rights Defenders and Guarantee of the Freedom of Expression

21-In Cameroon, freedom of expression is guaranteed by the Constitution. Its preamble states *"the freedom of communication, of expression, of the press, of assembly, of association and of trade unionism as well as the right to strike shall be guaranteed under the conditions fixed by law"*.

22-The media landscape is occupied by an increasing number of media organs with a free editorial line. In a bid to encourage media development, public assistance is provided to private media organs.

23-Human Rights defenders freely carry out their activities, in accordance with the laws in force. Even when these defenders do not belong to a legalised association or group, they are protected in the same way as all other citizens and a violation of their rights can be brought before the judicial authorities for investigation and prosecution.

24-Some associations of Human Rights defenders cooperate with State institutions in certain respects. For example, representatives of these associations are important

stakeholders in the collection of information for the drafting of the Report of the Ministry of Justice on Human Rights as well as Cameroon's periodic Reports to Human Rights Treaty Bodies and in the validation of the said Reports.

E : Prevention of and Accountability for Human Rights Violations by Enterprises

- 25-The State is conscious of the need for business enterprises to respect Human Rights, hence, the Government has taken a number of measures in this regard.
- 26-Government Departments have played an important role in raising awareness on UN Guiding Principles on Business and Human Rights.
- 27-Examples can be found in Policies and Legislation where prevention of the occurrence of Human Rights violations by business entities has been taken into account. The National Plan of Action for the Promotion and Protection of Human Rights in Cameroon (2015-2019), integrates the implementation of these Guiding Principles into its strategic framework. Carrying out of an environmental impact assessment for any development project is mandatory. This is done in order to evaluate the effect of the project on the environment, natural resources and the socio-cultural life of the population. Also, under section 44 (3) of the Mining Code, Mining Agreements must contain obligations pertaining to public health, security, hygiene, safety of facilities and environmental and cultural heritage protection, and by virtue of Section 213 (1), violation of this obligations shall lead to the withdrawal of the mining licence.
- 28-The above measures are among those taken to assist enterprises in avoiding to cause or contribute to Human Rights violations through their activities.
- 29-Some laws have also taken on board the need to hold business enterprises accountable for Human Rights violations. When violations occur, enterprises can be civilly or criminally responsible. Business entities hitherto criminally irresponsible are since the institution of the new Penal Code in July 2016 criminally responsible. Section 74-1 of the said Code provides "*corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives*". Thus, corporate bodies will be liable for any Human Rights violation that constitutes an offence.
- 30-What precedes are the observations of the State and you are assured of Cameroon's full commitment to collaborate with the United Nations Special Procedures at all times.

REPUBLICQUE DU CAMEROUN
Paix – Travail – Patrie

PRESIDENCE DE LA REPUBLIQUE

MINISTERE DE LA DEFENSE



REPUBLIC OF CAMEROON
Peace - Work - Fatherland

PRESIDENCY OF THE REPUBLIC

MINISTRY OF DEFENCE

APPENDIX A

Yaoundé, le _____

N° _____ /DV/MINDEF/01.-

Le Ministre Délégué à la Présidence Chargé de la Défense
The Minister Delegate at the Presidency in Charge of Defence

A

- Messieurs : - le Secrétaire d'Etat à la Défense Chargé de la Gendarmerie Nationale
- le Secrétaire d'Etat à la Défense Chargé des Anciens Combattants et Victimes de Guerre
 - le Général de Corps d'Armée, Chef d'Etat-Major des Armées
 - les Chefs d'Etats Majors EMAT – EMAA – EMM
 - le Directeur Central de la Coordination/Gendarmerie Nationale
 - le Commandant du Corps National des Sapeurs Pompiers
 - le Commandant du Centre de Renseignements Militaires
 - le Directeur de la Justice Militaire
 - le Chef Division de la Sécurité Militaire
 - les Commissaires du Gouvernement près les Tribunaux Militaires
 - les Commandants des Régions/Gendarmerie Nationale
 - les Commandants des Légions/Gendarmerie Nationale

Objet : Recommandations issues du 5^{ème} Rapport périodique du Cameroun au Comité des Nations Unies contre la torture

A la suite des recommandations issues du 5^{ème} Rapport périodique du Cameroun visé en objet,

J'ai l'honneur de vous rappeler que la torture est formellement interdite au Cameroun tel que le consacre notre Code Pénal en son article 32 (bis) inséré par la Loi n° 97/009 du 10 janvier 1997 modifiant et complétant certaines dispositions de ce Code.

Quiconque commet donc des actes de torture, en donne l'ordre, en est complice ou les autorise tacitement sera tenu personnellement responsable devant la Loi.

Je vous prescris à cet effet :

- a) de veiller à ce que toutes les allégations de torture et de mauvais traitement, de détention arbitraire et de décès en détention donnent rapidement lieu à une enquête efficace et impartiale, de telle sorte que les auteurs et complices présumés de ces actes, y compris ceux qui occupent des postes de commandement, soient poursuivis et condamnés à des peines à la mesure de leurs actes et à ce que les victimes reçoivent une réparation adéquate ;
- b) de mettre fin aux pratiques de détentions arbitraires ou de détentions non reconnues officiellement, y compris les centres de détention militaires non répertoriés ;
- c) de créer un registre central de toutes les personnes arrêtées et détenues, qui puisse être consulté par la famille du détenu ;
- d) d'autoriser avec diligence l'accès sous contrôle des observateurs des droits de l'homme à tous les lieux de privation de liberté, étatiques ou de la société civile (Commission Nationale des Droits de l'Homme et des Libertés, Comité International de la Croix Rouge, organisations non gouvernementales de défense des droits humains, etc).

Aux responsables militaires de l'Extrême-Nord du Cameroun, je prescris particulièrement :

- a) de donner des instructions claires au personnel militaire y déployé, de ne procéder à aucune expulsion forcée des nigériens, en violation du principe de non refoulement ;
- b) de garantir des enquêtes efficaces et l'accès aux voies de recours aux réfugiés et aux requérants d'asile qui auraient été soumis à des traitements cruels, inhumains ou dégradants et à des actes d'extorsion de biens par le personnel militaire.

Aux responsables militaires des Régions du Nord-Ouest et du Sud-Ouest, je prescris spécifiquement :

- a) de veiller à ce que toutes les allégations d'usage excessif de la force, d'exécutions extrajudiciaires, de mauvais traitements et d'arrestations arbitraires imputées à des militaires pendant ou après

des manifestations pacifiques dans cette zone fassent l'objet d'enquêtes impartiales et que les responsables soient poursuivis, et s'ils sont reconnus coupables, sanctionnés et que les victimes obtiennent réparation ; le point devra régulièrement être fait à la Hiérarchie sur tous les cas traités ;

b) de redoubler d'effort pour dispenser systématiquement, en formation continue et permanente, à tous les membres des Forces de Défense et de Sécurité une formation de l'usage de la force, en particulier au cours des manifestations, en tenant dûment compte des principes de base des Nations Unies sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois.

J'attache du prix à l'observation rigoureuse des présentes instructions visant à rappeler aux différents responsables qu'ils doivent agir sur le terrain dans le strict respect des lois et règlements internes à notre Etat et de ses engagements internationaux consacrés par des instruments juridiques dûment ratifiés, sous peine de sanctions disciplinaires voire judiciaires, le cas échéant./.

Copies à :

- MIN SG/PR
 - SG/PM
 - MINETAT/MINJUSTICE
 - EMP/PRC
 - SEMIL
- 

APPENDIX B

"REPUBLIC OF CAMEROON"
"IN THE NAME OF THE PEOPLE OF CAMEROON"
"JUDGMENT"
IN THE COURT OF FIRST INSTANCE OF MBENGWÉ
HOLDEN AT MBENGWÉ
BEFORE HIS LORDSHIP [REDACTED]
WITH [REDACTED] AS REGISTRAR IN ATTENDANCE
THIS 11th JANUARY 2018



Judgment/Ruling No: CRM/01/CFI/2018 of 11/01/2018
CFIM/99c/16

The People.....Complainant

Is

[REDACTED]

Accused

Parties: Accused absent, Pws present

Appearances: [REDACTED] for the people

Prosecution witnesses [REDACTED]

Defense counsel: None

Civil claimants [REDACTED]

The court:

Mindful of the Law No 2006/015 of 29th December 2006 on judicial organization as amended;

Mindful of the Law No 2005/007 of 27th July 2005 to establish the criminal procedure code;

Mindful of the Laws in force;

Whereas accused persons:

1) [REDACTED] born on the 2nd April 1985 at Acha-Tugi, son of [REDACTED] farmer residing at Nyen;

2) [REDACTED] on the 20th July 1974 at Acha, son [REDACTED] residing at Tudiq;

Were brought to court by way of direct summons of the legal department for having in the month of February 2016 at Tudiq within the jurisdiction of the Court

of First Instance Mbengwi, together in agreement without just cause retained goats belonging to one [redacted] and thereby committed an offence contrary to and punishable under sections 74, 96 and 322(3) of the penal code;

Whereas through the report of interrogation at the legal department in offences committed flagrante delicto one Ndong Vincent Awazi, born on the 1st December 1962 at Tudig, son of [redacted] metal worker residing at Tudig was brought to court for having at Tudig, on or about the 17th day of November 2016, infringed a legally made and published sub-prefectoral decision No 053/SPD/BALPA/2015 of 17th October 2015 signed by the divisional officer of Mbengwi and thereby committed an offence contrary to and punishable under section R 370(12) of the penal code;

Whereas 1st and 2nd accused persons who were duly identified and arraigned on the 27th July 2016 pleaded not guilty to the charge;

Whereas by ruling on the 8th February 2017 and pursuant to section 6(2)(a) of the CPC a joint trial was ordered in the two abovementioned matters;

Whereas only 2nd accused graced this court with his presence while 1st accused jumped bail and 3rd accused though brought by way of flagrante delicto procedure did not show up;

That even bench warrants issued for apprehension of 1st and 3rd remained fruitless and the prosecution led by Magistrates [redacted] in a bid to prove their case called one witness and tendered exhibits "A" to "D" while the defence called no witness and tendered no exhibit as well;

Whereas Pw, one [redacted] residing at Wumfi on oath told the court that he knows accused but they are not related;

He averred that in or about the month of August 2015, accused persons entered his grazing land at Tudig and started farming on it. That he went and complained to the farmer/grazier commission that went to the field for investigation and they asked accused persons to stop farming there. That an injunction was ordered against the farmers halting them from further farming activity there but accused persons still went there to farm in violation of the said injunction order;

Whereas the prosecution tendered the sub-prefectoral decision No 053/SPD/BALPA/2015 of 17th October 2015 signed by the divisional officer of Mbengwi placing an injunction order on a grazing area in dispute at Tudig village alongside the grazing permit in the name of Pw dated 12th August 2016. That same were admitted and marked exhibits "A" and "B" respectively;

Whereas Pw further said as accused persons were working there many of his goats got missing. That when his herdsman complained to him about the missing goats he started carrying out investigations and he met 1st and 2nd accused holding his

three goats. That he did everything possible to retrieve his goats from them to no avail as they refused. That the next days both accused persons took those goats to the council and said they were stray goats. That he still went to the DO and complained and the DO forwarded the matter for investigation. That he finally collected his two goats from the council and one is still remaining. That accused persons are still working on the land and he has been seeing them there. That accused persons have built a fence there blocking his cows from having access to water. That the area is a hill but accused persons went and occupied the valley where he used to take his cows to drink. That accused persons have planted cassava and plantains there. Pw finally said he was claiming from accused persons the sum of 750,000 cfa;

Whereas when cross-examined by 2nd accused Pw said the farm on the land belongs to 2nd and 3rd accused. That he saw only two goats that he collected at the council. That he was called to the village council but he did not go there because the matter was already before the DO. That he met 1st and 2nd accused persons with his goats and tried to take them back but they refused. That to the best of his knowledge his goats did not destroy any crop;

Whereas before the prosecution closed their case they applied for the charge to be amended by including 1st and 2nd accused in the charge on violation of injunction order;

That the submissions of the prosecution were upheld and the charge was amended as follows:

"That you [redacted] and Ndong Vincent Awazi, at the same time and place infringed a legally made and published sub-prefectoral decision No 053/SPD/BALPA/2015 of 17th October 2015 signed by the divisional officer of Mbengwi and thereby committed an offence contrary to and punishable under section R370(12) of the penal code;

Whereas 2nd accused was re-arraigned on the amended charge and he pleaded not guilty;

Whereas after the prosecution case the court ruled that evidence adduced so far were enough to warrant accused persons to be put to their defence and only 2nd accused who was present opted to give sworn evidence and called no witness;

Whereas stating his defence on oath 2nd accused said he knows Pw but they are not related while 1st accused is his nephew and 3rd accused his senior brother;

He averred that the land in issue where they were working doesn't belong to him. That he was a mere worker and the person who had the land was a white man and he is gone. That one day after the owner of the land had already left he was at home and heard that they were needed in court. That it was at that juncture that he

8 X

knew that Pw is the one who complained against them. That the white man caught the goats in that farm and handed them to the mayor. That he called 3rd accused who told him that after the mayor received the goat he issued him a receipt. When cross-examined 2nd accused said the white man whose name was Jan Capelle was the one who took the goat to the mayor with 1st accused. That they were three in number a mother and two nursing goats. That when they caught the goats they took them to the regent who called Pw but the latter refused to show up and the goats were taken to the mayor. That he was not present when they caught the goats;

Whereas to confound 2nd accused the prosecution tendered his cautionary statement made during preliminary investigation and same was admitted and marked exhibit "C";

* That 2nd accused further said exhibit "C" is true. That he knew that Pw was disputing the land in issue with others. That they did not block the access to the water and the place in issue is not a grazing land but a farming land. That the said land is the valley and Pw has his grazing permit on top of the hill. That since he did not follow 1st accused when the goats were being taken to the mayor he doesn't know the outcome of the 3rd goat. That Pw was called three times to the palace but refused to show up and the goats stayed there for one day. That in the place in issue there are palm trees, plums and other crops. That many people worked farm there and died. That he started working there in January and ended in April 2016. That many people are working there as task work. That 3rd accused is like the regent of that place and he was the collaborator of the white man. That even 1st accused worked there;

Whereas answering the questions from court 2nd accused said there is no written document to show that he was working for the white man. That when the goats were caught they were taken to 3rd accused as the regent. That Pw was having dispute with the white man on that land. That the white man told him that he has been having problems on that land with Pw concerning animals which always destroyed his crops (cassava, plantains and yams). That the white man might have bought that land from one man from Njinibi. That it was 3rd accused who sold the hill to the white man. That the three of them are from Tudig palace and that is where he lives. That when Pw attacked them he was with 1st accused and the white man. That it was around 8 PM. That they were with Pw's goats. That they did not release the goats to Pw because they thought he could deny having recovered same;

Whereas the prosecution tendered the statements of 1st and 3rd accused made during investigation under the provisions of section 336(b) of the CPC. That same were admitted and marked exhibits "E" and "D" respectively;

Whereas it flows from the cautionary statement of 1st accused that on the 12th February 2016 they went to their farm as usual and met a female goats and two young ones. That since the goats have been destroying their crops they caught them. That after inquiring they were informed that they belonged to Pw and they called him over the phone to come in 15 minutes but he didn't. That they called the regent who asked them to take the goats to Tudig palace and on their way to the palace they met with Pw who tried to take back those goats by force but they denied. That they took the goats to the palace then to the police and finally to the mayor of Mbengwi;

Whereas in his cautionary statement 3rd accused said that he is the regent of Tudig village. That the cassava estate found on the disputed land was handed to the Fon of Tudig by one white man called Jan Capelle who was expelled from the village. That in the absence of the Fon he is the one controlling it. That he is the one who employed one [REDACTED] to erect the fence round that farm to prevent cattle from entering there. That he was summoned by the DO of Mbengwi wherein he was asked to remove the fence but he never did so despite many warnings from the said authority who told him that the land was a grazing land. That he is aware of the injunction order put on the land by the DO. That he knows that Pw had a grazing permit there but it doesn't cover the portion of the farm;

Whereas after the hearing the court visited the locus in quo to ascertain the materiality of the facts. That at the locus only Pw grace the court with his presence; That Pw led the court to the site situated on the right side on the Tudig hill on the road leading to Acha. That the court noticed the land in issue is on the side of a big hill across a big stream that Pw told the court it stands as the boundary between farmers and graziers. On the land the court met cattle of dozens of cows and Pw told the court that they are his. The disputed area is found on the south-east of the said hill toward the stream. There could be found stems of cassava, ridges, a bamboo fence protecting the farmed zone on the west and the north, three bamboo houses and Pw told the court that all are done by accused persons. The court noticed that the fence prevents cows from getting access to the farmed area right to the stream. Pw said his neighbours are: [REDACTED]

1) for the offence of fraudulent retention

For the prosecution to secure conviction under the provisions of section 74, 96 and 322(3) of the penal code, it must be proven that 1st and 2nd accused who at the beginning had good faith in retaining Pw's goats finally knew they had no right over it but went ahead in retaining same;

Whereas Pw's contention is that he met the abovementioned accused holding his three goats and he tried to recover them but they refused. That accused finally took his goats to the mayor of Mbengwi where he could recover only two of them;

Whereas 1st and 2nd accused acknowledged in their cautionary statements that on the 12th February 2016 in the company of one white man called Jan Capelle they caught three goats in their farm. That 2nd accused said they finally discovered that they belonged to Pw. That both accused said as they were conveying the goats to Tudig palace they met with Pw on their way and the latter claimed his goats and wanted to recover them but they refused and took them to the palace where they were finally taken to the Mayor of Mbengwi after transiting through the police;

Whereas 2nd accused told the court that he knew Pw was disputing the area where they caught the goats with the white man. That he knew Pw was claiming that it was his grazing land though the white man was carrying out his farming activities there;

Whereas from the above considerations and coupled with the fact that accused wilfully refused to release the goats to its owner after Pw claimed same from them, 1st and 2nd accused committed the offence of fraudulent retention with the necessary criminal intention;

II) for the offence of violation of injunction order

Whereas it is the contention of Pw that in or about the month of August 2015, accused persons entered his grazing land at Tudig and started farming on it. That he went and complained to the farmer/grazier commission that went to the field for investigation and they asked accused to stop farming there. That an injunction was ordered against the farmers halting them from further farming activity there but accused still went there to farm in violation of the said injunction order;

Whereas exhibit "A" which is the sub prefectoral order No 053/SPD/BALPA/2015 placing an injunction order on a grazing area under dispute in Tudig village was signed on the 17th October 2015 by the DO of Mbengwi. That article 2 of the said injunction order stops immediately any activity going on there by farmers;

Whereas 3rd accused said he was aware of the exhibit "A". That the DO personally told him to remove the fence he built on the land but he refused even after several

earnings from that authority. That on their part 2nd and 3rd accused said they were on that particular farm on the 12th February 2016 wherein they caught three goats belonging to Pw. That 2nd accused further said in court that he was a mere worker for the white man who had dispute over that land with Pw;

Whereas during the visit to the locus the court noticed that farming activity was going on there even of recent as the cassava was seen to have been removed not for a remote period;

Whereas what matters in simple offence is facts and not the criminal intention. That having worked on the farm in issue in violation of the injunction order all three accused are held in the links of the indictment;

Whereas after having decided as such the civil claim shall succeed;

In consequence whereof

After full hearing and at first instance;

Hereby declares 1st and 2nd accused guilty of the offence of fraudulent retention contrary to and punishable under sections 74, 96 and 322(3) of the penal code and they are convicted for the said offence;

Declares all three accused guilty of the offence on violation of injunction order contrary to and punishable under sections 96 and R370 (12) of the penal code and they are convicted for the said offence;

Finds mitigations in their favour as there are first offenders;

They are convicted as follows:

1st Convict: [REDACTED] three months imprisonment with fine of 25000 cfa;

2nd Convict: [REDACTED] three months imprisonment with fine of 25000 cfa;

3rd Convict: Ndong Vincent Awazi: fine 20000 cfa;

In default of payment of fine 1st and 2nd convict shall serve further three months imprisonment and 3rd convict will serve forty days imprisonment;

All the convicts shall bear jointly and severally the costs of these proceedings valued at 148,920 cfa (reg 57500, stamps 12000, service 25500, witatt 18720, withr 25200, case file 5000, CR 3000). In default of payment each convict shall serve further nine months imprisonment;

All convict shall pay jointly and severally the civil claim of 750,000 cfa to one [REDACTED]

An imprisonment warrant is issued against the 1st and 2nd convicts for the execution of the imprisonment term;

NORTH WEST REGION

MOMO DIVISION

MBENGWI SUB DIVISION

SUB DIVISIONAL OFFICE

**BUREAU FOR ADMINISTRATIVE,
LEGAL AND POLITICAL AFFAIRS**

REPUBLIC OF CAMEROON
Peace - Work - Fatherland



**SUB-PREFECTORAL DECISION N° 053 /SPDIBALPA/2015
PLACING AN INJUNCTION ORDER ON A GRAZING AREA
UNDER DISPUTE IN TUDIG VILLAGE.**

THE DIVISIONAL OFFICER FOR MBENGWI SUB DIVISION
KNIGHT OF THE CAMEROON NATIONAL ORDER OF MERIT

MINDFUL of the Constitution of the Republic of Cameroon;
MINDFUL of Ordinance No. 74/01 of 06/07/74 establishing rules governing Land Tenure;
MINDFUL of law No. 80/22 of 14/07/80 to repress infringement on landed property and State Land;
MINDFUL of Decree No. 76/188 of 27/04/76 to establish the terms and conditions of management of National land;
MINDFUL of Decree No. 78/283 of 03/07/1978 fixing the modalities of managing Agro - pastoral conflicts;
MINDFUL of Decree No. 2004/009 of 24/04/004 on the organization of the Ministry of Territorial Administration and Decentralization;
MINDFUL of Decree No. 2008/376 of 12/11/2008 relating to the Administrative Organization of the Republic of Cameroon;
MINDFUL of Decree no.2008/377 of 12/11/2008 fixing the attributions of Heads of Administrative Units, its organization and the functioning of their Services;
MINDFUL of Decree no. 2013/133 of 22/04/2013 appointing [REDACTED] as Divisional Officer for MBENGWI Sub Division;
CONSIDERING a complaint dated 05/08/2015 from the Ardo and Grazers of TUDIG and a report from the head of a Sub Commission of the Farmer/Grazer dated 28/09/2015, and the very necessity to maintain Peace and Order among farmers and Grazers in the Ardo;
CONSIDERING the necessity of service;

HEREBY DECIDES AS FOLLOWS:

ARTICLE I - That with effect from the date of signature of the present Decision an injunction order have been placed on a grazing area under dispute between the Ardo and Grazers of TUDIG and [REDACTED] in TUDIG village, for now the area remains and be used as a cattle track and the drinking point for the cattle.

ARTICLE II - Any activity going on there by the farmers should immediately stop for any infringement of this Decision by any farmer shall attract very severe sanctions and will be prosecuted in accordance with the Rules and Regulations in force.

ARTICLE III - That the Fon of TUDIG and his collaborators, the Ardo, the forces of law and order and the members of the farmer/Grazer Commission are charged each in his own sphere of Competence with the strict implementation of this Decision, which shall be registered, published and communicated wherever and wherever necessary.

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MBENGWI, the 1st Oct 2015
THE DIVISIONAL OFFICER FOR
MBENGWI SUB DIVISION
(CHAIRMAN OF farmer/grazer commissions)

[REDACTED]
SENIOR ADMINISTRATIVE OFFICE