VERITAS ONLINE LAW REPORTS

VOLUME ONE

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JUSTICES OF THE SUPREME COURT OF CAMEROON

The Hon. Lord Justice MEKOBE SONE Daniel
(Chief Justice of Cameroon)
The Hon. Lord Justice BISSECK Dagobert
(President Judicial Bench)
The Hon. Lord Justice BELOMBE Andre
(President Administrative Bench)
The Hon. Lord Justice ATEBA OMBALA Marc
(President Audit Bench)

The Hon. Lord Justice MVONDO EVEZO'O Jean Pierre The Hon. Lord Justice JEATSA Jacob The Hon. Lord Justice MVIENA Pierre Marie The Hon. Lord Justice EJANGUE EKAMBI Adolphe The Hon. Lord Justice EBONGUE Moise The Hon. Lord Justice NTYAM Suzanne-MENGUE The Hon. Lord Justice NJOCK KOGLA Daniel The Hon. Lord Justice ZIBI NSOE Toussaint The Hon. Lord Justice MEVONGO MEYE Pierre The Hon. Lord Justice MORFAW Henry NJINJU The Hon. Lord Justice Lucy AYUK ASUAGBOR The Hon. Lord Justice MBENOUN Theodore The Hon. Lord Justice MOUCHIA AMBE George The Hon. Lord Justice FOFUNG Justine - WACKA The Hon. Lord Justice SIMO TCHUENTE Lucienne The Hon. Lord Justice MOMA Macaulay CHE The Hon. Lord Justice MBALE Goethe Christian The Hon. Lord Justice NJUMBE Ernest	The Hon. Lord Justice YOSSA Christophe The Hon. Lord Justice SANDEU Emmanuel The Hon. Lord Justice OWOUNDI MBALLA Bruno The Hon. Lord Justice PAGAL Jean The Hon. Lord Justice NDOUMBE ETEKI Daniel The Hon. Lord Justice AMBOMO Marie Louise The Hon. Lord Justice NOUMBISSIE Julienne The Hon. Lord Justice MONGLO TODOU The Hon. Lord Justice FOE Jean Claude Robert The Hon. Lord Justice NJILELE Solomon The Hon. Lord Justice LONCHEL Mathias The Hon. Lord Justice MOUCHING ALASSAH The Hon. Lord Justice ONDOA OBOUNOU C.K The Hon. Lord Justice NKO NTONGZOK Irene The Hon. Lord Justice MAMAR PABA SALE The Hon. Lord Justice IBRAHIMA HALILOU The Hon. Lord Justice BONNY Paul The Hon. Lord Justice DJAM DOUDOU The Hon. Lord Justice SOKENG Roger
COURT OF APPEAL SOUTH WEST REGION	**COURT OF APPEAL NORTH WEST REGION**
The Hon. Lord Justice BECHEM EYONG ENEKE **(Chief Justice of South West Region)** **The Hon. Lord Justice BEA Abednego KALLA** **The Hon. Lord Justice MBENG AKO Martin** **The Hon. Lord Justice FONJOCK EKENYA B** **The Hon. Lord Justice NNOKO MBO Joseph** **The Hon. Lord Justice BEKONG MBE ALEMKA F** **The Hon. Lord Justice NYAMDI Henrietta** **The Hon. Lord Justice AGBOR James EYONG** **The Hon. Lord Justice Vera NGWENYI NGASSA** **The Hon. Lord Justice Anne AFONG**	**The Hon. Lord Justice TCHOUMI NYAJRO POVI Anne** **(Chief Justice of North West Region)** **The Hon. Lord Justice KWAMU NANA Anthony** **The Hon. Lord Justice NKENGLA Joseph AWA** **The Hon. Lord Justice Helen FON ACHU** **The Hon. Lord Justice BEMELA MABU Grace** **The Hon. Lord Justice MBUA ASSANGA Alexander** **The Hon. Lord Justice Charles NAMME MENYOLI**

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</table>

EDITORIAL

The Veritas Online Law Reports contains legal decisions of relevance to human rights and the rule of law in Cameroon. The Reports will be published quarterly, starting with this volume. The Reports covers cases heard by the Courts in Cameroon as well as the United Nations human rights treaty bodies and the decisions of the African Commission on Human and Peoples' Rights (and in the future also the African Court on Human and Peoples' Rights).

This is an innovative approach to Law Reporting in Cameroon and an attempt to respond to the transformations introduced by social media, and other online tools. It is hoped that this will broaden access to rule of law based decisions in Cameroon as well as fine tune legal debates on the necessity of the domestic application of international human rights law in Cameroon.

Decisions of the domestic courts are sourced directly from the registry of the respective courts, while those of the African Commission and the UN Human Rights Committee are sourced from the Annual Activity Reports of the Commission and the web page of the UN Human Rights Committee.

Fairly liberal editorial changes have been made in the text of the cases to ensure consistency and to avoid obvious errors.

Domestic or international cases that would be of interest to include in future issues of the Reports may be brought to the attention of the editors at:

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INDEX OF SUBJECT MATTER

INTERPRETER: Right thereto - Effect of non-compliance thereof - **The People of Cameroon v. Chief Ayamba Ette Otun & 23 Ors (2016) 1 VOLR p 21-28.**

INVALID PROCEEDINGS: Effects thereof - Attitude of Appellate Court thereto - **Amuche Louis Atanga v. The People of Cameroon & Anor (2016) 1 VOLR p 13-17.**

JUDGMENT: Time limits thereto - Effect of breach thereof - **Pauline Andong Wassi v. The People of Cameroon (2016) 1 VOLR p 7-12.**

JUDICIAL HARRASMENT: Meaning thereof - **Pauline Andong Wassi v. The People of Cameroon (2016) 1 VOLR p 7-12.**

MILITARY COURTS: Trial of civilians therein - Exceptions thereto - Whether mere invocation of domestic law can justify trial of civilians therein - Duty of the State to ensure the full protection of rights of accused by Military Courts - **Ebenezer Derek Mbongo Akwanga v. Cameroon (2016) 1 VOLR p 29-42.**

PREPARATION OF DEFENCE: Meaning thereof - Right of accused thereto - Apportionment of time thereto by trial courts - **Amuche Louis Atanga v. The People of Cameroon & Anor (2016) 1 VOLR p 13-17.**

REMAND IN CUSTODY: Necessity thereof - **Gorgji Dinka v. Cameroon (2016) 1 VOLR p 43-51.**

RIGHT TO NATIONALITY: Ambazonian Nationality - Whether denial thereof constitutes violation of article 24(3) of the CCPR - **Fogum Gorgji Dinka v. Cameroon (2016) 1 VOLR p 43-51.**

RIGHT TO SELF DETERMINATION: Rights of Ambazonians thereto - Competence of the UNHRC to adjudicate thereon - **Fogum Gorgji Dinka v. Cameroon (2016) 1 VOLR p 43-51.**

RIGHT TO VOTE & BE ELECTED: Right may not be suspended or excluded - Exceptions thereto - Removal of name from voters register - Effect thereof - **Fogum Gorgji Dinka v. Cameroon (2016) 1 VOLR p 43-51.**

SENTENCE: Excessive sentence - Power of Court of Appeal thereto - Illegal sentence - Attitude of Court of Appeal thereto - **Pauline Andong Wassi v. The People of Cameroon (2016) 1 VOLR p 7-12.**

TIME LIMITS IN CRIMINAL ACTIONS: How calculated - Statutory provisions thereto - **Amuche Louis Atanga v. The People of Cameroon & Anor (2016) 1 VOLR p...**

TORTURE: Nature of allegations thereof - Medical Certificates as proof thereof - Impact on health of the detainee - **Ebenezer Derek Mbongo Akwanga v. Cameroon (2016) 1 VOLR p 29-42.**

STATUTORY INTERPRETATION: Section 193(1) of the Penal Code; Escape from Lawful Custody - Requirements thereof - The import of section 193 of the Penal Code - **Pauline Andong Wassi v. The People of Cameroon (2016) 1 VOLR p 7-12.**

Section 231 (a) of Penal Code; Unlawful Assembly - Requirements thereof - Applicability of section 2&5 of Law No. 90/12/1990 on the non-possession of National Identity Card - On what it does not envisage - **The People of Cameroon v. Chief Ayamba Ette Otun & 23 Ors (2016) 1 VOLR p 21-28.**

WORDS & PHRASES: Arbitrariness - Meaning thereof - Need to be broadly interpreted - Elements thereof - **Fogum Gorgji Dinka v. Cameroon (2016) 1 VOLR p 43-51.**

INDEX OF CASES REPORTED

PAULINE ANDONG WASSI v. THE PEOPLE OF CAMEROON
COURT OF APPEAL SOUTH WEST REGION
CASWR/104C/2012
27 MAY, 2014
M.A. MBENG LJ, E.B. FONJOCK & V.N. NGASSA LLJ

On Whether the Court of Appeal Can Modify an Illegal Sentence: Section 459(2) of the CPC gives the Court of Appeal the powers to adjust an excessive sentence and issue a sentence equal to at most the maximum provided by law, but not to modify an illegal sentence.

On What Amounts To Judicial Harassment: The exclusion of eye witness, that is the Gendarmes who saw accused leave or permitted her to leave, exclusion of medical evidence, rejection of Gendarme records and the whole circumstance under which accused/Appellant was found guilty, in the face of essential ingredients of the offence being missing and all the doubts, amount to judicial harassment.

On The Nature of the Criminal Procedure Code: The Criminal Procedure Code is a book of strict time limits, relative and absolute nullities.

On The Effect of Adjourning a Judgment Out of Time: Adjourning a judgment out of time without proper motivation makes it a relative nullity.

On The Burden and Standard of Proof Required in Criminal Matters: Granted that by section 308(a) and section 372 of the Criminal Procedure Code, proof shall be by any means and no particular number of witnesses is needed to prove a case, this nevertheless does not divest the prosecution of the burden of proof under section 307 of the Criminal Procedure Code as well as the duty to produce the best and most appropriate evidence, which in Criminal matters these days is not even beyond reasonable doubt but beyond any doubt.

Appellant Absent
Respondent Present

Barrister Njioro for Appellant
Advocate General Suh A. Fusi for the Respondent

COURT NOTE: Barrister Njioro of Counsel for Appellant informs the Court that Appellant and her baby are admitted in hospital just this morning. The Court proceeds with Judgment.

UNANIMOUS JUDGMENT OF THE COURT

V.N. NGASSA LJ: Pauline Andong Wassi AKA Anyangwe aged 33 years, a hairdresser resident at Isokolo Limbe is aggrieved with the judgment of the Limbe Court of First Instance per His Worship Tatsi T. Theophilus in CFIL/448C/2012, judgment delivered on the 27th Day of August 2012, wherein the Appellant (above lawful) was convicted of escape from lawful custody contrary to and punishable under section 193(1) of

the Penal Code. Appellant was consequently sentenced to six months' Imprisonment plus costs of twenty five thousand 25.000 francs and in default of payment of costs, an additional term of three months' imprisonment.

Dissatisfied with the entire judgment and proceeding Appellant through her Counsel Barrister Njioro Abraham filed a memorandum and grounds of appeal on seven grounds. Advocate General Alfred Fusi Suh Esquire on behalf of Respondent replied to all seven grounds.

The brief facts which led up to this appeal as can be gathered from the proceedings are as follows:-

Owing to a complaint by one Nanje Okangi Mary the Appellant's land lady, a warrant of arrest was issued by the State Counsel of Limbe against Appellant. Appellant was arrested on the 18th day 2012 she was produced before the State Counsel himself (Eni Mokube Esquire) the deputy Magistrate Njiman Ewane remanded Appellant to Gendarme Custody with an order that she be reproduced on the 29th May 2012. On the same evening of the 23rd of May 2012, the State Counsel called Magistrate Ewane and instructed the latter to control the Gendarmerie cell because the former had got wind that Appellant was not in the cell. Magistrate Ewane herein PW1 inspected the cells and effectively, Appellant was not at the Gendarmerie.

The next day Appellant was rearrested and eventually brought before the Court upon a flagrante delicto charge for escape from lawful custody. Amidst Appellants' allegations that she was pregnant, taken ill and allowed to go to the hospital by the Brigade Commander, with medical records tendered, the Court nevertheless found Appellant guilty of Escape from lawful custody and proceeded to convict and sentence her.

We will now proceed to examine the grounds of appeal, not in the order in which they were filed, but in an expedient fashion. Grounds one, two and five will be examined together.

Ground one, the famous omnibus ground alleges: that the judgment of the trial Magistrate is altogether unreasonable, unwarranted having regard to the evidence adduced at the trial.

Ground Two alleges: That the trial Magistrate convicted the Appellant in the absence of the mental element (mens rea) of the alleged offence contrary to section 74 of the Penal Code.

Ground Five states: The trial Court rejected admissible secondary evidence contrary to the law.

In arguing ground one, Counsel for Appellant submitted that Appellant left the Brigade on grounds of ill health, to go to the hospital with the express permission of the Brigade Commander. The Brigade Commander never complained that Appellant had escaped. To this Counsel for Respondent replied that since it was the State Counsel who remanded Appellant, it is untenable to allege that the Brigade Commander permitted Appellant to go to the hospital. Counsel for the Respondent further castigated Appellants' medical records exhibits E, F, G-G1 as being irregular.

On ground Two as to mens rea, Counsel for Appellant referred the Court to section 74(1) (2) and (4) of the Penal Code and submitted that there was complete absence of proof of intention to escape. Counsel further submitted that the trial judge went on a frolic when he stated that Appellant had connived with unknown offices to escape. Counsel for Respondent replied that knowing full well that it was the state Counsel who remanded her, by negotiating with Gendarme officers to leave the Brigade, Appellant clearly had an intention to escape.

On Ground Five, as to the rejection of admissible secondary evidence, Counsel for the Appellant submitted that Appellant tried to tender a certified true copy of the entries of the Gendarme logbook with proof that

Gendarme Officers were summoned, but such evidence was rejected. To the above, Counsel for the Respondent replied that the Court rightly rejected Appellant's documents as they were a notice to produce and not proof of service. He referred the Court to pages 17 and 18 of the records of proceedings.

In considering the above grounds of appeal and the arguments for and against as summarized above we find as follows:

Section 193(1) of the Penal Code under which Appellant was charged reads: "Whoever escapes from lawful custody or who being permitted to work outside the prison leaves his place of work without permission, shall be punished with imprisonment for from three months to one year".

It can easily be deduced from the above definition that the following ingredients are relevant to the first part under which Appellant was charged: (a) that the offender be in custody as in under lock and key; (b) that such custody be lawful; (c) that the offender breaks the bounds of such custody in an irregular manner such as by force, breaking away or by tricks; (d) that the custodian be against such an escape; and (e) that the offender be aware and intend to break bounds against the will of the custodian.

The Court of Appeal has often ruled that the Court of Appeal will not disturb the findings of fact of the trial Magistrate who it is that has the opportunity to examine the witnesses, unless there is a grave error in the trial Magistrate appreciation of such facts. In the present case, granted that by section 308(a) and section 372 of the Criminal Procedure Code, proof shall be by any means and no particular number of witnesses is needed to prove a case, this nevertheless does not divest the prosecution of the burden of proof under section 307 of the Criminal Procedure Code as well as the duty to produce the best and most appropriate evidence, which in Criminal matters these days is not even beyond reasonable doubt but beyond any doubt. Section 395 (2) of the CPC provides: "In case of doubt, the accused shall be acquitted. Mention of the benefit of the doubt shall be made in the judgment"

We find that the proceedings were conducted in such a way that the whole circumstances of Appellants' leaving the Gendarme cell on the night of the 23rd of May 2012 have been shrouded in mystery, which mystery in itself constitutes a grave doubt which should have been resolved in favor of the Accused/Appellant.

Firstly, how and why the State Counsel who was not on seat received information that Appellant was no longer in the cell, to the extent of sending PW1 to control the cell is bizarre.

Secondly, not only did Appellant contend that she was permitted to leave the cell by the Brigade Commander to go to the hospital and tendered medical evidence to that effect, but she was willing to call the Gendarme officer who allowed her to leave as well as the logbook in which her husband signed her out. Strangely enough the Court excluded the evidence she attempted to tender, and even when Counsel for Accused/Appellant applied, on pages 20 line 24-30 and page 21 lines 1-10 of the proceedings the Court refused to inspect the logbook and upheld the State Counsel's submissions that the Brigade Commander could only be called in as a co-accused.

Furthermore, the lone witness for the prosecution Magistrate Ewane testified that he was informed that a member of the accused's family signed her out and she looked as presently ill. This is borne out in pages 8, page 9 lines 23-26. The Court in its judgment at page 24 lines 12, noted that Accused/Appellant attempted to call Taku Valerie or GM Bahoya as witnesses, yet went ahead to find her guilty of escape from lawful custody.

We find that the exclusion of eye witness, that is the Gendarmes who saw accused leave or permitted her to leave, exclusion of medical evidence, rejection of Gendarme records and the whole circumstance under which

accused/Appellant was found guilty, in the face of essential ingredients of the offence being missing and all the doubts, amount to judicial harassment.

There was certainly no love lost between the accused and trial Court. To allege that just because a woman was put in a cell and was later on not found in the cell (without looking into circumstances) amounts to escape, admits of a mechanical rather than a conceptual assessment of an offence.

Grounds 1, 2 and 5 of the Appeal succeed.

Ground Three alleges: The Learned trial Magistrate erred at law by making an Order of Imprisonment against the Appellant who was a pregnant woman.

In support of the above ground, Counsel for Appellant cited section 565 of the Criminal Procedure Code. In reply Counsel for Respondent urged the Court not to rely on the Medical evidence of pregnancy as it was built up and in the alternative if the Court found her to be pregnant then this Court of Appeal should set aside the order of imprisonment and order Appellant to pay a fine.

Section 565 of the Criminal Procedure Code provides: "An order of imprisonment in default of payment shall not be passed against a person less than eighteen years (18) of age or more than sixty years old, or against pregnant woman at the time of its execution".

Furthermore section 27 (2) of the Penal code provides: "No woman who is with child or who has been recently delivered may begin to serve her sentence until six weeks after delivery".

Throughout the proceedings and as borne out in her medical records Exhibits D through G-G3, it was made manifest that Appellant was ill and part of that illness was as a result of a pregnancy with a threatened abortion as borne out in exhibit D, a medical certificate.

Section 459(2) of the CPC gives the Court of Appeal the powers to adjust an excessive sentence and issue a sentence equal to at most the maximum provided by law but not to modify an illegal sentence.

Engrained in general Criminal Law and Human Rights Law is the consciousness of special circumstances that are peculiar to certain classes of people. One such class of people are pregnant women, miners and the aged. Section 2 of the Convention on the Elimination of all forms of Discrimination Against Women makes it clear that any special advantages given to women may not be considered discriminatory but as of right.

The trial Court, in deliberately disregarding the expert evidence of Accused/Appellant's pregnancy and proceeding to sentence her to imprisonment in default of a pecuniary and accessory penalty in violation of section 565 of the CPC and further in failing to mention that Appellant sentence of imprisonment only commence six weeks after delivery completely violated the law and principles of sentencing. This Court may amend an excessive sentence but not a sentence in violation of the law. In this we lean on our own judgment in **CASWR/10^{C}/2010 Ndi Nwebetfua Vs. The People and 1 Other Judgment dated 23/4/2013**. Ground Three accordingly succeeds.

There would have been no need to proceed with the grounds of Appeal, but for the fact that the Court of Appeal being a Court of law has a bounding duty to expound on issues of law.

Ground six is on a point of law it avers: That the trial Court delivered its judgment out of time contrary to the prescription of the law.

In arguing this ground Counsel for Appellant referred the Court to section 388 (1) of the C.P.C which mandates that a judgment be delivered either immediately or in the next fifteen (15) days. To this Counsel for the Respondent reposted that Counsel for the Appellant was present in Court when the date of adjournment was taken and did not protest. He further argued that the judgment was not entitled to be nullified just because it was delivered out of time. From the records of proceedings, the defence opened and closed its case on the 23rd day of July 2012. At page 21 lines 7-10 the Court adjourned for judgment 20 days later on the 13/08/12.

The Criminal Procedure Code is a book of strict time limits, relative and absolute nullities. Granted that 15 days may not exactly fall on a working day, the trial Magistrate should have articulated why the judgment could not be delivered within 15 days. This omission or neglect is also a procedural aberration which cannot be cured. Adjourning a judgment out of time without proper motivation makes it a relative nullity.

Ground six equally succeeds.

Based upon the above grounds we find no need to proceed with other grounds of appeal which now become superfluous.

Pursuant to section 452(3) of the C.P.C. the Court of Appeal of the South West Region, upon a finding that grounds 1, 2, 5, 3 and 6 succeed, hereby quashes and reverses the judgment of the Court of First Instance Limbe in CFIL/448C/2012 herein appealed against.

Order: The Public treasury to bear the cost of these proceedings of 32.500 (thirty two thousand five hundred francs) pursuant to section 452(3) C.P.C.

Warning: Pursuant to section 389(4) and 399 of the C.P.C parties are informed of their right of Appeal which is 10 (ten) days from tomorrow the 28th May 2014.

AMUCHE LOUIS ATANGA v. THE PEOPLE OF CAMEROON & CARINE FANWI KEMWI
COURT OF APPEAL NORTH WEST REGION
CANWR/MS/34C/2014
21 OCTOBER, 2014
A.N NJIE LJ, A.K NANA &H.I FONACHU LLJ

On The Legal Duty of a Trial Court to Create an Environment for Fair Hearing Even in Flagrante Delicto Proceedings: In our considered view, even when he is faced with the procedure of dealing with offences committed flagrante delicto, which procedure naturally calls for very speedy trials, a trial Judge still has a legal duty to create an environment for fair hearing and not a caricature of it.

On The Apportionment of Time to Accused to Prepare Defence: We think that even if the Criminal Procedure Code does not state in its section 300 that an accused upon his application should be granted three working days to prepare his defence, a trial Judge should not be seen to be too miserly with his apportionment of time to an accused for purposes of preparing his defence. Of course, he, that is, the trial Judge, cannot also be seen to be over-generous with the Court's time so as to violate the law and to the extent that the hearing of such a case is unduly delayed.

On The Calculation of Time Limits in Criminal Proceedings: Furthermore, the trial Court's order of adjournment as stated hereinabove injured section 7(b) of the Criminal Procedure Code which states that "The day on which the act was done which sets the time running shall not be included in calculating time-limit".

On What Preparing a Defence for an Accused Requires: Also remarkable, is the now well accepted practice that for an accused, preparing a defence in the case may require seeking the services of counsel. That is why considering the fact that the trial Magistrate who is an expert of law and procedure did not give the Appellant in the instant case a reasonable opportunity, that is, a legal opportunity to prepare his defence.

On Whether an Appellate Court Can Deliver a Judgment Using Contaminated Evidence: Now, it seems clear to us that this Court as an appellate Court has no power to deliver a judgment using contaminated evidence.

On The Kind of Evidence That Can be Reviewed by an Appellate Court: Section 463 of the Criminal Procedure Code empowers the appellate Court to review evidence, that is, live evidence and deliver a judgment on the merits of a case where only the judgment of the lower Court is invalid and it is annulled for violating the provisions of section 389(2) of the same code. In such a case, the evidence to be reviewed is live and legal because the proceedings conducted in the lower Court are valid. But that is not the case here.

On The Effect of Invalid Proceedings by a Trial Court: ...the learned trial Magistrate, with respect, violated the law on the 16/8/13 before hearing of the case on the 19/8/13, the proceedings conducted in that lower Court on the 19/8/13 are invalid. Consequently, the evidence obtained during those invalid proceedings

cannot be reviewed by this Court because it is not legal. That evidence is contaminated by the invalid proceedings. In fact, the trial Court's proceedings of the 19/8/13 (just like the trial Magistrate's order of adjournment made on the 16/8/13) are as good as not conducted.

Appellant Present
1st Respondents Present
2nd Respondent Absent
Barrister Ngek John Ngala for the Appellant
Mr. Wuakoh Achaleke Stephen "Substitut du Procureur General" for the 1st Respondents
Barrister Kumfa Elvis for the 2nd Respondent Absent

UNANIMOUS JUDGMENT OF THE COURT

A.N. NJIE LJ: This appeal is against the judgment of His Worship Magistrate Achu Francis President of the Court of First Instance Bamenda delivered on the 30/8/13 in Suit No CFIBA/677C/13. The facts leading up to the judgment appealed against are that, the appellant was dragged to the lower Court by way of the procedure reserved for offences committed flagrante delicto, for offending the provisions of section 318(1)(c) of the Penal Code. The 2nd Respondent who was the victim of the offence orally introduced a civil claim of 5.200.000 FRS.; being special damages of 3.836.000 FRS., and general damages of 1.364.000 FRS. The Appellant and the Civil Party testified at the trial on the 19/8/13.

At the conclusion of a full hearing that opened and closed on the 19/8/13, the trial Magistrate found the appellant guilty as charged and imposed the following sentence on him: "Fine 5.100.000 FRS and in default of payment convict shall serve 08 years in prison". The appellant was also ordered to pay costs of 200.000 FRS or serve 9 months imprisonment and damages of 4.836.000 FRS to the Civil Party.

Dissatisfied with that judgment, the Appellant through his counsel Barrister Ngek John Ngala quickly filed a Notice of Appeal on the 2/9/13. Counsel for the Appellant filed a Memorandum of Grounds of Appeal on the 13/9/13. It contains 4 grounds of appeal and their supporting submissions.

The grounds of appeal, some of which we find self-explanatory are couched as follows:

"That the sentence pronounced by the learned trial Judge is illegal, excessive and violates the provisions of section 318(1)(c) of the Penal Code. That the form of bringing the charge against the appellant by way of flagrante delicto violated the Appellant's rights to a fair hearing and equally ambushed the Accused/Appellant. That the learned trial Judge erred in law and in procedure by sentencing the Appellant on the 30th of August instead of 9th September 2013 fixed for Appellant's judgment. That the whole judgment including the civil award is unreasonable, unwarranted and cannot be supported by the evidence adduced at the trial".

The records of proceedings were received in the registry of this Court on the 28/1/14. On the 3/6/14, Barrister Kumfa Elvis filed submissions here on behalf of the 2nd Respondent and canvassed the 4 grounds of appeal seriatim. He conceded to the complaint in ground 1 of the appeal and urged us to lean on section 459(2) of the Criminal Procedure Code and correct the illegal sentence imposed on the appellant. He challenged the arguments in support of Ground 2 of the appeal but submitted that even if such arguments are upheld, this court ought to invoke its powers under section 463 of the Criminal Procedure Code, review the available evidence and deliver a judgment on the case after annulling the trial Court's judgment. He urged us to hold that Grounds 3 and 4 of the appeal lack merits and to dismiss the entire appeal.

The "Substitut du Procureur General", Mr. Wuakoh Achaleke Stephen, filed submissions on the 4/6/14 on behalf of the 1st Respondents. In the submissions, the learned "Substitut du Procureur General" said nothing about the Appellants grounds of appeal. He simply proceeded to raise fresh issues, and he submitted strenuously, lengthily and sometimes even repeatedly on the nullity of the trial Court's proceedings and judgment. In doing so, he relied on sections 290, 300, 310, 338, 359, 385 and 389 of the Criminal Procedure Code.

Reacting to those submissions filed on behalf of the 1st Respondents, Barrister Kumfa Elvis filed submission on behalf of the 2nd Respondent on the 01/7/14. He submitted that although the printed record did not contain the proceedings of the 16/8/2014, the trial Magistrate effectively complied with the provisions of sections 300(1) and 359(1) of the Criminal Procedure Code and this is borne out in the Appellant's memorandum of Grounds of Appeal. He argued that the "Substitut du Procureur General" was wrong (in the submissions of the 1st Respondent) to consider the 19/08/13 as the first day of hearing of the matter in the Court below. Finally, he referred to sections 3(1) and 463 of the Criminal Procedure Code and submitted that the law empowers this Court of Appeal to review the evidence in the case and deliver a judgment on its merit after annulling the lower Court's judgment.

Let us begin by stating the obvious. Attracted by the submissions of Barrister Kumfa Elvis, this Court ordered the authorities of the trial Court of First Instance Bamenda to forward the Court's proceedings in the case of the 16/8/13. In obedience of that order, the President of the lower Court, Magistrate Achu Francis forwarded those proceedings (signed by him and the Registrar-in-Attendance) on the 16/9/14. And it is revealed in the trial Court's Proceedings of 16/8/13 that the Appellant was identified and arraigned on an undisclosed charge. He pleaded Not Guilty. He was granted 3 days to prepare his defence (as required by section 300 of the Criminal Procedure Code) and remanded in prison custody. The matter was adjourned to the 19/8/2013 for hearing. It now seems to us clear that the supplementary proceedings forwarded here by the President of the lower Court have taken care of many of the issues raised in the submissions of the 1st Respondents.

The hard fact is that the Appellant was arraigned in the trial Court on the 16/8/13. But was the law respected by the trial Magistrate on the 16/8/13? That in our opinion is the fulcrum of the Appellant's case and it lies squarely in ground 2 of this appeal.

Strictly speaking Ground 2 of the appeal is not couched with much elegance, but the issues raised therein are important in the sense that they relate to the proceedings conducted in the case on 16/8/13. That ground of appeal consequently leads us to the commencement and conduct of the criminal proceedings against the Appellant.

Now the records of proceedings clearly point to the fact that the Appellant appeared before the Court of First Instance Bamenda presided over by Magistrate Francis Achu at 2 P.M on the 16/8/13 on the orders contained in a report of interrogation by the State Counsel of Mezam who opted for the procedure for offences committed flagrante delicto, and charged him to stand trial there for committing the offence contemplated in section 318(1)(c) of the Penal Code.

Drawing a chronological sequence of the records of proceedings, we think that the learned trial Magistrate, with respect, made the law, that is, section 300 of the Criminal Procedure Code uncomfortable when after the Appellant's arraignment he adjourned the matter from about 5 P.M on Friday 16/8/13 to Monday 19/8/13 at 9 AM for hearing. In our considered view, even when he is faced with the procedure of dealing with offences committed flagrante delicto, which procedure naturally calls for very speedy trials, a trial Judge still has a legal duty to create an environment for fair hearing and not a caricature of it.

We think that even if the Criminal Procedure Code does not state in its section 300 that an accused upon his application should be granted three working days to prepare his defence, a trial Judge should not be seen to be too miserly with his apportionment of time to an accused for purposes of preparing his defence. Of course, he, that is, the trial Judge, cannot also be seen to be over-generous with the Court's time so as to violate the law and to the extent that the hearing of such a case is unduly delayed.

In the present case, we feel obliged to agree with counsel for the appellant that the trial Magistrate's order adjourning the matter from 5 PM on Friday to Monday 19/8/13 for hearing (which hearing effectively took place on the 19/8/13) was wrong. Firstly by a simple hourly calculation, from 5 PM on Friday 16/8/13 to 9 AM on Monday 19/8/13 does not amount to three days as per the law. Furthermore, the trial Court's order of adjournment as stated hereinabove injured section 7(b) of the Criminal Procedure Code which states that "The day on which the act was done which sets the time running shall not be included in calculating time-limit". In fact, we think that that order of adjournment is as good as not made. Also remarkable, is the now well accepted practice that for an accused, preparing a defence in the case may require seeking the services of counsel. That is why considering the fact that the trial Magistrate who is an expert of law and procedure did not give the Appellant in the instant case a reasonable opportunity, that is, a legal opportunity to prepare his defence.

Truly speaking, sitting in our quiet moment we do not see what had to be lost in this case if the hearing had been adjourned from Friday 16/8/13 to Thursday 22/8/13 as a firm date or thereabout, especially when we consider the fact that the Appellant was already arrested and placed in custody.

Now, what is the fate reserved for this case in those circumstances where the trial Magistrate violated section 300 of the Criminal Procedure Code?

As the way forward, Barrister Kumfa Elvis thinks that this appellate Court ought to lean on section 463 of the Criminal Procedure Code, review the evidence and deliver a judgment on the merits of the case after annulling the trial Court's judgment. On our part, we think, with respect, that the learned counsel for the 2nd Respondent got it all wrong here.

Now, it seems clear to us that this Court as an appellate Court has no power to deliver a judgment using contaminated evidence. Section 463 of the Criminal Procedure Code empowers the appellate Court to review evidence, that is, live evidence and deliver a judgment on the merits of a case where only the judgment of the lower Court is invalid and it is annulled for violating the provisions of section 389(2) of the same code. In such a case, the evidence to be reviewed is live and legal because the proceedings conducted in the lower Court are valid. But that is not the case here.

In the present case where the learned trial Magistrate, with respect, violated the law on the 16/8/13 before hearing of the case on the 19/8/13, the proceedings conducted in that lower Court on the 19/8/13 are invalid. Consequently, the evidence obtained during those invalid proceedings cannot be reviewed by this Court because it is not legal. That evidence is contaminated by the invalid proceedings. In fact, the trial Court's proceedings of the 19/8/13 (just like the trial Magistrate's order of adjournment made on the 16/8/13) are as good as not conducted.

The inescapable result is that in such a case, there is no judgment in the eyes of the law and we mean there is even no bad judgment that can be annulled to permit the review of the evidence as per section 463 of the Criminal Procedure Code.

Faced with such circumstances, it will clearly be an exercise in futility to consider the other grounds of appeal touching on the glaringly illegal sentence imposed by the trial Magistrate on the Appellant. That illegal sentence even seems to us to be the result of the unguided rush taken in the lower court to punish the Appellant. It will also be a mere academic exercise for us to consider the irregularities which the learned "Substitut du Procureur General" seemingly spent much time and energy to raise and condemn in the submissions filed on behalf of the 1st Respondents.

To conclude this judgment, we hold that ground 2 of the appeal succeeds and with it the entire appeal.

We hereby declare the proceedings of the trial Court of First Instance Bamenda in Suit No. CFIBA/677C/13 a nullity, and for the purposes of the records, we also nullify the lower Court's judgment delivered on the 30/8/13 and set aside the verdict, the sentence and the orders of payment of costs and damages. The Appellant is accordingly discharged.

Finally, we order that a Release Order be issued for the immediate and unconditional release of the Appellant, Amuche Louis Atanga, from prison.

The costs of proceedings are taxed and set out as follows: Stamp duty and Registration = 20.000 frs. Fiscal stamps = 27.000 frs. TOTAL COSTS = 47.000 frs. The total costs of 47.000 frs are to be borne by the Public Treasury.

The parties are reminded of their right to appeal against this judgment latest 10 days from tomorrow the 22/10/2014.

AGBOR ENOW TERENCE & 10 ORS v. THE PEOPLE OF CAMEROON
COURT OF APPEAL SOUTH WEST REGION
CASWR/2M/C/2013
26 NOVEMBER, 2013
S.A NJILELE LJ, F.M BEKONG & COL J.T EKFUINGEI LLJ

Whether the Law Allows for Double Standards: Appellants were jointly charged with some military men. The military men were granted self bail and the Appellants denied bail without any justification but relying on the conjectures of the prosecution that the Appellants may cause trouble in Memfe if released on bail. We believe that everybody is equal before the law, military man or civilian. Since we do not understand the reason for the double standards used by the trial Court, we also find merit in these two grounds.

On the Need to Avoid Long Pre-trial Detention: In view of the fact that the Appellants have been in detention for almost one year and the trial is still to commence and some of the sentences are short sentences, the likelihood is that most of the Appellants would have served the minimum sentence before the trial; not to talk of the judgment. That will not be good for our Legal system and our Country which is striving to be a society respecting the rule of law.

Appellants Present
Respondents Present

Barrister Loh Georges for the Appellants
Colonel Njumo for the Respondents

UNANIMOUS JUDGMENT OF THE COURT

F.M BEKONG LJ: This appeal is against the inter-locutory ruling of the Military Tribunal Buea in suit N° 155/0RD/TMB delivered on 02/04/2013 by his Lordship Col. Andre NGALAHO. In the said ruling the Court refused to admit the Appellants to Bail. The Appellants were standing trial at the Military Tribunal for armed riot contrary to section 233 of the Penal Code and destruction contrary to section 316 of the same Penal Code.

The Appellants aggrieved by the said Ruling refusing them bail filed notice and 4 grounds of appeal. Learned Counsel for the Appellants pursuant to section 443 of the Criminal Procedure Code filed his submissions at the Registry of the Court below on 12/04/2013. He argued grounds 1 and 2 together and grounds 3 and 4 together.

When the matter came up for hearing on 29/10/2013, Learned Counsel for the Appellants adopted and relied on their filed and served written submissions of 12/04/2013 and urged us to allow their appeal and

grant the Appellant bail. On the other hand the Leaned Commissioner for Government also adopted and relied on their written submissions and urged us not to grant Appellants' appeal.

ON GROUNDS 1 AND 2

It is the contention of the Appellants that the Ruling refusing Appellants Bail was done in absolute violation of sections 8(1) and 8(2) of the Criminal Procedure Code. He argued that it is a cardinal principle of law that all accused persons or suspects are presumed innocent until they are proved guilty of whatever offence they are being tried for. He submitted that because some trials may take a long time bail of suspects and accused persons are provided for under sections 222 to 235 of the Criminal Procedure Code. He said the Appellants have been in detention since 10/05/2012 and the trial has not yet commenced yet the Appellants were denied bail as the learned trial judge deliberately refused to apply the provisions of section 244 as jointly read with 246(G)(2) of the Criminal Procedure Code. He wonders whether after the long detention period and if Appellants are not found guilty would it not amount to legal persecution. He urged us to frown at this conduct of the trial Court and uphold this ground and review the position of the trial Court.

In reply, Learned Counsel for the Respondent has urged us to read section 233 of the Penal Code jointly with sections 115 and 117 of same and we shall find that the offence becomes a felony and therefore un-bailable.

In order to avoid repetition we shall proceed to examined grounds 3 and 4 before determining the whole appeal.

The contention of the Appellant in the above grounds is that the learned trial Judge based his refusal to grant bail on suppositions and conjecturing thus violating the cardinal legal principle of No conjecturing and No Suppositions at law. The Prosecution in opposing bail at the Court below used conjecturing and suppositions, that is in assuming that should Appellants be granted bail, they would cause trouble in Mamfe by disturbing public peace and this in spite of the plea from the defence Counsel that Appellants be granted bail with stiff recognizance to maintain and keep the peace while on bail. The Appellants were never given the chance because of assumptions, suppositions and conjecturing of the prosecution.

He further submitted that some of the offences carry short terms and all the offences are bailable. More so, self bail was granted to some Military men who were jointly charged with the Appellants. He urged us to hold that the Courts do not have double standards and that everybody is equal before the law and what is good for the gulls is also good for the ganders. He said the Appellants have reasonable sureties and are ready to enter into a recognizance to maintain and keep peace if granted bail.

In reply the Learned Commissioner for the Government urged us to read section 233 of the Penal Code with sections 115 and 117 of the same Code and will find that the offence becomes a felony and hence un-bailable.

Having scrupulously examined the arguments of leaned counsel on either side the first issue we have to determine is whether the offences for which the Appellants/Applicants are standing trial are bailable or not. Sections 133 and 316 are clearly misdemeanors and therefore bailable. We do not understand how section 115 of the Penal code has been brought into the show by the Respondent. Section 117 gives the definition of "weapon" and that is probably why the Appellants were charged before the military tribunal of Buea.

Section 115 of the Penal code is a felony called "armed band" for which the Appellants were not charged. We find all the arguments based on section 115 futile and baseless because "armed band" and "armed riot" are totally different offences. That is why the first is under section 115 and the other is under section 233 of the

Penal Code. We therefore agree with Counsel for the Appellants that the offences for which Appellants were charged, namely: armed riot section 233 and destruction section 316 of the Penal Code are bailable offences.

The second issue we want to determine is whether the law allows for double standards. Appellants were jointly charged with some military men. The military men were granted self bail and the Appellants denied bail without any justification but relying on the conjectures of the prosecution that the Appellants may cause trouble in Memfe if released on bail. We believe that everybody is equal before the law, military man or civilian. Since we do not understand the reason for the double standards used by the trial Court, we also find merit in these two grounds and allow them and with them the entire appeal and review the ruling of the trial Court.

In view of the fact that the Appellants have been in detention for almost one year and the trial is still to commence and some of the sentences are short sentences, the likelihood is that most of the Appellants would have served the minimum sentence before the trial; not to talk of the judgment. That will not be good for our Legal system and our Country which is striving to be a society respecting the rule of law.

By reason of the foregoing, we grant or allow this appeal in its entirety and make the following consequential orders:

1. The Appellants/Applicants named above are hereby granted bail in the sum of one million francs and one surety each in the like sum, resident within the jurisdiction of the Court.
2. The Appellants/Applicants shall each enter into a recognizance to maintain and keep the peace in the sum of 500.000 francs and one surety in the like sum
3. There is no order as to costs.

THE PEOPLE OF CAMEROON v. CHIEF AYAMBA ETTE OTUN & 23 OTHERS
COURT OF FIRST INSTANCE TIKO
TM/185C/2008
07 MAY, 2014
T.T.TATSI PRESIDENT

***On How to Treat a Suspect who is Under Detention*:** Section 122 of the Criminal Procedure Code states that a suspect under detention shall immediately be informed of the allegations against him and shall be treated humanely both morally and materially.

On The Protection of Individual Fundamental Rights to Liberties: The Constitution of this Country as well as the United Nations Charter, Protocols, the African Charter on Human and Peoples' Right accords to individuals fundamental human rights to liberties especially in private premises.

On The Inviolability of the Home: The preamble of our Constitution says the home is inviolate and that private individuals are protected in their private environments.

On The Rights of Citizens Not to be Arrested in Private Space: Private citizens can only be arrested in their private environment which should be every citizen's castle on a probable cause and following due process within the ambit of the rule of the law.

On The Law on Possession of National Identity Card: The law on the possession of I.D Cards does not envisage that you should hold out an Identity Card on one hand while bathing for fear of a raid of your home by security forces.

On The Need to Afford a Person Arrested on Private Property Reasonable Time To Produce National Identity Card: It is okay that a citizen found on a highway or in public places be asked and detained for non possession of an Identity Card. In private property, this should be another matter and the citizen should be allowed reasonable time to present the Identity Card. If you arrest him *manu-militaria* without warrant on private property and without giving him the time to produce his Identity Card, then you make it impossible for him to do so.

On the Effect of Statements Recorded in French Language from English Speaking Detainees Without an Interpreter: ...statements from some of the accused persons... were rejected for infringing Section 90 (3) of the Criminal Procedure Code....The reason being that he took statements from [English speaking] accused persons in French without the services of an interpreter.

CHARGE: 1. Unlawful Assembly; Section 231 (a) of Penal Code

2. Non-possession of National Identity Card; Section 2&5 of Law No. 90/12/1990.
3. Breaking of Taxation Seal; Section 191of Penal Code

Accused No.1,2,3,5,6,7,9,11,14,17,18,20,22,23, and 24- Present
Accused No. 4, 8, 10, 13,15,16,19, and 21 – Absent
Persecution Witnesses all absent.

Magistrate Sakwe Martin (State Counsel) for The People of Cameroon – present.

Barrister Ajong Stanislaus, Nchinda Peter, Awafung Michael, Nseke Luma, Ashu Samuel Bissong & Forsack Eric for all the accused persons.

J U D G M E N T

Theophilus Tanyi TATSI (President): The 24 accused persons were variously charged that on the 06th of August 2008, at MUTENGENE in the FAKO Division, they did take part in an arrangement for a meeting in a place open to the public without having giving such notice as may be required by the law contrary to Section 231 (a) of the Penal Code.

Each accused person was a focus of a "Report of interrogation at the Legal Department in offences committed flagrante delicto". Each report was conducted at the Legal Department Tiko by Magistrate SAKWE Martin who prosecuted this matter in Court. Hence, there were 24 such report of interrogation in the Court file and one for each accused person.

Some of the accused persons that is:

1. Accused No. 1: chief AYAMBA ETTE OTUN
2. Accused No. 5: WANGUNWUN GEORGE
3. Accused No. 6: NGOE ALIUS MOKUBE
4. Accused No. 8: AGBOR FORTUNG
5. Accused No. 9: TEBO TITANJI CHRISTIAN
6. Accused No. 12: MBAH STEPHEN
7. Accused No. 15: EMMANUEL FONGOH
8. Accused No. 16: TINDA MOSES
9. Accused No. 18: MATHIAS ARREY
10. Accused No. 21: MUKETE SAMUEL NGOH
11. Accused No. 22: TAMFU BLAIS

All have second count to wit: "That at the same time the place, being adult Cameroonians were found without being in possession of the National Identity Card contrary to and punishable under Section 2 and 5 of Law No. 19/12/1990."

SABUM James – the second accused had a second count to wit: "That at the same time and place, he did break a seal lawfully affixed to his business premises contrary to Section 191 of the Penal Code."

All the accused persons pleaded not guilty before the State Counsel on the 10/10/2008.

The matter was registered in Court on the 10/10/2008 and came up before Magistrate MUKETE TAHLE. The matter suffered a number of adjournments and on the 09/06/2009, the Court ordered for hearing to

open but the defense Counsel objected and walk out of the case. The matter suffered further adjournments. Thereafter, it became difficult to secure the presence of the prosecution witnesses.

I sat for this matter for the first time in September 2009. After two adjournments, I transfer the matter to Court II before Magistrate CHI Valentine. This was on the 31/01/2011. On the 25/05/2011 when this matter came up before the said Magistrate CHI Valentine, both the prosecution and the defence were ready to go on. However, Magistrate CHI Valentine, declined to hear the matter alleging that the matter was not assigned to him by the President of the Court as required by law. He specifically ruled that the matter should be heard by the President of the Court of First Instance, TIKO. This was on the 25/05/2011.

The matter came up before me on the 30/05/2011. By this date, the matter had suffered about 19 adjournments over a period of about three years

The prosecution case opened on the 30/05/2011. The prosecution led by Magistrate SAKWE called five prosecution witnesses and tendered in evidence Exhibits "A" to "P". A number of document sought to be tendered by the prosecution were rejected and marked "Rejects 1 to 12"

The first prosecution witness, *officier de police* NGOUMOU Sosthene alleges that on the 06/10/2008, one of his unidentified informants called him apparently on the phone at about 14H00 alleging that there was a meeting in MUTENGENE at the second accused – SABUM's residence where there is an off-license bar.

That being an officer of the Special Branch, he passed the information to his Commissioner, the Commissioner of Public Security TIKO, the Commissioner of Special Branch, the Army and Gendarmes already there following his information interrogating the accused persons. He stated he heard the D.O TIKO asking the suspects to identify themselves by showing their I.D Cards. That some of them did so and some could not.

He stated that the D.O also inquired from the accused persons whether they had an authorization to hold the said meeting and they stated that they had no authorization.

PW1 alleges that they saw one alleged militant filming the meeting. That they confiscated the camera which he tendered in evidence as Exhibit "B". The accused persons were arrested and statements taken from them.

Under cross-examination, the PW1 stated that he does not know why the accused persons were brought to Court. He also stated that, he did not see the accused persons making arrangements to hold a meeting as charged.

PW2, Assistant Superintendent of Police TAMBI Augustine stated that prior to October 2008, SABUM James was running an off-license bar at his premises. That he participated in a tax drive culminating into closure of the bar. He tendered in evidence Exhibit "E". Exhibit E is a business Establishment Closure Report dated 29 September 2008. It stated that, Tax Inspector ISSA Magellan, a sworn inspector of taxes, had closed the business premises of SABUM James – the second accused. PW2 stated emphatically that he took part in sealing the off-license of SABUM James.

Under cross-examination, the second prosecution witness stated that he was not present when the accused persons were arrested but assisted in their arrest and tendered in evidence some of their statements.

He stated that the premise sealed is that of SABUM James and he resides and runs an off-license bar. That the bar is in front of the building and that SABUM James lives in the back part of the house. He stated that there

was no proof that SABUM James reopened the off-license bar after it was sealed. He stated that the accused persons were investigated for illegal assembly and non possession of National Identity Cards.

PW2 further alleges that at the time accused persons were arrested, the D.O of TIKO had made an order he did not have in court banning all meetings.

PW3 *Officier de Police, 2eme Grade* WAMBA Matins stated that on the 06/06/2008, he was at the Police Station when suspect were brought. He helped in investigations and recorded statement from 05 suspects viz: Exhibits "H" to "L". He sought to tender a document tending that SABUM James did break a tax seal and was rejected from evidence and marked "reject 5". He stated that the suspects were investigated for illegal gathering and non-possession of National Identity Cards.

Officier de Police ANYE SAMA testified as the 4th prosecution witness. He said he was on duty on the day of the arrest and took part in the investigations. He received 04 statements from suspects in evidence as Exhibits "M" to "P". Under cross-examination, he stated that suspects were being investigated for illegal assembly. That one of accused urinated on the Commissioner of Public Security. He stated that the suspects belonged to the Southern Cameroon National Council (S.C.N.C).That they were a separatist movement seeking to separate from the Republic of Cameroon.

PW5 is Gendarme ELONG EKO Casmir. He stated that in October 2008, his Brigade Commander asked him to go to Guest house at SABUM James' place to see whether a meeting was going on there. When he arrived the scene, a few minutes later, the army, D.O of TIKO and other forces came to the scene and arrested the participants. He received statements from some of the accused persons. Unfortunately, they were rejected for infringing Section 90 (3) of the Criminal Procedure Code. They were marked "rejects 6 to 12". The reason being that he took statements from [English speaking] accused persons in French without the services of an interpreter.

Under cross-examination, the PW5 stated that when he arrived at the vicinity of SABUM's house, he stood at a distance and observed that they were a number of persons in the house holding a meeting and they were being filmed with a camera. He stated that he did not see people going into the meeting or coming out of the meeting for the time he stood at a distance waiting for backup.

In-chief, PW1 stated that 'Guest House' is written on the front of SABUM's house.

The first accused Chief AYAMBA ETTE OTUN adopted his statement in Exhibit "C. He added that on the 5th of October 2008, he returned from Europe. Later, his members came to great him and they planned to have launch together; that they had no secretary since they were not holding a meeting.

Chief AYAMBA showed his I.D card to the Court. He gave copy of his passport in evidence as Exhibit "R". Chief AYAMBA complained that he was arrested without a warrant of arrest.

Under cross-examination, Chief AYAMBA stated that SABUM James – the second accuses and Mr. TAKU Sylvester (the 20th accused person) picked him up from the airport in Douala to MUTENGENE. He stated that he hadn't his I.D Card on him because he had sent his suitcase where his I.D Card was ahead to KUMBA. That S.C.N.C was a pressure group seeking to restore the state of Southern Cameroons. That all the arrested accused persons are members of the S.C.N.C. He stated that 15th accused person was the COUNTY Chairman. That he has been received on previous occasions at the Guest House. That SABUM James is the National Organizing Secretary of the S.C.N.C.

Under re-examination, the 1st accused stated that they were having a meal when the Forces of Law and Order came and destroyed the plates and food. That S.C.N.C. is not illegal.

Accused No. 2: SABUM James identified his statement as Exhibit "D". Second accused stated that they were eating lunch with 1st accused and other S.C.N.C. activists when the Forces of Law and Order came to his premises, smashed property, took chairs and tables away. He stated that there was no public meeting in his house. That he did not break any seal put at his off-license by the Taxation Department. He stated that he had been arrested on several occasions by the Commissioner of Public Security – TIKO.

While the second accused was being cross-examined, an individual got up in Court, threatened the Court with a knife. The Court had to rise in a hurry. He was joined by the 14th accused person who shouted at the top of his voice.

The matter resumed on the 31/10/2011.

SABUM stated that he was National Organizing Secretary of S.C.N.C. He stated that S.C.N.C. Activists came to his house to be briefed on the achievements of 1st accused who had just returned from Europe. That, his house was called 'Guest House'. That, he receives S.C.N.C. activists at his house. That, on the day of his arrest, the activists were informed of the briefing by word of mouth.

Accused No. 3: BABILA TANNGUH John stated that on the day of the arrest, he was passing by SABUM's house, when he learnt of the arrival of the 1st accused, and the meeting. He went to listen out of curiosity. He was arrested and he states that he later became a member of S.C.N.C.

IN ANSWER TO Court questions, accused No.3: stated that when he got inside SABUM's home, preparations were being made for food and drinks to be brought. That the forces of Law and Order came before the food was shared. He stated that the accused No.14 OFON Jasper was so stressed by the arrest that he peed on the legs of the Commissioner.

Accused No. 6: NGOE ALIUS MOKUBE is a blind person, and accused No.7 is a worker. Both of them stated that they were not attending a public meeting on that day. Both stated that they have I.D Cards. Accused No.7 showed his I.D Card to Court and stated that the Forces of Law and Order smashed their food and brutalized them that day.

On the 01/02/2011, accused No.11 Jacob SAMA gave evidence on oath as well as accused No. 12 corroborating the evidence of the others that accused No.1 was regularly received at Guest House where they communed with him sharing meals together. That on the day of their arrest, the Forces of Law and Order smashed their food, tables, and chairs and brutalized them.

The 14th accused person OFON Jasper evidence on oath, showed his Identity Card. He stated that he was beaten with a machete before he signed Exhibit "O" –his statement.

He stated that it was one George TAMBO who called him to Pa SABUM's house. That when he arrived Pa SABUM'S on the day of the arrest, he found food on the table. That he was asked to sit down and that the Commissioner of Police came to him directly and seized his camera. That the Commissioner asked him to sit on floor and he felt the need to urinate but the Commissioner refused to allow him to go urinate. That seriously pressed; he urinated on the floor beside the legs of the Commissioner. That the military came and he was beaten to a state of unconsciousness and later found him-self inside a vehicle and was taken to the Police Station – TIKO where they were seriously beaten.

Under cross-examination, accused No. 14 stated that he was beaten for a day by five police officers.

Accused No.14 showed his I.D Card to the Court as well as Accused No.16 (TINDATI Moses) who also testified after him.

TINDATI Moses is Organizing Secretary of S.C.N.C. MUYUKA. He stated that they were about to eat when the Forces of Law and Order came to arrest the S.C.N.C. activists.

On the 02/05/2012, accused No. 17 – BATI ACHO Mary stated that she served food and that before they could eat the food, the D.O and gendarmes came along, break the plates, food flasks and destroyed the food. They were arrested and beaten. Accused No.17 is a Militant of S.C.N.C and stated that each time Chief AYAMBA returns, he brief S.C.N.C Militants on his trip.

Accused No.18 – Mathias ARREY, Accused No. 19 – NDIFON Joseph and accused No. 24 – FOKUM Andrew are all S.C.N.C activists. They all gave evidence on oath. They all allege that they had a briefing at SABUM's residence for S.C.N.C activists. That they were all arrested and locked up in one toilet at the Police Station under deplorable conditions.

The Counsel for the defense as well as the Magistrate SAKWE addressed the Court on the evidence.

From the totality of evidence before me, I do fine that on the 5th of October 2008, the first accused returned from abroad and came to reside at the residence of Pa SABUM – THE SECOND ACCUSED.

FIRST ACCUSED, Chief AYAMBA is the Chairman of the Southern Cameroon National Council and SABUM James is the National Organizing Secretary.

There are Militants of the S.C.N.C in FAKO Division and its environs.

The evidence tends to suggest that each time Chief AYAMBA came to MUTENGENE, whether on his way out or to Cameroon, he sojourned at the residence of Pa SABUM.

It is clear that prior to September 2008, SABUM ran a bar at the front part of his residence. However, in September 2008, the Chief of Taxation closed the bar down.

Hence, officially by October 2008, SABUN only had his residence as his premises named 'Guest House'.

On the 06th October 2008, most activists were informed by word of mouth that their Chairman was around at SABUM's residence. As it is customary, they convened there to share in a meal of food and drinks.

Before they could have a taste of food and sip their drinks, the Forces of Law and Order led by the D.O who were informed, came to the scene and arrested all of them to the Police Station - TIKO.

This Court was not informed of the information that the D.O had to cause this arrest. This Court can only presume that there was probable cause tending to suggest that the security of the Unitary State of Cameroon was being threatened.

However, the Learned State Counsel was immediately informed and he dealt with this matter as a matter of flagrante-delicto.

The accused persons were charged under Section 231 of the Penal Code. That Section states:

Section 231 (a) – Unlawful Assembly:- **Whoever,**

a.) **Takes part in the arrangement for a meeting, demonstration, or procession in any place open to the public without having giving such notice as may be required by law or before the expiry of such notice or after service of lawful prohibition;...**
b.) **...shall be punished with imprisonment for from fifteen days to six months and with fine from five thousand to one hundred thousand"**

From the above, the notice to hold a meeting must be a requirement of a law. Hence, Section 231 (a) of the Penal Code has to be read along with another law that requires such notice or under which the meeting is prohibited.

This matter has been before this Court for over 04 years and the prosecution has failed to cite the relevant law that required the accused persons to notify any specified authority of their meeting.

The other ingredient under Section 231(a) is that the meeting shall be in a place open to the public. Exhibit "E" shows that SABUM's bar at his house open to the public had been closed down by Taxation in September 2008 meaning that, his residence was now private.

There is no charge or conviction or other evidence tending to suggest that the bar was running on the 06th of October 2008 to be said to be a place open to the public.

The fifth prosecution witness who was present before the coming of the Forces of Law and Order stated that he did not find people entering or going out of the house of SABUM as the activists sat. This evidence tends to suggest that the meeting was not one open to the public where people entered and came out.

Section 122 of the Criminal Procedure Code states that a suspect under detention shall immediately be informed of the allegations against him and shall be treated humanely both morally and materially. There is evidence from 4th prosecution witness that one of the accused persons, the 14th accused persons urinated on the legs of the Commissioner of Public Security, TIKO. This evidence corroborates the evidence of the 14th accused person OFON Jasper that the said Commissioner denied him the permit to go urinate and so pressed; he urinated on the floor beside the leg of the Commissioner.

However, despite the provision of the Code, none of the accused persons was sent to the hospital after the arrest and they failed to tender any medical record of the torture or assault they received.

I have examined the statements of the accused persons and there is no indication that they were informed that they had violated either Law No. 90/055 of 19 December 1990 on Public Meetings or Public order or Law No. 90/053 of 19 December 1990 on Association within the meaning of section 122 of the Criminal Procedure Code.

I now address myself to Law No.90/042 of 19 December 1990 on National Identity Cards. Some of the accused persons are charged for non-possession of an Identity Card at the time of their arrest. They have produced these cards during the trial.

The Constitution of this Country as well as the United Nations Charter, Protocols, the African Charter of Human and Peoples' Right accords to individual fundamental human rights to liberties especially in private

premises. The preamble of our constitution says the home is inviolate and that private individuals are protected in their private environments. This means that private citizens can only be arrested in their private environment which should be every citizen's castle on a probable cause and following due process within the ambit of the rule of the law.

It is okay that a citizen found on a highway or in public places be asked and detained for non possession of an I.D Card. In private property, this should be another matter and the citizen should be allowed reasonable time to present the I.D Card. If you arrest him *manu militaria* without warrant on private property and without giving him the time to produce his I.D Card, then you make it impossible for him to do so. The law on the possession of I.D Cards does not envisage that you should hold out I.D Card on one hand while bathing for fear of a raid of your home by security forces.

In the circumstances, I find that the accused persons charged for non-possession of the National Identity Cards had no intention to do so and since when they had the opportunity to do so, presented them, I find that this offense is not proved against them.

The second accused SABUM James was charged for breaking the seals of taxation under Section 291 of the Penal Code. The prosecution failed to provide evidence to prove the constituent elements of the offence.

From the foregoing, I do find that though the Forces of Law and Order had information that accused persons were meeting apparently illegally, they had no probable cause to arrest them the way they did. More so, though the State Counsel was quickly called in to the investigation, the prosecution failed to inform or charge the accused persons for any punishable offence

From the foregoing, all the charges against all the accused persons are hereby dismissed and the accused persons discharged and acquitted.

EBENEZER DEREK MBONGO AKWANGA v. CAMEROON
UNITED NATIONS HUMAN RIGHTS COMMITTEE
COMMUNICATION No. 1813/2008
22 MARCH, 2011

On Right to be Informed of Reasons for Arrest and Opportunity to Challenge Same: The Committee finds that nothing suggests that at the time of arrest, the author was informed of the reasons for his arrest, that he was ever brought before a judge or judicial officer, or that he ever was afforded the opportunity to challenge the lawfulness of his arrest or detention.

On When Civilians May be Tried by Military Courts: The State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate for the task and that recourse to military courts is unavoidable.

On The Guarantees of Fair Trial Rights by Military Courts: The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. In the present case, the State party has not shown why recourse to a military court was required. In commenting on the gravity of the charges against the author, it has not indicated why the ordinary civilian courts or other alternative forms of civilian court were inadequate for the task of trying him.

Whether Mere Invocation of Domestic Law Can Justify Trial of Civilians By Military Courts: Nor does the mere invocation of conduct of the military trial in accordance with domestic legal provisions constitute an argument under the Covenant in support of recourse to such courts.

On The Proof of Torture by Medical Certificates: ...the detailed allegations of torture suffered by the author and the impact on his health shown by the three medical certificates submitted, the Committee concludes that the State party has violated article 7 of the Covenant.

On The Conditions of Detention of Prisoners: Persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners.

DECISION

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 March 2011,

Having concluded its consideration of communication No. 1813/2008, submitted to the Human Rights Committee on behalf of Mr. Ebenezer Derek Mbongo Akwanga on his own behalf, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under Article 5, Paragraph 4, of the Optional Protocol

The author of the communication, dated 20 June 2008, is Mr. Ebenezer Derek Mbongo Akwanga, a Cameroonian national born on 18 November 1970 in Southern Cameroons and currently residing in the United States of America. He alleges violations by Cameroon[1] of articles 7, 9, 10 and 14. The author is represented by counsel, Mr. Kevin Laue, The Redress Trust.

The Facts as Submitted by the Author

Since his student days, the author was a political activist and leader of the Southern Cameroons Youth League (SCYL) and campaigned peacefully for the rights of the people of Southern Cameroons. On 24 March 1997, the author was travelling as a passenger in a car which was stopped in Jakiri, Bui Division, North-West Province.[2] Without warning, the State party's security agents fired shots at the tyres of the vehicle. The author recognized among the security agents a plain-clothes member of the political security network of the Yaoundé police. Large numbers of people swarmed around the car and in the resulting chaos, the author managed to escape. Later that night, the author was detained by about 10 armed police officers. He was handcuffed and led towards a van without being told why he was being arrested. When he asked questions, he was hit with a rifle butt, causing him to faint. He regained consciousness in a cell at the Jakiri Gendarmerie Brigade where he was questioned about his identity. His legs were chained and he was kicked and beaten with batons and doused with stinking water until he fainted. In total, he was detained for about 13 hours at Jakiri Gendarmerie Brigade.

On 25 March 1997, the author was driven to the Kumbo Gendarmerie, where he was stripped naked and, with his chained legs forcibly stretched out, he was beaten with a machete on the soles of his bare feet and then forced to dance on sharp gravel, singing the praise of President Biya in French. He was then placed in a very hot cell and subjected to a constant loud thumping noise. He spent five hours at Kumbo Gendarmerie. In the afternoon of that same day, he was driven to the Gendarmerie Legion at Up Station, Bamenda, where plastic bags were melted over his bare thighs, he was paraded naked in front of female officers, mocked and denied food and water. He was also suspended upside down from an iron bar between his knees and beaten on the soles of his bare feet. During these periods of torture, the author was interrogated and asked to confess to the crime of trying to divide the country. He was repeatedly accused of being part of an armed and violent secessionist movement, which he consistently denied. He spent five days in this place of detention.

[1] The Covenant and the Optional Protocol entered into force for Cameroon on 27 June 1984.

[2] According to Amnesty International, AFR 17/03/1999, more than 50 people from Cameroon's English-speaking provinces were detained for over two years in connection with violent events in North-West Province in March 1997 before being brought before a military court in the capital Yaoundé.

On 29 March 1997, the author was taken to the National Headquarters of the Gendarmerie, Secretariat of the State for Defence in Yaoundé. He was identified as "*élément très dangereux*" and put in a cell with hardened criminals, who had been instructed by the gendarmerie to make him "uncomfortable". For 25 days he was forced to sleep near the toilet on a urine-soaked bare floor and he was not allowed to bathe. He was only able to crawl, as standing with his chained legs was painful. After the third day, he was interrogated and again consistently accused of being involved in an armed and violent secessionist movement.

On 2 June 1997, the author was taken to Kondengui Maximum Security Prison in Yaoundé, accused of activities incompatible with State security and attempting to split Southern Cameroons from Cameroon, however the allegations were confused and constantly changing. He was forced to share an overcrowded cell with 40 to 50 inmates, with wood-plank bunks for only 15. The prison was infested with rats and insects. After two weeks in this prison, the author became ill with a high fever and amoebic dysentery. The prison hospital he was taken to was under-resourced and lacked medicine. The author was assaulted by guards and other prisoners on numerous occasions. He spent nearly three months in this prison.

On 29 August 1997, the author was taken to Mfou Special Prison in the department of Méfou-et-Afamba, where he was placed in a dark, filthy cell with no windows. A few hours later he was placed in a communal cell, where other inmates abused him when they found out that he was involved in Southern Cameroons activities. Food in prison was always inadequate both in quantity and quality. On 6 June 1998 after 10 months in prison, the author became very ill.[3] He managed to alert some colleagues who publicized his illness and as a result he was hospitalized. In Mfou District Hospital, he was diagnosed as suffering from excessive torture and trauma with partial paralysis. A month later he was returned to prison. During the following 18-month period, the author was held incommunicado with no access to family, friends or lawyers. On 4 February 1999, he was transferred back to Kondengui Maximum Security Prison.

On 8 April 1999, the author was given papers in prison that he was to be arraigned at Yaoundé military court on 14 April 1999. The documents were in French and, although he could not understand them, he had to sign them. No lawyers were present. The charges were: aggravated theft, assassination, hostilities against the nation, attempted secession, non-denunciation of criminal activities, insurrection, revolution and complicity. The evidence presented consisted of a map of Southern Cameroons, Southern Cameroons National Council membership cards, fund-raising collection boxes, bows and arrows, and four "den guns".[4] There was only one Southern Cameroonian officer on the bench, who, when he agreed with the defence on the issue of translation, was replaced by a supporter of the Government. On the second day of the trial, the charges were changed and neither the accused nor the defence could understand them as they remained unclear. These new charges included offences under laws passed two years after the offences were said to have been committed, and were based on the evidence of those officers who had arrested and tortured the author. The author denied and continues to deny that he had committed any crimes. On 6 October 1999, the author was sentenced to 20 years' imprisonment.

The author remained in Kondengui Maximum Security Prison to serve his sentence. He became ill with a pulmonary infection and spent nine months in the prison infirmary in 2001. In March 2003, he was admitted

[3] He had difficulties moving the right side of his body and speaking. He vomited and defecated blood. He suffered from loss of vision.

[4] Traditionally made guns which do not use bullets but gunpowder and are fired during traditional ceremonies.

to Yaoundé Central Hospital. On 9 July 2003, the author escaped from hospital to Nigeria, where he remained for two and a half years. In Nigeria he was hospitalized and a doctor noted in his file that he had been subjected to physical and psychological torture.

The author was recognized as a refugee by the Office of the United Nations High Commissioner for Refugees. In February 2006, he was granted refugee status in the United States of America. In November 2007, a psychotherapist recorded the psychological impact of the torture the author had suffered and referred to persistent nightmares, extreme anxiety, fear, panic attacks, depression and insomnia.

The Complaint

The author submits that the ill-treatment and torture he suffered during his arrest and at the various places of detention where he was held constitutes a breach of article 7. These places were Jakiri Gendarmerie Brigade;[5] Kumbo Gendarmerie; Bamenda Gendarmerie; Yaoundé Gendarmerie Headquarters, where the author was required to sleep in sordid conditions and the authorities failed to intervene when fellow prisoners tormented him physically and psychologically;[6] the Kondengui Maximum Security Prison in Yaoundé, where the author was subjected to inhuman conditions, as a direct result of which he fell seriously ill and could not obtain proper treatment;[7] and lastly, the Mfou Special Prison, where the author was held incommunicado from 29 August 1997 to 4 February 1999, which facilitated the practice of torture and ill-treatment.[8] The author submits that the treatment he suffered during his arrest and in successive places of detention amounts to torture or at least cruel, inhuman or degrading treatment, contrary to articles 7 and 10 of the Covenant.

The author states that the events described constitute a violation of his rights under article 9 as he was never informed at the time of his arrest of the reasons for his arrest; he was not brought promptly before a judicial body and was severely tortured; he was deprived of his liberty for more than two years before being brought before a military court and during this period he had no opportunity to challenge any aspect of his detention.

With respect to article 10, the author refers to the Committee's jurisprudence, according to which the Standard Minimum Rules for the Treatment of Prisoners are effectively incorporated in article 10.[9] The author submits that he was held in a cell with 55 people sharing 15 beds, in violation of rule 9. Moreover, contrary to rules 10 to 21, he did not have adequate bedding, clothing, food and hygiene facilities. Furthermore, he did not receive adequate medical care (rules 22 to 26). In addition, in breach of article 10, paragraph 2, the author,

[5] See communication No. 334/1988, *Bailey v. Jamaica*, Views adopted on 12 May 1993; communication No. 255/1987, *Linton v. Jamaica*, Views adopted on 22 October 1992.

[6] See communication No. 868/1999, *Wilson v. the Philippines*, Views adopted on 30 October 2003, para. 2.1.

[7] See communication No. 115/1982, *Wight v. Madagascar*, Views adopted on 1 April 1985, para. 15.2-17; communication No. 1152/2003 and 1190/2003, *Bee and Obiang v. Equatorial Guinea*, Views adopted on 30 November 2005, para. 6.1; communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 10 August 1994, para. 9.4; communication No. 188/1984, *Portorreal v. Dominican Republic*, Views adopted on 5 November 1987, para. 9.2.

[8] See communication No. 704/1996, *Shaw v. Jamaica*, Views adopted on 4 June 1998; communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; general comment No. 20, 10 March 1992, para. 11.

[9] See for example communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 10 August 1994, para. 9.3, concluding observations on the United States of America, CCPR/C/79/Add.50, para. 34.

who was a remand prisoner, was not segregated from convicted prisoners. He was denied access to the outside world for 18 months and therefore contends that his in-communicado detention was in breach of article 10.[10]

As regards article 14, the author submits that the composition of the military court and the conduct of the trial violated his rights to a fair trial, as the military court operated under the authority of the Ministry of Defence, which also has authority over the persons who tried, detained and charged the author. Moreover, he asserts that the information used by the prosecutor was obtained by torture. The author had no access to a lawyer during his pre-trial detention and during the trial he had little opportunity to communicate with his lawyer, who had no access to the indictment and was therefore not able to prepare the author's defence adequately. Moreover, the prosecution relied on written evidence proving that armed attacks had been planned; however, this evidence was not produced in court. The author also submits that he was tried by a military court although he was a civilian.[11]

With regard to the exhaustion of domestic remedies, the author submits that during his incarceration, petitions were made by political parties, such as the Social Democratic Front (SDF) and international NGOs calling for his release, but these were ignored. The author was not allowed any visits by his family, friends or lawyers who, because of their genuine fear of intimidation, could not take any steps to have access to him, nor was it possible for him to bring any legal action from prison. Due to the fact that the author subsequently escaped from prison and fled abroad, he is prevented from returning to the State party to pursue any local remedies.

The author further submits that one of the defence lawyers tried to obtain the judgement or sentencing papers from the Military Court and Appeals Court of Centre Province, which confirmed the initial sentence, but without success. Proceedings to challenge the jurisdiction of the Military Court and for the trial to be heard under the jurisdiction of the common law and in a language which the author could understand, filed before the Supreme Court on 10 December 1997, were ignored by the Military Court, which proceeded with the trial. To date, the motion before the Supreme Court is still pending. The author submits that it would be futile and dangerous for him to do any more than he already attempted while in custody. He recalls the Committee's jurisprudence according to which the effectiveness of remedies against ill-treatment cannot be dissociated from the author's portrayal as a political opposition activist.[12] He adds that his isolation in prison prevented him from availing himself of remedies, in particular as he was detained incommunicado in inhumane conditions. He further submits that, even if he had been allowed access to remedies, any attempt to sue the State would have been futile, as the judiciary is not independent.[13] He adds that claims for compensation would also be ineffective, as the law on compensation came into force after the events concerned had occurred and the perpetrator must stand trial for torture. Therefore, the author claims that he has no adequate or available remedy in Cameroon either in law or practice.

State Party's Observations on Admissibility and Merits

[10] See communication No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 13 May 2004.

[11] See Concluding observations by the Human Rights Committee, Cameroon, CCPR/C/79/Add.116, para. 21.

[12] See communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 10 August 1994, para. 8.2; communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 10 May 2005, para. 4.11.

[13] See US Department of State Report on Human Rights, 1997 and 1999, Special Rapporteur on torture, Sir Nigel Rodley, E/CN.4/2009/Add.2, 11 November 1999, para. 58.

On 8 July 2009, the State party submitted its observations on admissibility and merits. The State party refers to the facts as submitted by the author and notes that on 23 March 1997, dynamite, detonators and nitrate were stolen from a powder magazine. On 27 March 1997, administrative buildings in Jakiri were attacked causing death, serious injury and kidnapping. The investigations led to the arrest of 67 persons. The author had stated in his testimony of 5 April 1997 that as the President of the youth of the Southern Cameroon's National Council (SCNC), he was in charge of stealing explosives, which were then hidden at the home of a member of the SCNC in Jakiri. The author was arrested when he was on the way to retrieve the explosives. The State party further submits that the author was part of a military trial against 67 members of the SCNC and that he was sentenced on 5 October 1999 to 20 years' imprisonment and a fine of 100,000 francs for the possession of illegal weapons and war munitions and aggravated theft. While the case was pending before the Court of Appeal, the author took advantage of a medical evacuation at the Central Hospital and escaped on 9 July 2003. On 15 December 2005, the Court of Appeal confirmed the first instance judgement and issued an arrest warrant against the author. Counsel for the author filed an appeal to the Supreme Court.

The State party submits that the communication should be declared inadmissible under article 5, paragraph 2 (a) of the Optional Protocol, as the same matter has been submitted on behalf of the author and 17 others to the African Commission on Human and People's Rights. On 25 November 2006, during the Commission's fortieth session, the case was heard; however, a decision remains pending.

Furthermore, the State party submits that the communication should be declared inadmissible for the author's failure to exhaust domestic remedies under article 5, paragraph 2 (b) of the Optional Protocol.[14] The author could have brought an application to the competent criminal court ("*tribunal répressif competent*") on the basis of article 132 bis of the Criminal Code to complain about the torture he had suffered, or on the basis of article 332 et seq. of the Code of Criminal Procedure to request that the proceedings be annulled because of the absence of an interpreter and of generally fair trial guarantees. In order to justify why he failed to exhaust domestic remedies, the author claims that permission for visits was not given and that he cannot return to Cameroon to introduce an application because of his escape. The State party submits that no instructions to refuse visits to the author have been issued to the competent authorities and that the author was hospitalized twice under surveillance and could have introduced his court actions at that time.

On the merits, the State party submits that investigations into this grave incident were carried out in full respect of the legislation in force at the time. Referring to the Committee's jurisprudence, the State party notes that it is for the national authorities to decide how to investigate a crime, as long as the investigation is not conducted in an arbitrary manner.[15] Torture and ill-treatment are of a criminal nature and therefore the onus of proof is on the author. The State party argues that the medical certificate issued by a Nigerian doctor only states that the author has an ulcer and diabetes, without establishing a link between this diagnosis and the violence that the author alleges he has suffered.

[14] See communication No. 1010/2001, *Aouf v. Belgium*, Views adopted on 17 March 2006; communication No. 1103/2002, *Castro v. Colombia*, Inadmissibility decision of 28 October 2005; communication No. 1218/2003, *Platonov v. Russian Federation*, Views adopted on 1 November 2005; communication No. 1302/2004, *Khan v. Canada*, Inadmissibility decision adopted on 25 July 2006; communication No. 1374/2005, *Kurbogaj v. Spain*, Inadmissibility decision adopted on 14 July 2006.

[15] See communication No. 1070/2002, *Kouidis v. Greece*, Views adopted on 28 March 2006.

With regard to the author's allegations that his rights to liberty and security have been violated, the State party argues that the SCNC is a secessionist movement, all actions of which are illegal and prohibited. The author is being untruthful when he alleges that he did not know the reasons for his arrest, when it was thanks to his testimony that the person holding the stolen goods could be identified.

With regard to detention conditions, the State party acknowledges the problems of detention conditions in its prisons, in particular dilapidation, overcrowding, criminality and a lack of means to finance the construction of new prisons. Nevertheless, with the help of the European Union, prison conditions in Douala and Yaoundé have been significantly improved since June 2002. In the Kondengui Prison, detainees receive a daily food ration that can be supplemented by visitors. It also has an infirmary, run by a medical doctor, and a referral system has been established with Yaoundé Central Hospital. With regard to the allegations of torture in Mfou Prison, the author himself acknowledged that the torture was committed by his fellow detainees. In the absence of any proof that this treatment has been instigated by the authorities, the State party submits that it cannot be held responsible for acts by private individuals and recalls that it paid for the author's medical treatment following these acts of violence.

With regard to the author's allegations that his right to a fair trial was violated, the State party underscores that the trial was conducted in accordance with the legislation in force. With regard to the author's complaint relating to article 14, paragraph 3 (f) of the Covenant, the State party explains that French was used at the hearings; however those parties who did not speak or understand French benefited from the services of an official interpreter.

Author's Comments on the State Party's Submission

On 22 September 2009, the author submitted his comments on the State party's observations on the admissibility and merits. He reiterates that he was held for two years without trial and that neither he nor his defence lawyer could properly understand the initial charges or the subsequent modified charges. He further claims that he was sentenced for crimes that had not been clearly explained and that he never saw the judgment.

With regard to admissibility, the author argues that he is not aware of any complaint submitted on his behalf to the African Commission on Human and People's Rights. He notes that he never authorized any lawyer to submit such a complaint. He further notes that the State party has not submitted any documentation in this regard and that the alleged complaint is not available in the public domain. Recalling the Committee's jurisprudence,[16] according to which the "same matter" in article 5, paragraph 2 (a) of the Optional Protocol must be understood as including the same claim concerning the same individual, submitted by him or by someone else capable of acting on his behalf before the other international body, the author submits that the allegedly pending complaint before the African Commission on Human and Peoples' Rights does not constitute the "same matter" as it does not concern the same persons: the State party mentions that the complaint before the African Commission was submitted on behalf of 18 persons, while the author is the sole complainant in the present communication. Furthermore, the facts of the author's complaint in the present

[16] See communication No. 75/1980, *Fanali v. Italy*, Views adopted on 31 March 1983, para. 7.2; communication No. 1155/2003, *Unn et al. v. Norway*, Views adopted on 23 November 2004, para. 13.3; communication No. 6/1977, *Millan Sequeria v. Uruguay*, Views adopted on 29 July 1980, para. 9.

communication relate to his detention from 24 March 1997 to 9 July 2003, while the facts on which the alleged complaint before the African Commission on Human and Peoples' Rights is based remain unclear.

With regard to the State party's argument that the author failed to exhaust domestic remedies, the author disputes the State party's statement that he did not exhaust any remedies before submitting his communication to the Committee. He notes that he was tried by a military court and that his appeal was decided on 15 December 2005. With regard to bringing a complaint of torture under Act No. 97/009 of 10 January 1997, the author argues that the court considered only a few matters and that once an official is found guilty, the Government usually dissociates itself from that official, making it impossible for the victim to obtain compensation. Moreover, the author was held incommunicado and therefore did not have the possibility to file any complaint. The author also submits that the remedy is not effective in view of the grave nature of the torture and ill-treatment that he suffered.[17] He further notes that the State party did not dispute that he was not allowed to receive visits but only said that it had given no instructions in this regard. Furthermore, the author argues that it is unreasonable to suggest that he could have engaged in any proceedings during the rare moments when he had access to medical treatment for his ill health, for which the State party is responsible.

The author argues that the fair trial protection guarantees under the Criminal Procedure Code are not applicable because his case was tried before a military court. On 10 December 1997, the author filed a motion before the Supreme Court to challenge the jurisdiction of the military court and to request that the trial be heard under common-law jurisdiction and in a language that the author could understand; however, this motion remains pending. Recalling the Committee's jurisprudence,[18] the author of a communication does not need to resort to remedies that objectively have no prospect of success.

With regard to the merits, the author denies any involvement in any theft of explosives or other illegal activity and denies having given any testimony on 5 April 1997. On the contrary, he claims that 5 April 1997 falls within the period during which he was tortured at the National Gendarmerie headquarters in Yaoundé. Furthermore, he underlines that all of the evidence brought against him was unreliable either because torture had been practiced or because due process was not applied.

With regard to the torture and ill-treatment suffered by the author, he recalls the Committee's jurisprudence, according to which the State party has an obligation to investigate torture and that the investigation must be prompt, impartial, thorough and independent.[19] The author further argues that the State party has not responded to the specific allegations he has made and that its observations amount to a broad denial.[20] Moreover, with regard to the medical certificate issued by a Nigerian doctor in 2003, he disputes the State party's argument that it relates only to a stomach ulcer and diabetes. He refers to two additional medical reports of 2007 and 2009 in which the psychological impact of the torture was recorded and argues that these

[17] See communication No. 612/1995, *Vicente et al. v. Colombia*, Views adopted on 19 August 1997, para. 5.2; communication No. 778/1997, *Coronel et al. v. Colombia*, Views adopted on 29 November 2002, para. 6.4.

[18] See communication Nos. 210/1986 and 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 7 April 1989, para. 12.3; communication No. 147/1983, *Arzuaga Gilboa v. Uruguay*, Views adopted on 1 November 1985, para. 7.2.

[19] See communication No. 1070/2002, *Kouidis v. Greece*, Views adopted on 28 March 2006, paras. 7.4 and 9; general comment No. 20, article 7, forty-fourth session, 1992, para. 14; communication No. 107/1981, *Almeida de Quinteros et al. v. Uruguay*, Views adopted on 21 July 1983, para. 15.

[20] See communication No. 992/2001, *Bousroual v. Algeria*, Views adopted on 24 April 2006, para. 9.4.

three medical reports, together with his detailed narrative, exonerate him from the burden of proof and demonstrate beyond any shadow of a doubt that torture had taken place.

The author further notes that the State party acknowledged that detention conditions are bad when it referred to improvements made from June 2002 to December 2006. The State party has also admitted that the author was physically and mentally abused by other inmates. With reference to the Committee's general comment, the author underlines that the State party failed in its obligation to comply with the Standard Minimum Rules for the Treatment of Prisoners and that it failed to prevent him from being attacked by others.[21]

Issues and Proceedings Before the Committee

Consideration of Admissibility

Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its Rules of Procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

The Committee notes the State party's argument that the communication should be declared inadmissible pursuant to article 5, paragraph 2 (a) of the Optional Protocol, as the same matter is pending before the African Commission on Human and Peoples' Rights. It also notes that the author claims that he never authorized anybody to submit a complaint on his behalf to the African Commission on Human and Peoples' Rights and that he does not have any knowledge of such a submission. The Committee recalls its jurisprudence, according to which article 5, paragraph 2 (a) of the Optional Protocol cannot be so interpreted so as to imply that an unrelated third party, acting without the knowledge and consent of the alleged victim, can preclude the latter from having access to the Human Rights Committee.[22] Accordingly and in absence of any documentation from the State party, the Committee concludes that article 5, paragraph 2 (a) of the Optional Protocol is not an impediment to the admissibility of the present communication.

The Committee also notes the State party's argument that the author failed to exhaust domestic remedies, as he could have introduced an application under the Code of Criminal Procedure to complain about the torture that he suffered and about the trial proceedings. It also notes the author's contention that he was unable to file a complaint of torture as he was held incommunicado and that the remedy is not effective in view of the grave nature of the torture and ill-treatment that he suffered. With regard to remedies concerning the trial proceedings, the Committee notes the author's argument that the Code of Criminal Procedure is not applicable in a trial before a military court and that on 10 December 1997 he filed a motion to the Supreme Court challenging the proceedings, which, however, remains pending.

The Committee recalls its jurisprudence to the effect that authors must avail themselves of all judicial remedies in order to fulfill the requirement of article 5, paragraph 2 (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[23] With regard to the

[21] General comment No. 21, article 10, para. 3, forty-fourth session, 1992.

[22] See communication No. 74/1980, *Miguel Angel Estrella v. Uruguay*, Views adopted on 29 March 1983, para. 4.3.

[23] See communication No. 1003/2001, *P.L. v. Germany*, decision on admissibility adopted on 22 October 2003, para. 6.5; communication No. 433/1990, *A.P.A. v. Spain*, decision on admissibility adopted on 25 March 1994, para. 6.2.

author's failure to raise claims of torture and unfair proceedings before the domestic courts, the Committee observes that the State party has merely listed in abstract terms the existence of remedies under the Code of Criminal Procedure, without relating them to the circumstances of the author's case and without showing how they might provide effective redress. The Committee notes that during the author's detention from 24 March 1997 to 9 July 2003, he was allegedly held incommunicado, a fact that the State party has refuted with the general statement that no instructions had been given to the competent authorities to refuse visits to the author. In the present case, the Committee considers that the remedy under the Code of Criminal Procedure was de facto not available to the author. With regard to the author's claims concerning the fairness of the proceedings, the Committee notes that on 10 December 1997, he filed a motion before the Supreme Court to challenge the jurisdiction of the military court and to request that the trial be heard under common-law jurisdiction in a language that he could understand. The Committee notes that this motion remains unanswered and, therefore, considers that the delay in responding to the author's motion of 1997 to the Supreme Court is unreasonable. Accordingly, the Committee concludes that article 5, paragraph 2 (b) of the Optional Protocol does not preclude it from examining the author's communication.

The Committee finds that, for purposes of admissibility, the author has sufficiently substantiated his claims under articles 7, 9, 10 and 14, of the Covenant and therefore proceeds to its consideration of the merits.

Consideration of the Merits

The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1 of the Optional Protocol.

The Committee notes the author's detailed description of the torture he suffered in different places of detention, particularly at the time of his arrest, at the Jakiri Gendarmerie Brigade and at the Kumbo Gendarmerie. It notes the State party's argument that torture and ill-treatment are matters of criminal law and that the onus of proof therefore lies on the author. In light of the information provided to the Committee and, in particular, the detailed allegations of torture suffered by the author and the impact on his health shown by the three medical certificates submitted, the Committee concludes that the State party has violated article 7 of the Covenant.

The Committee notes that the State party has not contested the information concerning the author's conditions of detention and ill-treatment by fellow prisoners, and particularly the ill-treatment to which he was subjected in detention. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners.[24] It considers, as it has repeatedly found in respect of similar substantiated claims,[25] that the author's conditions of detention, as described, violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are, therefore, contrary to article 10, paragraph 1 of the Covenant. Furthermore, the Committee

[24] General comment No. 21 [44] on article 10, paras. 3 and 5; communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2.

[25] See for example: communication No. 908/2000, *Xavier Evans v. Trinidad and Tobago*, Views adopted on 21 March 2003; and communication No. 1173/2003, *Abdelhamid Benhadj v. Algeria*, Views adopted on 20 July 2007.

finds that the fact the author was detained with convicted prisoners during his pre-trial detention constitutes a violation of article 10, paragraph 2, of the Covenant.

With regard to the alleged violation of article 9, the Committee notes the State party's argument that the author knew the reasons for his arrest, as it was thanks to his testimony that the holder of the stolen goods could be identified. The Committee notes that this does not clarify whether the author was informed of the reason for his arrest at the time of his arrest. It further notes that the State party has not contested the author's prolonged pre-trial detention from 24 March 1997 to 5 October 1999, without an opportunity to challenge the lawfulness of his detention. Recalling its general comment,[26] the Committee finds that nothing suggests that at the time of arrest, the author was informed of the reasons for his arrest, that he was ever brought before a judge or judicial officer, or that he ever was afforded the opportunity to challenge the lawfulness of his arrest or detention. In the absence of relevant State party information on these claims, the Committee considers that the facts before it indicate a violation of article 9, paragraphs 2, 3 and 4, of the Covenant.

The Committee notes the State party's argument that the author's trial was conducted according to the legislation in force and that he benefited from an official interpreter during the hearings. It also notes the author's argument that the court was not independent, that he had little opportunity to communicate with his lawyer, who had no access to the indictment and was therefore not able to prepare his defence adequately, and that the written evidence on which the indictment was based was not produced in court. The Committee recalls its general comment No. 32,[27] in which it considers that the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate for the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. In the present case, the State party has not shown why recourse to a military court was required. In commenting on the gravity of the charges against the author, it has not indicated why the ordinary civilian courts or other alternative forms of civilian court were inadequate for the task of trying him. Nor does the mere invocation of conduct of the military trial in accordance with domestic legal provisions constitute an argument under the Covenant in support of recourse to such courts. The State party's failure to demonstrate the need to rely on a military court in this case means that the Committee need not examine whether the military court, as a matter of fact, afforded the full guarantees of article 14.[28] The Committee concludes that the trial and sentencing of the author by a military court discloses a violation of article 14 of the Covenant.

The Human Rights Committee, acting under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of the rights of Mr. Akwanga under article 7; article 10, paragraphs 1 and 2; article 9, paragraphs 2, 3 and 4; and article 14.

In accordance with article 2, paragraph 3 (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which should include a review of his conviction with the guarantees enshrined in the Covenant, an investigation of the alleged events and prosecution of the persons responsible,

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[26] General comment No. 8, article 9, sixteenth session, 1982.

[27] General comment No. 32, article 14, CCPR/C/GC/32, para. 22.

[28] See communication No. 1172/2003, *Madani v. Algeria*, Views adopted on 28 March 2007, para. 8.7.

as well as adequate reparation, including compensation. The State party is under an obligation to avoid similar violations in the future.

Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

Concurring Opinion of Committee Members Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Ms. Zonke Zanele Majodina, Ms. Iulia Motoc, Sir Nigel Rodley and Ms. Margo Waterval

The signatories of this concurring opinion wish to reaffirm that they consider that military courts should not in principle have jurisdiction to try civilians.

Military functions fall within the framework of a hierarchical organization and are subject to rules of discipline that are difficult to reconcile with the independence of judges called for under article 14 of the Covenant and reaffirmed in the Bangalore Principles on the independence of the judiciary.

Furthermore, whenever States give military courts jurisdiction to try non-military persons, they must explain in their reports under article 40 of the Covenant or in a communication under the Optional Protocol the compelling reasons or exceptional circumstances that force them to derogate from the principle laid out above.

In all cases, military courts that try persons charged with a criminal offence must guarantee such persons all the rights set out in article 14 of the Covenant.

Concurring Opinion of Committee member Mr. Fabián Omar Salvioli

I concur with the Views of the Human Rights Committee on communication No. 1813/2008 submitted by Mr. Ebenezer Derek Mbongo Akwanga, but feel obliged to place on record my thoughts on an issue about which, regrettably, my views differ from those of the majority of Committee members. I am referring to the scope of military jurisdiction within the framework of the International Covenant on Civil and Political Rights, and follow the same reasoning expressed in my individual opinion on communication No. 1640/2007 (*Abdelhakim Wanis El Abani v. Libyan Arab Jamahiriya*).

In paragraph 7.5 of its Views on the present communication, the Committee stresses that there was a violation of article 14 because the State party was unable to justify the need to have the author tried by a military court and that, consequently: "The State party's failure to demonstrate the need to rely on a military court in this case means that the Committee need not examine whether the military court, as a matter of fact, afforded the full guarantees of article 14.[29a] The Committee concludes that the trial and sentence of Mr. Ebenezer Derek Mbongo Akwanga by a military court discloses a violation of article 14 of the Covenant."

[a] See communication No. 1172/2003, *Madani v. Algeria*, Views adopted on 28 March 2007, paragraph 8.7.

I must state unequivocally that the treatment of this point in general comment No. 32 is most regrettable. In its decision on the Akwanga case, the Committee has missed a clear opportunity to declare that the trial of civilians by military courts is incompatible with article 14 of the Covenant and to correct this regressive aspect of human rights law. A close reading of article 14 would indicate that the Covenant does not go so far as even to suggest that military justice might be applied to civilians. Article 14, which guarantees the right to justice and due process, does not contain a single reference to military courts. On numerous occasions — and always with negative consequences as far as human rights are concerned — States have empowered military courts to try civilians, but the Covenant is completely silent on the subject.

The Committee's reasoning in drafting general comment No. 32 should have been the exact opposite of what it was: since the trial of civilians by military courts is an exceptional exercise of jurisdiction (the trial of non-members of the military in the military justice system) and, moreover, since it takes place at an exceptional court (as military justice represents an exception to ordinary justice), it is a doubly exceptional exercise of jurisdiction and, as such, should have been explicitly provided for in the Covenant in order to be compatible with the Covenant, as it obviously removes civilians from the purview of those who are their natural judges.

Lest we forget, exceptions and restrictions to rights (in this case, a restriction on the right to be judged by a "natural judge" as part of the right to justice and due process) must in turn be interpreted restrictively and should not be so readily deemed to be compatible with the Covenant.

The idea is not — nor is it the Committee's role — to adapt the interpretation of the Covenant to take account of actual practices on the part of States that in fact entail proven human rights violations, but rather to help States parties to meet modern standards of due process by explicitly indicating what modifications, if any, must be made to domestic legislation in order to bring it into line with the Covenant.

Military jurisdiction, as applied throughout the world since the Second World War, with tragic results, has led without exception to the entrenchment of impunity for military personnel accused of serious mass violations of human rights. Moreover, when the military criminal justice system is applied to civilians, the outcome is convictions obtained on the basis of proceedings vitiated by abuses of all kinds, in which not only does the right to a defence become a chimera but much of the evidence is obtained by means of torture or cruel and inhuman treatment.

The Covenant does not prohibit the use of military courts, nor is it the intention of this opinion to call for their elimination. The jurisdiction of the military criminal justice system should, however, be contained within suitable limits if it is to be fully compatible with the Covenant: *ratione personae*, military justice should apply to serving military personnel, never to civilians or retired military personnel; *ratione materiae*, military courts should be competent to try disciplinary offences, never ordinary offences and certainly not human rights violations. Only under these conditions can military jurisdiction be compatible with the Covenant.

General comment No. 32 is an important legal document with respect to the human right to due process, but its treatment of the issue under discussion here is highly regrettable. Almost four years have passed since it was adopted, and the Committee should take steps to correct the notion that military courts may try civilians; its current position is completely out of step with modern standards of international human rights protection and with the most enlightened doctrine on the subject.

The Committee does not need to draft a new general comment in order to move forward *pro homine* on this particular point, but merely to take account of developments in the system of human rights protection. Individual communications under the Optional Protocol involving cases before the Committee in which, as in the Akwanga case, a civilian is tried by a military court and concluding observations on State party reports under article 40 of the Covenant also provide appropriate opportunities to perform this indispensable legal task and thereby contribute to the better fulfillment of the object and purpose of the Covenant.

As soon as this position is adopted, States parties, as members of the international community, will in good faith adjust their domestic legislation, and military courts with the power to try civilians will become part of a sad past that has happily been left behind.

Throughout its history, the Committee has made notable contributions to international human rights law and has been a source of inspiration to other international and regional jurisdictions. On the issue addressed in this opinion, however, the Committee is moving — for not much longer, I hope — in exactly the opposite direction.

As has been seen in thousands of cases and, regrettably, once again here, in the Akwanga case — although the Committee did not find it necessary to consider it in greater depth, in the absence of any justification by the State party of the need to try the victim in a military court — the abolition of military courts' jurisdiction over civilians is an outstanding issue in urgent need of a clear and appropriate response from the Human Rights Committee.

Moreover, the Committee ought to have pointed out, in paragraph 9 of its Views, that the State party should amend its domestic legislation so as to ensure that military courts have no jurisdiction whatsoever over civilians, as a way to avoid a repetition of incidents such as those described in the present communication.

FONGUM GORJI DINKA v. CAMEROON
UNITED NATIONS HUMAN RIGHTS COMMETTEE[**]
COMMUNICATION No. 1134/2002
17 MARCH 2005

On the Competence of the UNHR Committee to Consider Claims Alleging Violation of the Right to Self-determination: The Committee recalls that it does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self determination protected in article 1 of the Covenant.

Whether the Denial of the Right to Ambazonian Nationality Constitutes a Violation of Article 24(3) of the CCPR: The Committee recalls that this provision protects the right of every *child* to acquire a nationality. Its purpose is to prevent a child from being afforded less protection by society and the State because he or she is stateless, rather than to afford an entitlement to a nationality of one's own choice.

On the Meaning of Arbitrariness and how it Should be Interpreted: Arbitrariness is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.

On The Reasonableness And Necessity of Remand in Custody: This means that remand in custody must not only be lawful but reasonable and necessary in all the circumstances, for example to prevent flight, interference with evidence or the recurrence of crime.

On When Exhaustion of Domestic Remedies Would be Waived: Article 5, paragraph 2 (b), of the Optional Protocol does not require resort to remedies which objectively have no prospect of success.

On The Conditions of Detention of Prisoners: Persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners (1957).

On The Need to Segregate Suspects From Convicted Prisoners: The State party… has not adduced any exceptional circumstances which would have justified its failure to segregate the author from such convicts in order to emphasize his status as an un-convicted person.

DECISION

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 17 March 2005,

Having concluded its consideration of communication No. 1134/2002, submitted to the Human Rights Committee on behalf of Fongum Gorji-Dinka, under the Optional Protocol to the International Covenant on Civil and Political Rights, Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

The author of the communication is Mr. Fongum Gorji-Dinka, a national of Cameroon, born on 22 June 1930, currently residing in the United Kingdom. He claims to be victim of violations by Cameroon[30] of articles 1, paragraph 1; 7; 9 paragraphs 1 and 5; 10, paragraphs 1 and 2 (a); 12; 19; 24, paragraph 3; and 25 (b) of the Covenant. He is represented by counsel.[31]

Facts as submitted by the author

The author is a former President of the Bar Association of Cameroon (1976-1981), the Fon, or traditional ruler, of Widikum in Cameroon's North-West province, and claims to be the head of the exile government of "Ambazonia". His complaint is closely linked to events which occurred in British Southern Cameroon in the context of decolonization.

After World War I, the League of Nations placed all former German colonies under international administration. Under a League of Nations mandate, Cameroon was partitioned between Great Britain and France. After World War II, the British and French Cameroons became United Nations trust territories, the British part being divided into the United Nations trust territory of British Southern Cameroon ("Ambazonia") and the United Nations trust territory of British Northern Cameroon. The "Ambas" were a federation of sovereign but interdependent ethnocracies, each under a traditional ruler called "Fon". In 1954, they were unified in a modern parliamentary democracy, consisting of a House of Chiefs appointed from among the traditional leaders, a House of Assembly elected by universal suffrage, and a government led by a Prime Minister appointed and dismissed by the Queen of England.

French Cameroon achieved independence in 1960 as the Republic of Cameroon. While the largely Muslim British Northern Cameroon voted to join Nigeria, the largely Christian British Southern Cameroon, in a United Nations plebiscite held on 11 February 1961, voted in favour of joining a union with the Republic of Cameroon, within which Ambazonia would preserve its nationhood and a considerable degree of sovereignty.

[30] The Covenant and the Optional Protocol entered into force for the State party on 27 September 1984.

[31] The communication was submitted by the author personally. However, by letter dated 4 August 2004, Ms. Irene Schäfer presented an instrument executed by the author making her counsel of record.

The United Kingdom allegedly refused to implement the plebiscite, fearing that the Ambazonian Prime Minister would come under communist influence and would nationalize the Cameroon Development Cooperation (CDC), in which Britain had invested £ 2 million. In exchange for a license to continue exploiting CDC, the United Kingdom allegedly "sold" Ambazonia to the Republic of Cameroon which then became the Federal Republic of Cameroon.

On 8 October 1981, the author was asked to secure bail for five Nigerian missionaries accused of disseminating the teachings of a sect without a government permit. At the police station, he was arrested and detained together with the missionaries. A few months later, he was charged with the offense of fabricating a fake permit for the sect to operate in Cameroon. Although the trial judge found, on the facts, that the author had not been in Cameroon when the offense was committed, he sentenced him to 12 months' imprisonment. The author's appeal was delayed until after he had served his prison term. Just before the hearing of his appeal, Parliament enacted Amnesty Law 82/21, thereby expunging his conviction. The author subsequently abandoned his appeal and filed for compensation for unlawful detention, but he never received a reply from the authorities.

As a result of the "subjugation" of Ambazonians, whose human rights were allegedly severely violated by members of the Franco-Cameroonian armed forces as well as militia groups, riots broke out in 1983, prompting Parliament to enact Restoration Law 84/01, which dissolved the union of the two countries. The author then became head of the "Ambazonian Restoration Council" and published several articles, which called on President Paul Biya of the Republic of Cameroon to comply with the Restoration Law and to withdraw from Ambazonia.

On 31 May 1985, the author was arrested and taken from Bamenda (Ambazonia) to Yaoundé, where he was detained in a wet and dirty cell without a bed, table or any sanitary facilities. He fell ill and was hospitalized. After having received information on plans to transfer him to a mental hospital, he escaped to the residence of the British Ambassador, who rejected his asylum request and handed him over to the police. On 9 June 1985, the author was re-detained at the headquarters of the Brigade mixte mobile (BMM), a paramilitary police force, where he initially shared a cell with 20 murder convicts.

Allegedly as a result of the physical and mental torture he was subjected to during detention, the author suffered a stroke which paralyzed his left side.

The author's detention reportedly provoked the so-called "Dinka riots", whereupon schools closed for several weeks. On 11 November 1985, Parliament adopted a resolution calling for a National Conference to address the Ambazonian question. In response, President Biya accused the President of Parliament of leading a "pro-Dinka" parliamentary revolt against him; he had the author charged with high treason before a Military Tribunal, allegedly asking for the death penalty. The prosecution's case collapsed in the absence of any legal provision which would have criminalized the author's call on President Biya to comply with the Restoration Law by withdrawing from Ambazonia. On 3 February 1986, the author was acquitted of all charges and released from detention.

President Biya's intention to appeal the judgment, after having ordered the author's re-arrest, was frustrated because the law establishing the Military Tribunal did not provide for the possibility of appeal in cases

involving high treason. The author was then placed under house arrest between 7 February 1986 and 28 March 1988. In a letter dated 15 May 1987, the Department of Political Affairs of the Ministry of Territorial Administration advised the author that his behaviour during house arrest was incompatible with his "probationary release" by the Military Tribunal, since he continued to hold meetings at his palace, to attend customary court sessions, to invoke his prerogatives as Fon, to contempt and disregard the law enforcement and other authorities, and to continue the practice of the illegal Olumba Olumba religion. On 25 March 1988, the Sub-Divisional Office of the Batibo Momo Division informed the author that because of his "judicial antecedent", his name had been removed from the register of electors until such time he could produce a "certificate of rehabilitation".

On 28 March 1988, the author went into exile in Nigeria. In 1995, he went to Great Britain, where he was recognized as a refugee and became a barrister.

The complaint

The author claims that the "illegal annexation" of Ambazonia by the Republic of Cameroon denies the will of Ambazonians to preserve their nationhood and sovereign powers, as expressed in the 1961 plebiscite and confirmed by a 1992 judgment of the High Court of Bamenda, thereby violating his people's right to self-determination under article 1, paragraph 1, of the Covenant. By reference to article 24, paragraph 3, he also alleges a breach of the right to his own nationality.

The author claims that his detention from 8 October 1981 to 7 October 1982 and from 31 May 1985 to 3 February 1986, as well as his subsequent house arrest from 7 February 1986 to 28 March 1988, were arbitrary and in breach of article 9, paragraph 1, of the Covenant. The conditions of detention and the ill-treatment suffered during the second detention period amounted to violations of articles 7 and 10, paragraph 1, while the fact that he was initially kept with a group of murder convicts at the BMM headquarters, upon his re-arrest on 9 June 1985, violated article 10, paragraph 2 (a). He further claimed that the restriction on his movement during house arrest and his current *de facto* prohibition from leaving and entering his country amount to a breach of article 12 of the Covenant.

The author alleges that his deprivation of the right to vote and to be elected at elections violated article 25 (b) of the Covenant.

Under article 19 of the Covenant, the author claims that his arrest on 31 May 1985 and his subsequent detention were punitive measures, designed to punish him for his regime-critical publications.

The author further alleges that his right, under article 9, paragraph 5, to compensation for unlawful detention from 8 October 1981 to 7 October 1982 was violated, because the authorities never replied to his compensation claim.

The author claims that all his attempts to seek domestic judicial redress were futile, as the authorities did not respond to his compensation claim and did not comply with national laws or with the judgments of the Cameroon Military Tribunal and the High Court of Bamenda. Following his escape from house arrest in 1988, domestic remedies were no longer available to him as a fugitive. He contends that the only way to make his

rights prevail would be through a Committee decision, since Cameroon's authorities never respect their own tribunals' decisions in human rights-related matters.

The author submits that the same matter is not being examined under another procedure of international investigation or settlement.

Issues and proceedings before the Committee

Consideration of admissibility

On 12 November 2002, 26 May 2003 and 30 July 2003, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that States parties examine in good faith all the allegations brought against them, and that they make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.[32]

The Committee has noted that several years passed between the occurrence of the events at the basis of the author's communication, his attempts to avail himself of domestic remedies, and the time of submission of his case to the Committee. While such substantial delays might, in different circumstances, be characterized as an abuse of the right of submission within the meaning of article 3 of the Optional Protocol, unless a convincing explanation on justification of this delay has been adduced[33], the Committee also is mindful of the State party's failure to cooperate with it and to present to it its observations on the admissibility and merits of the case. In the circumstances, the Committee does not consider it necessary further to address this issue.

Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

Insofar as the author claims that his and his people's right to self-determination has been violated by the State party's failure to implement the 1961 plebiscite, Restoration Law 84/01, the 1992 judgment of the High Court of Bamenda, or by its "subjugation" of the Ambazonians, the Committee recalls that it does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self determination protected in article 1 of the Covenant.[34] The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III (articles 6 to 27) of the Covenant.[35] It follows that this part of the communication is inadmissible under article 1 of the Optional Protocol.

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[32] See Communication No. 912/2000, *Deolall v. Guyana*,, Views adopted on 1 November 2004, para. 4.1.
[33] See Communication No. 788/ 1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3.
[34] See Communication No. 932/2000, *Gillot v. France*, Views adopted on 15 July 2002, at para. 13.4.
[35] See Communication No. 167/1984, *Bernard Ominayak et al. v. Canada*, Views adopted on 26 March 1990, at para. 32.1.

Regarding the author's claim that his incarceration from 8 October 1981 to 7 October 1982 was arbitrary, in violation of article 9, paragraph 1, of the Covenant, given that his conviction was expunged by Amnesty Law 82/21, the Committee recalls that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless these violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant.[36] It notes that the author's incarceration in 1981-82 predates the entry into force of the Optional Protocol for the State party on 27 September 1984. The Committee observes that, while punishment suffered as a result of a criminal conviction that was subsequently reversed may continue to produce effects for as long as the victim of such punishment has not been compensated according to law, this is an issue which arises under article 14, paragraph 6, rather than under article 9, paragraph 1, of the Covenant. It does not therefore consider that the alleged arbitrary detention of the author continued to have effects beyond 27 September 1984, which would *in themselves* have constituted a violation of article 9, paragraph 1, of the Covenant. The Committee concludes that this part of the communication is inadmissible *ratione temporis* under article 1 of the Optional Protocol.

As to the author's allegation that he was not compensated for his unlawful detention in 1981-82, the Committee considers that the author has not provided sufficient information to substantiate his claim, for purposes of admissibility. In particular, he did not provide copies, nor indicate the date or addressee of any letters to the competent authorities, claiming compensation. It follows that this claim is inadmissible under article 2 of the Optional Protocol.

Insofar as the author claims a violation of articles 7 of the Covenant in that he was physically and mentally tortured in detention after his re-arrest on 9 June 1985 (and which allegedly resulted in a stroke which paralyzed his left side), the Committee notes that he has not provided any details about the ill-treatment allegedly suffered, nor copies of any medical reports which would corroborate his allegation. Therefore, the Committee concludes that the author has not substantiated this claim, for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

With regard to the author's claim that his arrest on 31 May 1985 and his subsequent detention were measures designed to punish him for the publication of his regime-critical pamphlets, in violation of article 19 of the Covenant, the Committee finds that the author has not substantiated, for purposes of admissibility, that said detention was a direct consequence of such publications. It follows that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

As regards the author's claim under article 25 (b) of the Covenant, the Committee is of the view that exercise of the right to vote and to stand for election is dependent on the name of the person concerned being included in the register of voters. If the author's name is not on the register of voters or is removed from the register, he cannot exercise his right to vote or stand for election. In the absence of any explanations from the State party, the Committee notes that the author's name was arbitrarily removed from the voters' list, without any motivation or court decision. The very fact of removal of the author's name from the register of voters may therefore constitute denial of his right to vote and to stand for election in accordance with article 25 (b) of the

[36] See Communication No. 520/1992, *Könye and Könye v. Hungary*, Decision on admissibility adopted on 7 April 1994, at para. 6.4; Communication No. 24/1977, *Sandra Lovelace v. Canada*, Views adopted on 30 July 1981, at para. 7.3.

Covenant. The Committee is accordingly of the view that the author has sufficiently substantiated this claim, for purposes of admissibility.

Insofar as the author claims that he is being denied his right to Ambazonian nationality, in violation of article 24, paragraph 3, of the Covenant, the Committee recalls that this provision protects the right of every *child* to acquire a nationality. Its purpose is to prevent a child from being afforded less protection by society and the State because he or she is stateless[37], rather than to afford an entitlement to a nationality of one's own choice. It follows that this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

With regard to exhaustion of domestic remedies, the Committee takes note of the author's argument that, following his escape from house arrest in 1988, he was not in a position to seek redress at the domestic level, as a person who was wanted in Cameroon. In the light of its jurisprudence[38] that article 5, paragraph 2 (b), of the Optional Protocol does not require resort to remedies which objectively have no prospect of success, and in the absence of any indication by the State party that the author could have availed himself of effective remedies, the Committee is satisfied that the author has sufficiently demonstrated the ineffectiveness and unavailability of domestic remedies in his particular case.

The Committee concludes that the communication is admissible, insofar as it raises issues under articles 7, 9, paragraph 1, 10, paragraphs 1 and 2 (a), 12 and 25 (b) of the Covenant, and to the extent that it relates to the lawfulness and the conditions of detention following his arrest on 31 May 1985, his incarceration initially with a group of murder convicts at the BMM headquarters, the lawfulness of, as well as the restrictions on his liberty of movement during his house arrest from 7 February 1986 to 28 March 1988, and the removal of his name from the voters' register.

Consideration of the Merits

The first issue before the Committee is whether the author's detention from 31 May 1985 to 3 February 1986 was arbitrary. In accordance with the Committee's constant jurisprudence,[39] "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. This means that remand in custody must not only be lawful but reasonable and necessary in all the circumstances, for example to prevent flight, interference with evidence or the recurrence of crime.[40] The State party has not invoked any such elements in the instant case. The Committee further recalls the author's uncontested claim that it was only after his arrest on 31 May 1985 and his re-arrest on 9 June 1985 that President Biya filed criminal charges against him, allegedly without any legal basis and with the intention to influence the outcome of the trial before the Military Tribunal. Against this background, the Committee finds that the author's detention between 31 May 1985 and 3 February 1986 was neither reasonable nor necessary in the circumstances of the case, and thus in violation of article 9, paragraph 1, of the Covenant.

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[37] See General Comment No. 17 [35] on *article 24*, para. 8.

[38] See, e.g., Communications Nos. 210/1986 and 225/1987, *Earl Pratt and Ivan Morgan v. Jamaica*, Views adopted on 6 April 1989, para. 12.3.

[39] See Communication No. 305/1988, *Van Alphen v. The Netherlands*, Views adopted on 23 July 1990, para. 5.8; Communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.8.

[40] See *ibid.*

With regard to the conditions of detention, the Committee takes note of the author's uncontested allegation that he was kept in a wet and dirty cell without a bed, table or any sanitary facilities. It reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners (1957).[41] In the absence of State party information on the conditions of the author's detention, the Committee concludes that the author's rights under article 10, paragraph 1, were violated during his detention between 31 May 1985 and the day of his hospitalization.

The Committee notes that the author's claim that he was initially kept in a cell with 20 murder convicts at the headquarters of the Brigade mixte mobile has not been challenged by the State party, which has not adduced any exceptional circumstances which would have justified its failure to segregate the author from such convicts in order to emphasize his status as an un-convicted person. The Committee therefore finds that the author's rights under article 10, paragraph 2 (a), of the Covenant were breached during his detention at the BMM headquarters.

As to the author's claim that his house arrest between 7 February 1986 and 28 March 1988 was arbitrary, in violation of article 9, paragraph 1, of the Covenant, the Committee takes note of the letter dated 15 May 1987 from the Department of Political Affairs of the Ministry of Territorial Administration, which criticized the author's behaviour during his house arrest. This confirms that the author was indeed under house arrest. The Committee further notes that this house arrest was imposed on him after his acquittal and release by virtue of a final judgment of the Military Tribunal. The Committee recalls that article 9, paragraph 1, is applicable to all forms of deprivation of liberty[42] and observes that the author's house arrest was unlawful and therefore arbitrary in the circumstances of the case, and thus in violation of article 9, paragraph 1.

In the absence of any exceptional circumstances adduced by the State party, which would have justified any restrictions on the author's right to liberty of movement, the Committee finds that the author's rights under article 12, paragraph 1, of the Covenant were violated during his house arrest, which was itself unlawful and arbitrary.

As regards the author's claim that the removal of his name from the voters' register violates his rights under article 25 (b) of the Covenant, the Committee observes that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law which are objective and reasonable.[43] Although the letter dated 25 March 1998, which informed the author of the removal of his name from the register of voters, refers to the "current electoral law", it justifies that measure with his "judicial antecedent". In this regard, the Committee reiterates that persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote,[44] and recalls that the author was acquitted by the Military Tribunal in 1986 and that his conviction by another tribunal in 1981 was expunged by virtue of Amnesty Law 82/21. It also recalls that persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation.[45] In the absence of any objective and reasonable grounds to justify

[41] General Comment No. 21 [44] on *article 10*, paras. 3 and 5.
[42] General Comment No. 8 [16] *on article 9*, para. 1.
[43] General Comment No. 25 [57] *on article 25*, para. 4.
[44] *Ibid.*, at para. 14.
[45] *Ibid.*, at para. 15.

the author's deprivation of his right to vote and to be elected, the Committee concludes, on the basis of the material before it, that the removal of the author's name from the voters' register amounts to a violation of his rights under article 25 (b) of the Covenant.

The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations of articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant.

In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation and assurance of the enjoyment of his civil and political rights. The State party is also under an obligation to take measures to prevent similar violations in the future.

Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

OPEN SOCIETY JUSTICE INITIATIVE (on behalf of Pius NJAWE NOUMENI) v. CAMEROON
AFRICAN COMMISSION ON HUMAN & PEOPLES RIGHTS
COMMUNICATION No. 290/04
BANJUL THE 11th 25 MAY 2006.

Summary of Facts

1. The complaint is lodged by the NGO, Open Society Justice Initiative, on behalf of a Cameroonian citizen, Pius Njawè Noumeni, against the Government of Cameroon, a state Party to the African Charter.

2. The communication was submitted in accordance with Article 55 of the African Charter and the Complainant alleges that in November 1999 the Messager Group based in Douala, Cameroon, and headed by Mr Pius Njawè began operating a radio station in Douala whilst an illegal decision banning the operation of private radio stations was in place.

3. The Complainant maintains that following the formal liberalisation of air waves in April 2000, the Messager Group submitted an application with the Ministry of Communications of Cameroon for a license to operate a radio station. After the six (6) months period required under the law, the Ministry of Communication did not respond favorably to the request arguing that the application was still being considered.

4.The Complainant, moreover maintains that the Ministry of Communications of Cameroon was in the habit of processing applications for operational licenses in an arbitrary, illegal and discriminatory manner and had on many occasions refused to grant statutory license to operators of radio stations, and on the contrary resorting to the practice of informally issuing temporary authorization to operate on some frequencies, which did not provide any legal cover to the operators of radio stations but only placed them in a situation of uncertainty since the informal authorisation could at any given time be withdrawn. In addition, the complainant maintains that by refusing to process applications for operating licenses or providing reasons for refusal to grant licenses, the Ministry of Communications tends to ban, in an arbitrary, discriminatory and politically motivated manner existing operators from continuing to operate.

5. Taking into consideration that the Ministry of Communications did not respond within the legally prescribed period to the Messager Group's request and in view of the practice of arbitrarily refusing to grant operating licenses for stations, the complainant further maintains that the Messager [Group] announced in mid May 2003 that it will begin broadcasting programs on Radio Freedom FM on 24th May 2003. But on 23rd May 2003, even before Freedom FM began broadcasting, the Ministry of Communications took the decision to ban the broadcasting of the said programs and the police and the army sealed the premises of the radio station.

6. In September 2003, the Messager took the matter to court requesting for a break of the seals. After five (5) months of consecutive adjournments, the Court of First Instance of Douala decided that the matter came under the competence of the Administrative Court and took 3 months to deliver a written judgment which

should have enabled the Messager [Group] to appeal. Whilst the Court of Appeal should be considering this appeal, equipments worth $110,000 continue to daily depreciate because of inadequate storage conditions.

7. As the procedure in the civil court followed its course, the Ministry of Communications took Mr. Pius Njawè and the Messager Group to court for having 'set up and operated' without a license a radio broadcasting company.

Complaint

8. The Complainant maintains that the facts stated above constitute a violation by Cameroon of Articles 1, 2, 9, and 14 of the African Charter and consequently request the African Commission to consider as such and request Cameroon to pay adequate compensation to the victims for multiple violations of their rights and freedoms.

9. The Complainant moreover, requests the African Commission, in accordance with article 111 of its Rules of Procedure to request Cameroon to adopt provisional measures with a view to:

(a) Immediately lifting the ban affecting the programs of Freedom FM and authorize it to operate whilst awaiting the outcome of the African Commission's decision on the complaint;
(b) break the seal on the premises of Freedom FM so that the equipments could undergo proper maintenance whilst awaiting the African Commission's decision on the complaint;
(c) undertake a quick review of the legislative framework and administrative practices on issuing licenses for operating radio stations with a view to harmonizing them with the provisions of Article 9 of the African Charter and the 2002 Declaration of Principles.

Procedure

10. The complaint was received at the Secretariat of the African Commission on 28th June 2004.

11. By a letter ref. ACHPR/COMM 290/2004/RK addressed to the complainant, the Secretariat of the African Commission acknowledged receipt of this communication on 5th July 2004 and indicated that the seizure of the complaint will be considered by the African Commission at its 36th Ordinary Session (23rd November to 7th December 2004, Dakar, Senegal).

12. By a letter ref. ACHPR/GOV/COMM/3/RK of 15th July 2004, the Chairperson of the African Commission sent an urgent request for the adoption of provisional measures in accordance with the provisions of article 111 of the African Commission's Rules of Procedure to H.E Mr. Paul Biya, President of the Republic of Cameroon requesting that provisional measures be taken to ensure that no irreparable damage is done to the equipment of Radio Freedom FM.

13. By a letter of 16th November 2004, the Complainant informed the Chairperson of the African Commission, Commissioner Sawadogo, that the request for provisional measures had not been complied with and that further the Complainant had received death threats over the matter.

14. During the 36th Ordinary Session held in Dakar, Senegal, from 23rd November to 7th December 2004, the African Commission considered the communication and decided to be seized of it. The Complainants made

oral submissions on the failure of the State to comply with the request for provisional measure. The State delegates indicated that they had not been made aware of the request and the head of delegation, Minister Joseph Dione Ngute offered his good offices with a view to facilitating an amicable solution of the matter.

15. On 22nd December 2004, the Secretariat informed the parties that the African Commission had been seized of the communication and requested them to submit arguments on admissibility in three months from the date of notification.

16. On 22nd February 2005, the Secretariat reminded the State through a Note Verbale to submit its arguments on admissibility within one month from the date of the reminder.

17. On 22nd March 2005, the Complainant submitted further arguments on admissibility, which were transmitted to the Respondent State on 29th March 2005 through the Embassy of the Respondent State.

18. At its 37th Ordinary Session, which was held from 27th April to 11th May 2005 in Banjul, The Gambia, the African Commission considered the case and heard oral submissions from the parties. The African Commission subsequently deferred its decision on admissibility of the case pending receipt of arguments of the Respondent State on the same.

19. On 8th December 2005, the Respondent State sent to the Secretariat a letter informing it that amicable settlement was underway in the matter.

20. On 4th October 2005, the Secretariat informed the Complainant of the above letter and forwarded the attached documentation and requested them to send in their comments on the same.

21. At its 38th Ordinary Session held from the 21st November to 5th December 2005 in Banjul, The Gambia, the African Commission deferred its decision on the matter awaiting comments of the Complainant on the outcome of the said amicable settlement.

22. On 28th April 2006, the Secretariat received a note from the Complainant informing it that:

(a) the Government of Cameroon [had] dropped the criminal charges against the Freedom FM director and released the equipment of the Radio;
(b) the Government committed itself to grant Radio Freedom FM a provisional authorization to broadcast, and process its application for a full license in a fair and equitable manner;
(c) Freedom FM, for its part, agreed to discontinue the communication before the Commission, and settle the case;
(d) the ongoing negotiations between the parties on the compensation issue have now produced a mutually acceptable compromise, with the Government of Cameroon agreeing to re-open the discussions with Radio Freedom FM in relation to the compensation of the damages suffered by the radio, with a view to reaching a fair, comprehensive and final settlement of the case; and
(e) the Government has reiterated its commitment to grant Freedom FM a provisional authorization as soon as consideration of the current communication is discontinued –as well as process the Radio's application for a broadcasting license in a fair, transparent, and expeditious manner.

23. In consideration of the above, the Open Society Justice Initiative, acting on behalf of Mr. Pius Njawè and Groupe Le Messager, requested the African Commission to discontinue the consideration of

communication 290/04 against the Republic of Cameroon and that the amicable settlement be registered in its lieu.

24. At its 39th Ordinary Session held from 11th to 25th May 2006 in Banjul, The Gambia, the African Commission considered the communication and decided to close the file.

Decision of the African Commission

The African Commission takes note of the above request and decides to close the file.
The African Commission also requests the parties to forward to the Secretariat the written copy of the said amicable settlement for inclusion in the file.