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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2587/2015*, **

Communication submitted by:	Étienne Abessolo
Alleged victim:	The author
State party:	Cameroon
Date of communication:	16 October 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 September 2015 (not issued in document form)
Date of adoption of Views:	30 October 2020
Subject matter:	Lack of recourse to compensation
Procedural issues:	Inadmissibility *ratione materiae*; failure to exhaust domestic remedies
Substantive issues:	Right to an effective remedy
Articles of the Covenant:	2 (3) and 14 (1)
Articles of the Optional Protocol:	5 (2) (b)

1.1 The author of the communication is Étienne Abessolo, a national of Cameroon born in 1956. He claims that the State party has violated his rights under articles 2 (3) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 27 September 1984. The author, who is a lawyer by profession, is not represented by counsel.

1.2 On 18 November 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, refused the State party's request for the admissibility of the communication to be considered separately from the merits.

The facts as submitted by the author

2.1 On 9 August 2000, the author signed an open-ended retainer contract for the provision of representation and legal assistance services with the Port Authority of Douala. In December 2006, while this contract was in effect, the author was charged with embezzlement of public funds committed by a group. He and 12 other co-defendants were ordered to appear

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, David H. Moore, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

before the Wouri *Tribunal de Grande Instance* (court of major jurisdiction) in Douala as part of a major anti-corruption operation led by the judicial authorities, known as *Opération Épervier* (Operation Sparrow-hawk).

2.2 On 12 and 13 December 2007, the author and eight other co-defendants were acquitted by a judgment issued by the Wouri *Tribunal de Grande Instance* in Douala. The competent prosecution service subsequently appealed the acquittal judgment. On 11 June 2009, the Littoral Region Court of Appeal in Douala found all the co-defendants guilty and sentenced the author to 15 years' imprisonment and ordered him to pay, jointly with the Director General of the Port Authority of Douala, who himself had received a life sentence, 188,794,955 CFA francs (around 280,000 euros) in damages to the Port Authority of Douala, even though it had not lodged an appeal against the author.

2.3 Pursuant to the judgment issued by the Littoral Region Court of Appeal in Douala, the author was placed in detention on 12 June 2009. He lodged an appeal in cassation against this judgment and submitted a request for the warrant of committal issued against him to be revoked, which was registered by the secretariat of the Supreme Court on 24 June 2009. In its judgment of 21 January 2010, the Criminal Chamber of the Supreme Court declared the request inadmissible on the ground that the appeal itself was inadmissible.

2.4 The author submitted a second request to the same end, which was registered by the secretariat of the Supreme Court on 16 March 2010, and relodged the appeal in cassation. Since these proceedings concerned deprivation of liberty, they were classed as urgent in accordance with Cameroonian law. On 20 September 2010, the author referred the matter to the First President of the Supreme Court, asking that his request be given the urgency warranted by its subject matter. Having received no news of his appeal, the author again referred the matter to the First President of the Supreme Court in order to draw the latter's attention to his plight. His case file was listed once again on 16 June 2011, and was again entered on the general list. The proceedings were opened and the case was subsequently adjourned, with a judgment expected on 21 June 2012. At this hearing, the proceedings were deferred and the case was adjourned until 19 July 2012. On this date, the case was again removed from the list, with the author hearing nothing more about it.

2.5 On 2 May 2013, the author submitted a third request in an attempt to secure his release. This new request was also declared inadmissible on the ground that the appeal itself was inadmissible. In the meantime, his appeal moved forward on the merits and his case was considered at a hearing on 29 April 2014, during which the author was acquitted by the Supreme Court.

2.6 The author explains that he has suffered significant damages, both moral and material, as a result of the five years that he spent in detention. He states that, under the Code of Criminal Procedure, it is possible to claim compensation in cases involving a lengthy period in detention that culminates in a final acquittal. The Code of Criminal Procedure provides that a compensation commission, chaired by an adviser to the Supreme Court and composed of, inter alia, two appellate judges, representatives of the civil service and a representative of the Bar Association, should be established in such cases. A compensation commission is the only body competent to process claims for compensation and reparation. However, such a commission was not formally established and the author has been unable to lodge his claim.

The complaint

3.1 The author asserts that the State party's failure to establish the compensation commission provided for under the Code of Criminal Procedure is preventing him from lodging his claim for compensation and that, as a result, he is the victim of a violation of his rights under articles 2 (3) and 14 (1) of the Covenant.

3.2 The author considers that the domestic remedies available to him have been exhausted, as the very subject matter of the complaint is his lack of recourse to compensation following a lengthy period in pretrial detention, which culminated in his final acquittal.

State party's observations on admissibility

4.1 On 13 August 2015, the State party submitted its observations on the admissibility of the communication. It considers that, in accordance with the Committee's established jurisprudence, article 14 (6) of the Covenant, as domesticated by article 544 of the Code of Criminal Procedure and referred to by the author, is applicable only if three conditions are met: a final criminal conviction must have been handed down, the person must have suffered punishment as a result of the conviction and the conviction must have been subsequently reversed or the convicted person pardoned on account of a new or newly discovered fact. The State party also emphasizes that, under article 535 of the Code of Criminal Procedure, an appeal in cassation is admissible only when it is submitted in respect of a conviction that has become final.

4.2 The State party underlines that, in this case, the three conditions mentioned above have not been met. Judgment No. 038/CRIM of 11 June 2009 of the Littoral Region Court of Appeal in Douala, pursuant to which the author was imprisoned, is not final. Referring to the case of *Anderson v. Australia*, the State party stresses that the Committee has already established that the conviction is not final if there is still a possibility of appeal.[1] The State party indicates that the author stated that he had lodged an appeal in cassation against this decision with the Supreme Court and that his appeal had been received and considered. Since the first condition listed in article 14 (6) of the Covenant (relating to a final criminal conviction) has not been fulfilled, it follows that the second condition has not been fulfilled either.

4.3 The State party argues that the third condition too has not been met, since no new or newly discovered fact has been brought to the attention of the Supreme Court.[2] It stresses that the Supreme Court judgment shows that the facts brought before it were the same as those submitted for consideration by the first set of judges and that the Supreme Court simply made an assessment that was different from that made by the appellate judges, who had found the author guilty. The State party adds that, in this case, there can be no question of a miscarriage of justice either, since the ordinary remedies provided for in the Code of Criminal Procedure have made it possible to pass final judgment on the author's situation.

Author's comments on the State party's observations

5.1 In his submission of 14 September 2015, the author argues that, although article 544 of the Code of Criminal Procedure domesticates article 14 (6) of the Covenant, this domestic provision addresses matters that go beyond the scope of the beneficiaries of the right to compensation. He also argues that article 544 of the Code of Criminal Procedure provides for compensation in all cases of acquittal, even if an appeal in cassation has not been lodged.

5.2 The author asserts that the State party has interpreted the Covenant in a reductionist manner and that the right to compensation is recognized by Cameroonian law. He underlines that his communication is not based on article 14 (6) of the Covenant, but on article 14 (1). The author states that he is unable to exercise his right to compensation because the State party has not established a commission for this purpose. Thus, the author asks the Committee to find the communication admissible.

5.3 On 30 November 2016, the author submitted additional information to the Committee to the effect that the National Commission on Human Rights and Freedoms had informed him that the President of the Supreme Court had issued Order No. 115 of 16 February 2016 defining the composition and calling for the establishment of a compensation commission. The author recalls that this commission is, in essence, a purely administrative body and cannot be considered an offshoot of the Supreme Court. The author states that, despite this order, the compensation commission is not operational. He adds that the general public remains unaware of its existence and that the location of its head office has not been determined. The author also asserts that he has no recourse to this compensation commission, which was only established in February 2016, since article 237 (6) of the Code of Criminal

[1] *Anderson v. Australia* (CCPR/C/88/D/1367/2005), para. 7.4.

[2] See *W.J.H. v. Netherlands* (CCPR/C/45/D/408/1990); and *Irving v. Australia* (CCPR/C/74/D/880/1999).

Procedure gave him only six months in which to lodge a claim with it. The author therefore asserts that it is no longer possible for him to lodge a claim with the commission.

5.4 The author further argues that, according to the State party's line of reasoning, the issue at hand is the right to compensation, even though this right is clearly recognized by Cameroonian law. The author considers that the issue is, in actual fact, the exercise of this right, since the State party has not set up the commission that is to consider his claim for compensation. The author reiterates that the basis for referring this matter to the Committee is article 14 (1), and not article 14 (6), of the Covenant. The author asks the Committee to find the communication admissible and to proceed to consider it on the merits.

State party's additional observations on admissibility and the merits

6.1 In its observations of 3 April 2017, the State party points out that the author has explained his reasons for not having lodged a claim with the compensation commission, which include the fact that it is purely administrative in nature and non-operational, the failure to publish the decision establishing it and the fact that it has no official head office.

6.2 The State party recalls that, after he had been acquitted, the author referred his case to the President of the National Commission on Human Rights and Freedoms, explaining how it was not possible for him to receive compensation following his detention because the aforementioned compensation commission had not yet been established. In response to this submission, on 8 November 2016, the National Commission on Human Rights and Freedoms informed the author that, according to information provided by the Ministry of Justice, the compensation commission had since become operational.

6.3 On the merits, the State party refutes the author's argument that, due to its purely administrative nature, the compensation commission cannot be considered an offshoot of the Supreme Court. It also contests that a decree implementing the legal provisions establishing the commission was necessary in order for its members to be appointed. The State party considers that, since the President of the Supreme Court issued Order No. 115 of 16 February 2016 defining the composition of the commission in question, the requirements laid down in article 237 of the Code of Criminal Procedure have been fulfilled. It points out that the compensation commission, which is located at the Supreme Court, is chaired by an adviser to the Supreme Court and is composed of, inter alia, two appellate judges and representatives of a number of public authorities. The State party stresses that, although representatives of public authorities sit on the commission, this does not detract from its judicial nature; that the commission in question has no special attributes; and that it is comparable to the legal aid commissions established within each jurisdiction by Act No. 2009/004 of 14 April 2009, including within the Supreme Court, which also include representatives of public authorities.

6.4 As for the author's argument that the compensation commission is not operational, the State party reiterates that the author, having failed to lodge a claim with this body, cannot prejudge its effectiveness. The State party further asserts that the author's argument that the commission has no head office is moot, as the appointment of an adviser to the Supreme Court as the chair of the commission and the laying down, for the commission, of the same rules of procedure applicable to the Judicial Chamber of the Supreme Court make it clear that the commission's head office is at the Supreme Court. The State party recalls that articles 236 and 237 of the Code of Criminal Procedure provide that the head office of the compensation commission is at the Supreme Court. Consequently, the State party once again asks the Committee to find the communication inadmissible and unfounded.

6.5 In its submission of 22 January 2019, the State party reiterates that the communication is both inadmissible and unfounded. It asserts that the author has provided no evidence of having lodged a claim with the compensation commission and that, on the contrary, he merely presupposes that the remedy is unavailable by arguing that the commission is non-operational. The State party considers that only a failure by the commission to consider the author's claim could have justified his putting forward the argument that he had no recourse to compensation. The State party reiterates that the compensation commission is operational and points out that it has already received 16 claims, which are currently under consideration.

Author's comments on the State party's additional observations

7.1 In his comments of 7 July 2019, the author recalls that he submitted his communication to the Committee in October 2014, whereas the compensation commission was only established in February 2016. The author points out that the State party could not reasonably expect him to lodge a claim with a body that did not exist at the time. The author also points out that, since he was unable to lodge a claim with the commission within six months,[3] he was debarred and that, consequently, he has exhausted all the domestic remedies available to him. The author reiterates that he is entitled to compensation even if his acquittal is not the result of the discovery of a new fact and that the failure to establish the compensation commission in question constitutes a violation of his right to compensation.

7.2 The author refutes the State party's assertion that he deliberately chose not to lodge a claim with the compensation commission. He recalls that, even though the commission did not exist at the time, in order to abide by the rule of exhaustion of domestic remedies, he nevertheless waited until the time limit of six months provided for in the Code of Criminal Procedure had elapsed before referring the matter to the Committee.

7.3 The author recalls that it was only after he had written to inform the National Commission on Human Rights and Freedoms that he had been debarred, that the compensation commission did not exist and that he had submitted the present communication to the Committee that the Ministry of Justice disclosed that the State party was in the process of setting up the commission in question, which only became operational on 6 June 2016. The author adds that the mere fact of having established the commission is not sufficient in and of itself to bring his debarment to an end under Cameroonian law.

7.4 The author contests the supposed judicial nature of the compensation commission. While it is true that the commission is chaired by an adviser to the Supreme Court, which is his court of appeal,[4] it is not part of the Supreme Court itself. He reiterates that the compensation commission is not operational and that, since it has not been brought to the attention of Cameroonian citizens, it cannot be used against them.

7.5 On 29 May 2019, in order to demonstrate the dysfunctional nature of the compensation commission, the author submitted to the Committee a letter from the President of the Cameroon Bar Association stating that, until at least March 2018, the commission was not operational. In addition, the author submits a copy of excerpts from the preliminary submissions made by the public prosecutor to the Supreme Court during the swearing-in ceremony of the members of the compensation commission on 8 August 2018, in which the public prosecutor states that the ceremony marks the commission's "effective operationalization". The author therefore asks the Committee to declare the communication admissible and well-founded.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With regard to the admissibility *ratione materiae* of the communication, the Committee takes note of the State party's argument that the claim raised does not fall within the scope of article 14 (1) of the Covenant. The Committee notes that, according to the State party, the author raises issues that instead fall within the scope of article 14 (6) of the Covenant, as domesticated by article 544 of the Code of Criminal Procedure. Accordingly, the Committee recalls that article 14 (6) of the Covenant provides that compensation is to be

[3] Code of Criminal Procedure, art. 237 (6).

[4] Ibid., para. 8.

awarded, according to the law, to a person who has been convicted of a criminal offence by a final decision and has suffered punishment as a consequence of such conviction if his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows that there has been a miscarriage of justice.[5] The Committee considers that, if the author had submitted his communication under article 14 (6), it would be inadmissible, since the conditions set out in that article have not been met.

8.4 The Committee notes, however, that the author asserts that his communication falls within the scope of article 14 (1) and not within that of article 14 (6) of the Covenant, as claimed by the State party. The Committee takes note of the author's argument that article 14 (1) of the Covenant has been violated, since no remedies are available to him and he has no access to a court that can determine his rights and obligations under the law. The Committee also takes note of the author's argument that the State party has failed to provide him with an effective remedy, in violation of article 2 (3) of the Covenant. Having found that the State party has failed to produce sufficient evidence to contest the admissibility of the communication under articles 2 (3) and 14 (1) of the Covenant, read alone and in conjunction with one another, the Committee considers that the author's claim is admissible under these articles.

8.5 With regard to the argument that the communication is inadmissible because domestic remedies have not been exhausted, the Committee notes that, in this case, the State party could not reasonably expect the author to lodge a claim with the compensation commission when this body was not yet operational at the time when, legally speaking, he could have lodged such a claim. The Committee also notes that, in its conclusions, the State party does not comment on how the prohibition on the author's lodging a claim with the compensation commission following the expiry of the six-month time limit provided for under article 237 (6) of the Code of Criminal Procedure might be lifted or on whether the domestic legal system provided for the possibility of appealing this measure, given that the remedy provided for by law was neither effective nor timely.

8.6 In the light of the foregoing, the Committee considers that the author has sufficiently substantiated his claims and declares the communication admissible based on the claims raised under article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant, and proceeds to consider it on the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the author's statement that he has suffered significant damages, both moral and material, as a result of the five years that he spent in detention and that, under the Code of Criminal Procedure, he is entitled to compensation if certain conditions are met. The Committee points out, however, that the issue raised by the present communication is not whether the author is entitled to compensation, but his access to the remedy that would allow him to establish and assert his right to compensation. The Committee takes note of the author's argument that the failure to ensure the availability of the remedy established for this purpose, in this case the compensation commission, constitutes a violation of articles 2 (3) and 14 (1) of the Covenant.

9.3 Regarding the nature of the compensation commission, the Committee takes note of the State party's argument that the commission is an offshoot of the Supreme Court and not a purely administrative structure. The Committee notes that, under Cameroonian law, the decisions taken by compensation commissions, including the one referred to by the author, are akin to civil judgments.[6]

[5] *Anderson v. Australia*, para. 7.4; *W. J. H. v. Netherlands*, para. 6.3; *Irving v. Australia*, para. 8.3; and *Uebergang v. Australia* (CCPR/C/71/D/963/2001), para. 4.2.

[6] Code of Criminal Procedure, art. 237 (8).

9.4 The Committee considers that the State party's failure to give effect to a remedy provided for by law by way of compensation for damages constitutes a violation of article 14 (1) of the Covenant. The Committee recalls that, under article 2 (3) (b) of the Covenant, the State party has a duty to ensure that the person claiming such a remedy has his or her right thereto determined by a competent authority provided for by the law of the State, and that, in this case, not only was the remedy provided for by law not made available in a timely manner, but domestic law offered no means of challenging its unavailability.

9.5 Accordingly, the Committee considers that, in this case, the State party's failure to provide the author with timely recourse to compensation, as provided for by law, constitutes a violation of article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of the author's rights under article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to: (a) provide the author with adequate compensation for the violation of his rights under article 14 (1) of the Covenant; and (b) provide the author with access to a mechanism from which he can claim compensation for wrongful detention. The State party is also under an obligation to prevent similar violations from occurring in the future.

12. 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 and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.