



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. 3135/2018*, **

<i>Communication submitted by:</i>	Martial Didier Ndoe Essono (not represented by counsel)
<i>Alleged victims:</i>	The author and Annette Joséphine Ndoe Essono, Ketty Emma-Nestor Ndoe, Judith Anne Cécile Ndoe, Harry Claude Axel Ndoe, Stévia Roxane Ndoe, Elyz-Lou Milania Ndoe, Maxwell Martial Ndoe, Victorine Ndoe née Ntsa, Yveline Marie Laure Ndoe Bikie, Fulbert Jacques Sylvain Ndoe and Thierry Edgard Ndoe Messi
<i>State party:</i>	Cameroon
<i>Date of communication:</i>	16 October 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 March 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	18 March 2022
<i>Subject matter:</i>	Lack of recourse to compensation; unlawful arrest and detention
<i>Procedural issues:</i>	Inadmissibility <i>ratione materiae</i> ; exhaustion of domestic remedies
<i>Substantive issue:</i>	Effective remedy
<i>Articles of the Covenant:</i>	2 (3) and 9 (5)
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



1.1 The author of the communication is Martial Didier Ndoe Essono, a Cameroonian national born in 1955. He claims that the State party has violated his rights under articles 2 (3) and 9 (5) of the Covenant. The Optional Protocol entered into force for the State party on 27 September 1984. The author is not represented by counsel.

1.2 The author is submitting the communication on his own behalf and on behalf of the following persons, whom he describes as indirect victims of his unlawful arrest and detention: his wife, Annette Joséphine Ndoe Essono; his children, Ketty Emma-Nestor Ndoe, Judith Anne Cécile Ndoe, Harry Claude Axel Ndoe, Stévia Roxane Ndoe, Elyz-Lou Milania Ndoe and Maxwell Martial Ndoe; his mother, Victorine Ndoe née Ntsa; his sister, Yveline Marie Laure Ndoe Bikie; and his brothers Fulbert Jacques Sylvain Ndoe and Thierry Edgard Ndoe Messi.

The facts as submitted by the author

2.1 The author states that, on 21 February 2006, the State party launched a campaign to clean up public finances that prompted a wave of arrests among directors and managers of certain State-owned companies and administrative institutions. At the time of the events, the author was head of the communications department attached to the Directorate General of Cameroon Real Estate Corporation (*Société Immobilière du Cameroun*). This corporation is a public limited company specializing in real estate development whose majority shareholder is the State of Cameroon.

2.2 On the same day, the author was arrested in his office at the Douala regional headquarters by the chief of the regional division of the criminal investigation police and two plain-clothes police officers. During the arrest, the police officers admitted that they had no warrant and were acting on the instruction of their superior officers. Similarly, when asked the reasons for the arrest, the chief commissioner simply replied that he was carrying out orders and awaiting further instructions.

2.3 When, in view of the irregular circumstances, the author refused to accompany the police officers, he was handcuffed, forcibly removed from his office and placed in a police vehicle.

2.4 On the same day, the author's office and home were searched without a court-ordered warrant. Later on, at around 10 p.m., the author was forced into an unmarked vehicle and driven to the national headquarters of the criminal investigation police in Yaoundé, where, at around 1 a.m., he was placed in custody in violation of article 19 (4) of the Criminal Procedure Code of Cameroon. His lawyer was not permitted to visit him until 15 March 2006, more than 20 days after his arrest on 21 February 2006.

2.5 The author spent 19 months in pretrial detention, in violation of article 221 of the Criminal Procedure Code. He filed an application for habeas corpus with the presiding judge of Mfoundi High Court (*Tribunal de Grande Instance*) in Yaoundé in order to contest the mistreatment he had suffered and request his release on grounds of the numerous procedural irregularities that had compromised his arrest and detention, but his application was ignored.

2.6 Without informing the public prosecutor with territorial jurisdiction, and in violation of articles 96, 98 and 99 of the Criminal Procedure Code,¹ a team of officers from Yaoundé criminal investigation police proceeded to remove all items of furniture from the author's home. The confiscated property, along with the author's car, was taken to Yaoundé and abandoned in the courtyard of the criminal investigation police headquarters, where their

¹ Article 96 of the Criminal Procedure Code states that confiscated property must be brought before the suspect and witnesses and that all objects must be signed for, inventoried and placed under seal. These items were signed for, inventoried and placed under seal. Article 98 sets out the procedure for drafting the record of search and seizure, which must be signed by the owner of the premises searched, the owner of the property confiscated or their representative, any witnesses and, where applicable, any other persons who took part in the operations. Article 99 prohibits searches of private premises between the hours of 6 p.m. and 6 a.m. Searches may take place after 6 p.m. only if they have already begun and with the authorization of the public prosecutor. Exceptionally, if the public prosecutor cannot be contacted, the officer leading the operation may continue the search provided that he informs the public prosecutor immediately.

condition deteriorated significantly. The car was sealed up for seven years. The seizure and removal of the author's furniture was particularly traumatic for his children, who had to live for several months in a house without furniture.²

2.7 Throughout his pretrial detention, and in violation of articles 37 and 238 of the Criminal Procedure Code, the author was denied visits from friends and family members. A ban on leaving the country, entailing the withdrawal of travel documents, was imposed both on him and on close relatives who held a Cameroonian passport. This ban, which was ordered at the beginning of the proceedings in 2006, was not lifted until 2014.³

2.8 On 27 September 2007, the author was acquitted by Mfoundi High Court. This acquittal was upheld on appeal by the Court of Appeal of Centre Region in Yaoundé on 17 March 2011.⁴

2.9 Following the author's acquittal, Cameroon Real Estate Cooperation failed to respond to his numerous requests for reinstatement, in violation of article 32 (i) of the Labour Code (Act No. 92/007) of 14 August 1992. In view of his employer's inaction, the author took the case to court. Ultimately, in 2012, after five years, he agreed to accept an out-of-court settlement that allowed him to return to work and again receive a salary.⁵ The author maintains that Cameroon Real Estate Cooperation's refusal to reinstate him in his post for such a long period of time placed his family in a very vulnerable situation.

2.10 In the course of the preliminary investigation, the author's accounts were frozen as an interim measure by the investigating judge. By means of a request for international judicial assistance, his bank account in France was also subsequently frozen.⁶ The author indicates that, when his employer finally agreed to reinstate him in January 2012, he was less than three years away from retirement. He also states that the freeze placed on his bank accounts has still not been lifted.

Complaint

3.1 The author alleges a violation of article 9 (5) of the Covenant in that he was subjected to unlawful arrest and detention. He also claims that he has not received compensation for the injury he suffered and that the State party has violated article 2 (3) of the Covenant, read alone and in conjunction with article 9 (5), in that it has failed to fulfil its obligation to provide citizens whose rights and freedoms under the Covenant have been violated with an effective avenue of redress to repair the injury suffered. The author submits that his detention for 19 months was in contravention of article 221 of the Criminal Procedure Code, which stipulates that the duration of pretrial detention, as set by the investigating judge, may not exceed 6 months, subject to extension not exceeding 12 months.

3.2 The author claims that he has exhausted domestic avenues of redress. He maintains that no effective possibility of compensation for victims of human rights violations is available within the State party's domestic legal system. He adds that Cameroon has still not set up the Compensation Commission provided for in its Criminal Procedure Code. He also indicates that, although administrative litigation offers the possibility of recourse to the administrative courts that might ultimately lead to the award of compensation, in practice, compensation for injury attributable to the functioning of public services is excluded from the scope of application of the relevant law.⁷ To support this argument, the author cites the case of *Kingue v. Cameroon*,⁸ in which the Committee found that the provisions of article 5 (2) (b) of the Optional Protocol did not prevent it from examining the communication given the author's claim, which was not contested by the State party, that

² See exhibits 27, 28 and 29, annexed to the communication: report on the return of property confiscated in Douala.

³ See exhibit 36 for a copy of the decision.

⁴ A copy of the judgment is annexed to the communication.

⁵ Several letters and decisions related to his request for reinstatement in his post (exhibit Nos. 37–55) are annexed to the communication.

⁶ See, in this connection, the letters attached to the communication (exhibit Nos. 56 to 63 bis).

⁷ The author does not state the law to which he is referring but attaches the relevant case law to the file (exhibit Nos. 2, 3 and 4).

⁸ [CCPR/C/118/D/2388/2014](#).

domestic remedies had been exhausted because there was no effective remedy to repair the injury he had suffered as a victim of arbitrary arrest and detention, and because the Compensation Commission created for this purpose under the Criminal Procedure Code had not yet been set up and recourse to the administrative courts was pointless in view of settled case law excluding issues of compensation for injury attributable to the functioning of the public justice system from the jurisdiction of these courts and the subsequently adopted law confirming this exclusion.⁹

3.3 The author also maintains that his prolonged detention affected him in other ways, resulting in numerous violations of his rights. In particular, he affirms that he was deprived of resources for six years, that his property was damaged during the search and that his accounts were frozen. Most importantly, he notes that his passport was confiscated from 2006 to 2014, limiting his freedom of movement and preventing him from travelling even once he was acquitted.

3.4 As for the members of his family who are financially dependent on him, the author claims that his children were subjected to degrading treatment when their furniture was confiscated as it meant that they had to live for months in a home without chairs, tables or armchairs. Members of his family were never permitted to visit him, despite repeated requests to the authorities. Lastly, all of the author's relatives who had a Cameroonian passport also had their passports confiscated from 2006 to 2014.

State party's observations on admissibility

4. On 29 May 2018, the State party submitted its observations on admissibility. It refutes the author's argument that, even though the new Criminal Procedure Code adopted in 2005 had entered into force, the Compensation Commission provided for in articles 236 and 237 thereof was still not operational. The State party asserts that the First President of the Supreme Court issued Order No. 115, establishing the composition and providing for the operationalization of the Commission for the Compensation of Victims of Wrongful Police Custody and Pretrial Detention, on 16 February 2016. The State party believes that the author simply presumed that there was no domestic remedy available that he might attempt to exhaust, and therefore requests that the Committee find the present communication inadmissible.

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

5.1 In his submission of 22 July 2018, the author points out that the Compensation Commission was not established by the State party until 16 February 2016 – that is, 11 years after the adoption of the Criminal Procedure Code (Act No. 2005/007) of 27 July 2005 that provided for its creation. Accordingly, since the Commission had not yet been established, the domestic remedy it is supposed to provide was not available. Moreover, even after the Commission's establishment and the appointment of its members on 16 February 2016, there is total confusion surrounding its operation and, two years since its creation, there is no evidence of any meeting having been minuted or any decision having been published. The author adds that there is still considerable doubt as to the effectiveness and efficiency of the remedy that the Commission should be providing. He believes that the State party has failed in its obligation to keep the public updated about the availability of the Compensation Commission.

5.2 With regard to his failure to refer his claim to the Compensation Commission, the author recalls that article 237 (6) of the Criminal Procedure Code stipulates that "the Commission shall be seized, by means of an application, within 6 months of police custody ending, of a decision to dismiss a case being issued or a discharge or acquittal becoming final". The author also recalls that he was acquitted by judgment of the Court of Appeal of Centre Region on 17 March 2011. Consequently, based on article 237 (6) of the Criminal Procedure Code, he should have submitted his application to the Commission no later than 17 September 2011. However, on that date, the Commission did not yet exist: it was not established until 16 February 2016. The author therefore considers that recourse to the

⁹ Ibid., para. 6.3.

Compensation Commission was impossible since the remedy it was supposed to offer was neither effective nor available.

Author's additional comments on admissibility

6. On 10 August 2018, the author submitted to the Committee an article from the government newspaper, dated 9 August 2018, which covered the ceremony, held the day before, that is, on 8 August 2018, in which the members of the Compensation Commission were formally appointed. The author states that the information contained in this article indicates that the Compensation Commission has 18 members and became operational, by order of the First President of the Supreme Court, on 3 January 2018. This information casts doubt on the authenticity of the document submitted by the State party with its observations, which states that the Commission became operational in 2016 and has fewer members. The author believes that this article confirms that the domestic remedy that the Commission was supposed to guarantee was not available.

State party's observations on the merits

7.1 In its observations of 11 September 2018, the State party emphasizes that the author bases his communication on articles 2 (3) and 9 (5) of the Covenant relating, respectively, to the State's obligation to guarantee an effective remedy and the right to compensation for unlawful arrest and detention.

7.2 The State party refers to the author's failure to substantiate his allegations regarding the violation of his right to liberty. It maintains that the author was arrested and charged in connection with proceedings for misappropriation of public funds, an offence defined and punishable under the Criminal Code in force at the time.¹⁰ The State party recalls that the Committee has consistently taken the view that it is for national courts to review the facts and evidence and the application of national legislation in a particular case, unless it can be shown that the evaluation of evidence or application of national legislation was clearly arbitrary or amounted to a manifest error or denial of justice.¹¹

7.3 The State party recalls that the Court of Appeal of Centre Region concluded that the facts did indeed involve misappropriations of public funds. Consequently, in its judgment of 17 March 2011, the Court dismissed an objection raised by the lower court on the grounds that the case had been erroneously classified. The State party underscores that, in the present case, the author was suspected of having misappropriated public funds at the time of his arrest, and that the arrest was therefore neither arbitrary nor unlawful.¹²

7.4 The State party claims that the author's arrest was justified because the offence of which he was accused was punishable by a term of imprisonment. The State party notes that the embezzlement of which the author was accused involved the sum of 109,012,960 CFA francs (approximately 166,000 euros). His offence therefore fell within the category of offences punishable by life imprisonment established in article 184 (1) (a) of the Criminal Code in force at the time of the events. Article 94 of the Criminal Investigation Code, which was the text applicable at the time of the author's detention, provided that, "after interrogation, or in the event of the accused's flight, the judge may issue a warrant for their arrest or detention if the offence carries a term of imprisonment or more severe penalty".

7.5 The State party adds that, after being acquitted by Mfoundi High Court by judgment of 27 September 2007, the author was released despite an appeal lodged by the Public Prosecutor's Office, based on the principle that procedural laws are immediately enforceable and in implementation of article 545 of the Criminal Procedure Code.

7.6 As to the lawfulness of the procedure followed for the author's arrest and detention, the State party recalls that the author was arrested on 21 February 2006 and placed in detention on 22 February 2006 in the context of a criminal investigation that was closed on 30 October 2006. Mfoundi High Court handed down its judgment on 27 September 2007,

¹⁰ Cameroon, Criminal Code (Act No. 67/LF/1 of 12 July 2016), art. 184.

¹¹ *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; and *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3.

¹² See in this connection *Borisenko v. Hungary*, (CCPR/C/76/D/852/1999), para. 7.2.

following which the author was released, on 28 September 2008, despite the appeal lodged. The State party notes that, until the Criminal Procedure Code entered into force on 1 January 2007, the actions taken in the course of the proceedings against the author were governed by the provisions of the texts in force at the time.

7.7 The State party submits that, contrary to the author's allegations, the Criminal Investigation Code in force at the time of his detention on 22 February 2006 established no requirement to specify the duration of pretrial detention in the warrant. The State party emphasizes that, even under the new Criminal Procedure Code, the limit placed on the duration of pretrial detention applies to the criminal investigation phase of the proceedings only. Article 221 (1) of the Criminal Procedure Code, in the section relating to the criminal investigation phase of proceedings, stipulates that: "The duration of pretrial detention shall be specified by the investigating judge in the warrant. It shall not exceed six (6) months but may be extended, by reasoned order, for a maximum of twelve (12) further months in the case of serious offences and a maximum of six (6) further months in the case of ordinary offences."

7.8 The State party indicates that the legal instruments applicable at the time of the investigation, which included the Criminal Investigation Code, provided for the punishment of procedural irregularities, particularly when they affected liberty of person. Article 12 of Act No. 58/203 of 26 December 1958, which revised and simplified criminal procedure in Cameroon, provides that "except in the event of substantive nullity directly affecting liberty of person, no motion for nullity based on form of criminal procedure may be admitted unless it is proven that the failure to observe the prescribed formalities is detrimental to the interests of the adverse party in general and to the defence in particular. All motions for nullity against a same act must be submitted jointly." According to the State party, the author himself acknowledges this fact in invoking the later text, that is, the text of the Criminal Procedure Code that reinforced this guarantee. Unfortunately, there is no indication that he availed himself of this avenue of redress during the proceedings. The State party therefore considers that the author was aware that its actions were consistent with the legislation in force at the time.

7.9 With regard to the restriction of freedom of movement, the State party recalls that the Committee is of the view that a measure affecting this freedom falls within the scope of article 9 of the Covenant only if it can be considered to constitute an arrest. In the present case, the author states that his arrest took place on 21 February 2006. He has submitted for the file a copy of a letter from the investigating judge to the police authorities in which the latter are asked to restrict the freedom of movement of certain persons that is dated the following day, that is, 22 February 2006, the date on which the author was placed in pretrial detention. Since this request was made after his arrest, it can only be concluded that this measure does not constitute an arrest.

7.10 As to the author's claim that he was not permitted to communicate with his lawyer, the State party notes that the author himself submitted a letter of appointment dated 1 March 2006, that is, eight days after he was placed in detention. This letter was received at the Public Prosecutor's Office on 3 March 2006. A visiting permit signed by the Public Prosecutor and dated 15 March 2006 is also on file. There is no mention of the author's lawyer having any particular grievance regarding the exercise of visiting rights. The State party refutes the claim that the author was refused permission to receive visits from members of his family.

7.11 As to the other allegations made by the author, the State party notes that these do not fall within the scope of article 9 of the Covenant, which constitutes the basis for his submission to the Committee, and should therefore be declared inadmissible. With regard to the allegations concerning the pay and social security entitlements associated with the author's employment, in addition to the fact that these allegations are also inadmissible under article 9 of the Covenant, the author himself states that the labour dispute between him and his employer was settled out of court, a statement that corroborates the information provided by the State concerning the settlement agreement. Accordingly, the State party requests the Committee to find the author's claim for compensation unfounded.

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

8.1 In comments submitted on 12 February 2019, the author reaffirms that the procedure followed for his arrest as well as the reason for the arrest were unlawful. With regard to procedure, he reiterates that he was arrested without a warrant, that he was not notified of the reasons for his arrest and that searches were conducted at his office and home without a court-ordered warrant. The author likens his arrest to a kidnapping in that he was arrested and placed in police custody on the premises of Douala criminal investigation police, then taken in a private vehicle to the Yaoundé criminal investigation police headquarters 300 kilometres away.

8.2 The author reiterates that, as indicated in its articles of association, his employer, Cameroon Real Estate Cooperation, is a mixed public-private company whose majority shareholder is the State. He points out that, since he was appointed on a permanent contract by the Board of Directors, his employment was governed by the Labour Code and not by the Civil Service Code. In his view, the State's status as shareholder did not give it the right to initiate proceedings against an employee of the company.

8.3 With regard to his detention, the author affirms that, when the detention order was issued against him on 22 February 2006, the new Criminal Procedure Code (Act No. 2005/007) of 27 July 2005 was not yet being applied even though it had been promulgated. The author concurs with the State party's observations that "until the Criminal Procedure Code entered into force on 1 January 2007, the actions taken in the course of the proceedings against the author were governed by the provisions of the texts in force at the time", which included those provisions of the Criminal Investigation Code that had not been amended by later texts such as Ordinance No. 72/4 of 26 August 1972 on the organization of the judiciary. However, as of 1 January 2007, based on the principle that procedural laws are immediately enforceable, the new Criminal Procedure Code became the one and only procedural law in force, abrogating all provisions of earlier texts.¹³ The author is of the view that a case cannot be tried on the basis of a procedural law different to the law on which the investigation was based. Thus, given that the proceedings instituted against him – which were duly registered in the roll of the criminal chamber of Mfoundi High Court and first called to trial on 17 November 2006 – were postponed on several occasions, until at least after 1 January 2007, to give the Court time to align itself with the new law about to enter into force, all court decisions subsequently taken in the case, and notably the judgment of 27 September 2007, will have been based on the new Criminal Procedure Code. The author recalls that it was these procedural irregularities that led him to file a habeas corpus application with a view to securing his immediate release on the grounds that the unlawful acts should be declared null and void on the basis of article 3 of the Criminal Procedure Code.

8.4 The author states that his habeas corpus application was submitted to the presiding judge of Mfoundi High Court on 4 January 2007, that is, four days after the new Criminal Procedure Code entered into force, in accordance with articles 3 and 584 of the new Code, but that, despite being well-founded, the application was ignored. The author is of the view that this refusal to accord him the benefit of the relevant provisions of the new Criminal Procedure Code immediately upon its entry into force violated the provisions of article 9 (4) of the Covenant and that his detention was thus unlawful, especially since application of the new Code would have resulted in his release.

8.5 The author recounts that, although he was accused and questioned in relation to the alleged misappropriation of 82,090,500 CFA francs, when the order of committal for trial was read out, this sum had been raised to 109,012,960 CFA francs, new information having been incorporated without any additional investigation by the Public Prosecution Service. The author considers the refusal to allow him to communicate with his lawyer to be an act of psychological torture, in violation of articles 7 and 14 (3) of the Covenant.

¹³ See in this connection article 746 (1) of the new Criminal Procedure Code: "All earlier provisions contrary to the present law are hereby repealed, including, in particular: (a) The ordinance of 14 February 1838 establishing the Criminal Investigation Code ..." See also article 746 (2): "Any references in this Act to provisions of national law that have been repealed shall be deemed to be a reference to the provisions that replace them."

8.6 The author draws attention to the fact that a close associate of the President of the Republic who was acquitted in the same case was reinstated in his post immediately after his acquittal on 27 September 2007, whereas the author had to wait until 30 January 2012 for reinstatement. This constitutes discrimination in violation of article 26 of the Covenant. The author adds that the surveillance measures and the ban on leaving the country to which his family were subjected were contrary to the principle that criminal liability is personal by nature.

8.7 With regard to his right to compensation, the author asserts that, in the proceedings against him, he faced two adversaries: on the one hand, the State, which initiated the public prosecution and is therefore responsible for the injury that he suffered, and, on the other, his employer, Cameroon Real Estate Cooperation, which was a civil party in the proceedings. He believes it is the State that bears responsibility for compensating him because it was the State that initiated the public prosecution at the origin of the serious difficulties in his life.

8.8 The author maintains that, through its observations, the State party is trying to sow confusion between the settlement that he reached with his employer in the labour dispute linked to the case and the State's obligation to provide compensation.

8.9 The author considers that the out-of-court settlement concluded with his employer in respect of the outstanding salary payments due to him does not mean that he has waived his right to compensation from the State. He also takes the view that the second component of the out-of-court settlement, which entailed according to him the benefit of the pay grade increases to which he was entitled in view of his seniority but which had been frozen during his long involuntary absence, was intended to repair the damage to his career. He considers that, by agreeing to pay a cash advance to settle the social security debt that had accrued as a result of this case and thus make the out-of-court settlement viable, the State party explicitly admitted that there was a case for compensation on the part of the employer, the civil party in the case. Lastly, the author considers that the State, as the prosecuting party, and the party against which he initiated the present procedure, must also assume its share of the responsibility by providing him with compensation for the injury he has suffered as a result of the State's actions.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

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

9.3 With regard to the argument that the communication submitted by the author is inadmissible under articles 9 (5) and 2 (3) of the Covenant for failure to exhaust domestic remedies, the Committee notes the State party's assertion that the author did not refer the matter to the Compensation Commission created under Order No. 115 of the First President of the Supreme Court of 16 February 2016, establishing the composition and providing for the operationalization of the Commission for the Compensation of Victims of Wrongful Police Custody and Pretrial Detention in Cameroon. The Committee also notes that the author has provided information indicating that the 18-member Commission actually entered into operation by order of the First President of the Supreme Court of 3 January 2018 and was not therefore operational at the time of the events affecting him. The Committee further notes the author's argument that the State party's national legal system does not offer any effective means of compensation for victims of human rights violations and that the remedy available through the administrative courts as a means of obtaining compensation for injury attributable to the functioning of public services is ineffective.¹⁴

¹⁴ *Kingue v. Cameroon*, para. 6.3.

9.4 The Committee notes the author's claim that his unlawful arrest and detention had adverse consequences for members of his family, whom he qualifies as indirect victims on whose behalf he is submitting this communication. The Committee notes, however, that the author has not submitted any power of attorney authorizing him to act on behalf of the indirect victims nor any information indicating why they were unable to submit the communication themselves. The Committee further observes that the claims made in respect of the indirect victims have not been sufficiently substantiated for purposes of admissibility.¹⁵ The Committee also observes that the violations affecting the indirect victims were not first referred to the national authorities, and that, consequently, domestic remedies have not been exhausted. In view of the foregoing, the Committee considers that the allegations submitted on behalf of the indirect victims in this communication are not admissible under rule 99 (b) of the Committee's rules of procedure and article 5 (2) (b) of the Optional Protocol.

9.5 The Committee notes that the author raises several other grievances, including deprivation of resources for six years, damage to property, the freezing of his accounts and the confiscation of his passport and those of several members of his family, resulting in restrictions on their freedom of movement. The Committee notes, however, that the author has not exhausted domestic remedies with regard to the confiscation of his passport. It also notes the author's allegations that the State party's refusal to allow him to communicate with his lawyer was akin to psychological torture, in violation of articles 7 and 14 (3) of the Covenant. In addition, the Committee notes the author's allegations of a violation of article 26 of the Covenant in that he was a victim of discrimination because he was treated unfavourably relative to another similarly situated employee who was reinstated immediately after his acquittal. The Committee also notes the author's allegations regarding the consequences of the confiscation of his passport for his freedom of movement and freedom to travel. However, the Committee finds that these allegations are not sufficiently substantiated and therefore declares them inadmissible.

9.6 The Committee has already noted that the fact that the Compensation Commission provided for in the Criminal Procedure Code of Cameroon was not operational exempted the author from the obligation to exhaust domestic remedies for obtaining compensation for injury attributable to the functioning of the public justice system.¹⁶ The Committee also notes that, in its observations, the State party fails to provide information on whether and how the prohibition on the author's lodging a claim with the Compensation Commission following the expiry of the six-month time limit established in article 237 (6) of the Criminal Procedure Code could have been lifted and does not indicate whether there was any possibility of appealing against this measure within the domestic legal system.¹⁷

9.7 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 grievances raised by the author under article 9 (5) of the Covenant, and proceeds to consider it on the merits.

Consideration on the merits

10.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's allegations that he is a victim of a violation of article 9 (5) of the Covenant because he has not received compensation for the injury he suffered as a result of his unlawful arrest and detention.

¹⁵ See rule 99 (b) of the Committee's rules of procedure.

¹⁶ *Abessolo v. Cameroon* (CCPR/C/130/D/2587/2015), para. 8.5.

¹⁷ *Ibid.*

10.3 The Committee recalls its general comment No. 35 (2014) according to which, within the meaning of article 9 (5) of the Covenant, the “unlawful” character of the arrest or detention may result from violation of domestic law or violation of the Covenant itself, such as substantively arbitrary detention and detention that violates procedural requirements of other paragraphs of article 9. However, the fact that a criminal defendant was ultimately acquitted, at first instance or on appeal, does not in and of itself render any preceding detention “unlawful”.¹⁸

10.4 In the present case, the Committee notes the author’s allegation that he was arrested in his office in Douala on 21 February 2006, without a court-ordered warrant, and was then taken in a private vehicle to the national criminal investigation police headquarters in Yaoundé, where he was detained without the right to receive visits from family members for a period of 19 months. The Committee notes the author’s claim that a ban on leaving the country was imposed on him from 2006 to 2014. The Committee also notes the State party’s argument that the author’s arrest and detention were justified because misappropriation of public funds was classified as an offence punishable by life imprisonment under article 184 (1) (a) of the Criminal Code in force at the time of the events.

10.5 The Committee recalls that it is for national courts to review facts and evidence or the application of domestic legislation in a particular case, unless it can be shown that the evaluation of evidence or application of the law was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁹ In the present case, the Committee observes that the conditions guaranteed by the Covenant should still have been met even though, as the State party points out, the Court of Appeal of Centre Region classified the acts of which the author was accused as offences against State property and he was suspected of substantial misappropriation of public funds at the time of his arrest.²⁰ The Committee also observes that the State party has not contested the author’s allegation that the presiding judge of Mfoundi High Court in Yaoundé failed to rule on the habeas corpus application that he submitted as a means to contest the irregularities of which he claimed to be a victim and request his release on grounds of the procedural irregularities that, according to the author, compromised his arrest and detention.

10.6 The Committee also notes that the author was not permitted to contact his lawyer until 20 days after he was placed in detention, that is, on 15 March 2006. The Committee notes the State party’s argument that a visiting permit dated 15 March 2006 was issued by the Public Prosecution Service, which fact confirms that the author was permitted to contact his lawyer only at a late stage. The Committee recalls that article 9 of the Covenant also requires compliance with domestic rules providing important safeguards for detained persons, such as access to counsel.²¹ The Committee observes that the fact that access to a lawyer to assist the author after his arrest was provided only at a late stage is an indication of the unlawful nature of his detention.

10.7 The Committee takes note of the author’s argument that he was detained for 19 months in violation of article 221 of the Criminal Procedure Code, which stipulates that the duration of pretrial detention established by the investigating judge in the warrant may not exceed six months, subject to extension for a further period not exceeding 12 months. The Committee also takes note of the State party’s argument that, at the time of the author’s detention on 22 February 2006, the Criminal Investigation Code then in force did not establish a requirement to mention the duration of detention in the warrant, and that, even under the new Criminal Procedure Code, this requirement concerns only the criminal investigation phase of the proceedings.

10.8 The Committee recalls that, under article 9 of the Covenant, no one may be subjected to arbitrary arrest or detention. It further recalls that, after an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether

¹⁸ Human Rights Committee, general comment No. 35 (2014), para. 51.

¹⁹ *Riedl-Riedenstein et al. v. Germany*, para. 7.3; and *Schedko and Bondarenko v. Belarus*, para. 9.3.

²⁰ See, in this connection, *Borisenko v. Hungary*, para. 7.2.

²¹ Human Rights Committee, general comment No. 35 (2014), para. 23; *Butovenko v. Ukraine* (CCPR/C/102/D/1412/2015), para. 7.6.

it continues to be reasonable and necessary in the light of possible alternatives.²² In addition, article 9 (3) states that anyone arrested or detained on a criminal charge must be tried within a reasonable time or released. The Committee notes that the author was not immediately notified of the reasons for his arrest and that he was held in detention without the possibility of challenging its lawfulness, as his habeas corpus application was not even considered. Moreover, his detention for more than 19 months appears to have exceeded the 18-month time limit which, according to the State party, is set by the Criminal Procedure Code that entered into force on 1 January 2007, when the author was still in detention. The Committee notes in this connection that the State party has not put forward any grounds to justify the author's detention beyond the maximum time limit permitted under national law. In view of the foregoing, the Committee considers that the author has been a victim of detention in violation of the safeguards established in article 9 (1), (2) and (3) of the Covenant.²³

10.9 In this connection, the Committee notes the author's argument that the out-of-court settlement reached between him and his employer essentially concerned outstanding salary payments and the reparation of his career, taking account of the pay grade increases that had been frozen during his long involuntary absence, and that this out-of-court settlement does not mean that he has waived his right to compensation from the State party. The Committee notes that the author sees the amount paid by the State to Cameroon Real Estate Cooperation to cover outstanding salary and social security payments due in this case as an explicit acceptance that there was a case for compensation on the part of the employer, as the civil party in the case, and that, consequently, the State party, as the prosecuting party and the party against which the author has brought the present communication, must also provide compensation for the injury he has suffered as a result of its action. The Committee also notes the State party's argument that the allegations regarding pay and social security entitlements that the author puts forward in evidence of the material injury that he and his family suffered as a result of his arrest and detention do not fall within the scope of article 9 of the Covenant; that, as the author points out, the labour dispute between the author and his employer was settled amicably out of court; and that, consequently, the author's claim for compensation is unfounded. The Committee notes, however, that the State party has not indicated how, beyond the resolution of the salary- and social security-related aspects of the dispute between the employer and the author, the issue of compensation for unlawful arrest and detention has been resolved, in accordance with article 9 (5) of the Covenant.

10.10 The Committee bases the unlawful character of the author's detention on the fact that: (a) it was only at a late stage that the author received a visit from his lawyer, who was not permitted to visit him until twenty days after his arrest; (b) the author was unable to contact his family and loved ones during his detention; and (c) he was not able to have the lawfulness of his arrest and detention reviewed even though a request to that effect was submitted to Mfoundi High Court. The Committee further notes that the State party has not submitted any evidence to challenge the author's claim that his arrest was unlawful. Accordingly, the Committee considers that the author has a right to compensation pursuant to article 9 (5) of the Covenant. Having found a violation of article 9 of the Covenant, the Committee has decided not to consider the allegation of a violation of article 2 (3), read in conjunction with article 9 of the Covenant, in respect of the same events.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it reveal a violation by the State party of the author's rights under article 9 (5) of the Covenant.

12. 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 obligation requires it to make full reparation to persons whose Covenant rights have been violated. Accordingly, the State party is required, inter alia, to take appropriate steps to: (a) provide the author with adequate compensation for the violation of article 9 (5) of the Covenant; and (b) give the author access to a mechanism through which he can claim compensation for his excessively prolonged

²² Human Rights Committee, general comment No. 35 (2014), para. 38; see also *Taright et al. v. Algeria* (CCPR/C/86/D/1085/2002), paras. 8.3 and 8.4.

²³ *Bengono v. Cameroon* (CCPR/C/132/D/2609/2015), para. 7.2.

detention. The State party is also under an obligation to prevent similar violations from occurring in the future.

13. 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 or 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 Committee's 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.
