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**Committee against Torture**

 Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1034/2020[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

*Communication submitted by:* S.B. (represented by counsel, Michael Fossoh Nkendem)

*Alleged victim:* The complainant

*State party:* Cameroon

*Date of complaint:* 2 July 2020 (initial submission)

*Document references:* Decision taken pursuant to rule 115 of the Committee’s rules of procedure, transmitted to the State party on 27 October 2020 (not issued in document form)

*Date of adoption of decision:* 4 November 2022

*Subject matter:* Torture or ill-treatment of a prisoner during a medical emergency

*Procedural issues:* Admissibility – exhaustion of domestic remedies; admissibility – examination by another procedure of international investigation or settlement; admissibility – level of substantiation of claims

*Substantive issues:* Political activities; obligation of the State party to proceed to a prompt and impartial investigation; torture; cruel, inhuman or degrading treatment

*Articles of the Convention:* 1, 2, 11–14 and 16

1. The complainant is S.B., a national of Cameroon born on 25 April 1967. He is currently being held at Yaoundé Central Prison (Kondengui), having been sentenced to life imprisonment. He considers that the State party has violated his rights under articles 1, 2, 11–14 and 16 of the Convention. The State party made the declaration pursuant to article 22 (1) of the Convention on 12 October 2000. The complainant is represented by counsel.

 Facts as submitted by the complainant

2.1 The complainant is considered a political prisoner in Cameroon, as he is one of the leaders of the Interim Government of Ambazonia, an Anglophone separatist movement that has been in conflict with the Government of Cameroon in the west of the country for three years. He and other leaders of the movement were unlawfully arrested in Nigeria in January 2018 before being forcibly transferred to Cameroon.

2.2 On 20 August 2019, the complainant was sentenced to life imprisonment by Yaoundé Military Tribunal for terrorism, resistance and secession. The fairness of the trial has been called into question.[[3]](#footnote-3) He has since been serving his sentence at Yaoundé Central Prison.

2.3 In May 2020, when the complainant had been suffering from respiratory issues for several days and had all the symptoms associated with the coronavirus disease (COVID-19), the prison authorities failed to provide him with the necessary care. On the morning of 16 May 2020, with his health taking a severe turn for the worse, he was transferred to Yaoundé Military Hospital, where his family found him comatose and on a drip.[[4]](#footnote-4) On the evening of 19 May 2020, on the pretext of having to increase security around the complainant, the prison authorities applied handcuffs to him, securing them too tightly, and attached him to the bed, even though there was no justification for doing so and he was still on a drip.[[5]](#footnote-5) The complainant remained handcuffed to his bed all night, unable to move, and complained for hours about severe pain. This pain was inflicted and restraint used deliberately by the prison guards, who were public officials performing their official duties, for the purpose of extracting information from the complainant or coercing him.

2.4 In an affidavit, the complainant’s sister stated that the same guards had told her that they wanted the complainant to “cooperate with them”, given his links to the independence movements in western Cameroon in conflict with government forces.[[6]](#footnote-6) The complainant was also struck in the chest by one of the prison guards, causing him great pain. The purpose of thus striking and restraining him was to debase and humiliate him, resulting in a violation of his human dignity.

2.5 In addition, the complainant had a sheet placed over his head during the night, such that he was effectively hooded. The prisoner escort guards justified this action as a way of protecting him from mosquito bites. Such treatment is akin to a technique of “disorientation”, which has the effect of making the victim lose his or her geographical and visual points of reference and causes severe mental anguish, particularly when the deprivation of liberty lasts for an especially long time. Moreover, for a patient experiencing the symptoms of COVID-19, which is caused by a respiratory infection, this disorientation technique could not but have significantly increased his breathing difficulties and the suffering inherent in the sensation of asphyxia.

2.6 On 26 May 2020, the complainant filed a complaint with the public prosecutor regarding the treatment to which he had been subjected at the military hospital, but no action was taken in response and no investigation was conducted by the State party. The complainant tried to contact the judicial authorities again on 26 June 2020 but did not receive a reply.

2.7 As for the possibility of filing a complaint with a hierarchically superior prosecutor or the courts regarding the conduct of the investigation, it is not legally possible to address such a complaint to the Chief Prosecutor, who is not competent to receive it. Likewise, the events in question have not been referred to any other judicial authority, owing to inaction on the part of the domestic authorities, and it is not possible for the complainant to apply directly to a court.

2.8 The complainant maintains that, in any case, there is no obligation to exhaust domestic remedies if they offer no prospect of success. He alleges that the remedies are neither available nor effective and that applying them would do nothing but unreasonably prolong recognition of the ill-treatment to which he was subjected. The justice system in Cameroon is not impartial, and impunity is widespread when members of the authorities commit human rights violations. Moreover, when remedies are sought before the competent courts, inaction on the part of the Cameroonian justice system causes the proceedings to be unreasonably prolonged, contrary to the right to a fair trial and to recognition of effective and efficient justice.

 Complaint

3.1 According to the complainant, the State party has violated his rights under articles 1, 11–14 and 16 of the Convention.[[7]](#footnote-7)

3.2 The authorities’ refusal to provide the complainant with appropriate care and the unjustified and disproportionate infringement of his liberty constitute inhuman treatment within the meaning of article 16 of the Convention. At the time of the events, the complainant was in a particularly critical condition; he was experiencing serious respiratory issues and presenting all the symptoms of a severe form of COVID-19. However, he was neither tested nor received treatment. He had recently been in a coma and was on a continuous drip. He was extremely tired and could not move freely.

3.3 In addition, a sheet was placed over the complainant’s head for several hours during the night, which caused him severe stress and mental suffering. By disregarding the complainant’s health, the prison guards failed to respect his humanity and thus seriously violated his dignity. In this connection, the judges of the European Court of Human Rights have considered that such acts amount to inhuman treatment within the meaning of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).[[8]](#footnote-8)

3.4 As the complaint of 26 May 2020 and the reminder of 26 June 2020 went unanswered, the State party is in breach of its general obligation to conduct a thorough investigation when there is ground to believe that an act of torture or inhuman treatment has been committed under its jurisdiction, in accordance with article 12 of the Convention.

 State party’s observations on admissibility

4.1 In its observations of 24 February 2021, the State party notes that, since 22 November 2018, the complainant has been held at Yaoundé Central Prison in connection with proceedings for acclamation of acts of terrorism, secession, complicity in acts of terrorism, financing of acts of terrorism, recruitment and training for participation in acts of terrorism, revolution, insurrection, hostilities against the fatherland, armed band, propagation of false information, undermining the external and internal security of the State and non-possession of a national identity card.

4.2 The proceedings culminated in judgment No. 194/19 of Yaoundé Military Tribunal of 19 and 20 August 2019, in which the complainant was found guilty of the aforementioned offences and sentenced to life imprisonment. This judgment was upheld by the Centre Region Court of Appeal on 17 September 2020.

4.3 On 22 November 2018, a remand warrant having been issued against him, the complainant was entered in the register of Yaoundé Central Prison and placed in building No. 13 of the detention block, in accordance with section 20 of Decree No. 92/052 of 27 March 1992 on the prison system in Cameroon. The Decree establishes, inter alia, principles and rules to ensure the humane treatment of prisoners.

4.4 On 23 November 2018, pursuant to section 32 (1) of Decree No. 92/052, the complainant received a medical visit from the chief prison cardiologist. The visit revealed that the complainant had diabetes, a fungal infection and dental cavities. Subsequently, the complainant was seen on multiple occasions at the infirmary of Yaoundé Central Prison, the Yaoundé prison medical centre and hospitals with more advanced equipment, such as Yaoundé Military Hospital, a referral facility in the national public health system.

4.5 The complainant had five consultations at Yaoundé Military Hospital. On 16 May 2020, following “delirious spells”, he was admitted to the emergency department of Yaoundé Military Hospital. The medical consultation and the results obtained on the same day revealed that the complainant had hypoglycaemia, with a reading of 0.5 g/l (normal values fall between 0.6 and 1.2), sodium and potassium deficiencies and anaemia. Additional tests established that the complainant had neither COVID-19 nor a respiratory condition.

4.6 During his seven-day hospital stay, the complainant was able to receive visits from his family, and one member remained at his bedside at all times. To mitigate the risk of escape, a team was assigned to guard him, its members rotating every 24 hours. Owing to the cool weather at that time of the year, the prison guards took care to cover the complainant with a sheet up to his waist. The director of Yaoundé Central Prison carried out several inspections and spoke with the complainant and members of his family. His family members did not bring any issues to the director’s attention.

4.7 The State party considers that the complaint is inadmissible on the grounds that the complainant has not exhausted domestic remedies and that the complaint lacks substantiation.

4.8 Domestic remedies are available to the complainant. He alleges – without evidence – that domestic remedies are unavailable and ineffective, that the subsequent proceedings would be unreasonably prolonged and that law enforcement officials enjoy impunity. However, the State party has established torture as a specific offence under Law No. 97/009 of 10 January 1997 amending certain provisions of the Penal Code.[[9]](#footnote-9) Section 277-3 (6) and (7) of the Code specify that “torture may not be justified by command of a superior or public authority” and that “no exceptional circumstances, whatever they are, whether a state of war or threat of war, internal political [in]stability or state of exception, may be invoked to justify torture”. Stringent penalties have been established in proportion to the severity of the acts committed.[[10]](#footnote-10) Depending on the applicable penalty, torture constitutes either a misdemeanour or a felony under Cameroonian law,[[11]](#footnote-11) with misdemeanours falling under the jurisdiction of the court of first instance (*tribunal de première instance*) and felonies under that of the high court (*tribunal de grande instance*).[[12]](#footnote-12)

4.9 On the procedural side, under sections 83 and 135 of the Criminal Procedure Code, judicial police officers and the State Counsel receive complaints from persons who consider themselves to be victims of offences. Complaints are not subject to any requirements of form, and there is no fee to pay. Even a prisoner may file a complaint with these judicial authorities, under the supervision of the prison director or through his or her lawyer.

4.10 In the present case, the complainant chose to address his complaint to the public prosecutor of the Centre Region Court of Appeal, under whose control judicial police officers operate in the region, in accordance with section 78 (3) of the Criminal Procedure Code. Contrary to the claims made in the communication, the public prosecutor of the Centre Region Court of Appeal instructed the State Counsel of the Mfoundi High Court to open an investigation. The ensuing investigative actions are under way. The results of the investigation will determine the appropriate legal action to be taken.

4.11 In addition, under sections 59–61 of the Criminal Procedure Code, any offence may give rise to, on the one hand, the institution of criminal proceedings aimed at securing a sentence or a preventive measure against an offender, which may also be initiated by the victim, and, on the other, a civil claim aimed at obtaining compensation for the damage resulting from an offence, which may be made by the victim alongside a criminal action before the same court so long as they arise from the same offence.

4.12 Any person subject to Cameroonian law who considers himself or herself to be the victim of an offence may institute a criminal action either through a private prosecution by way of a direct summons or through a complaint with a civil claim.[[13]](#footnote-13) Not only may the complainant receive legal assistance,[[14]](#footnote-14) but undertaking a private prosecution by way of a direct summons and lodging a complaint with a civil claim are simple and inexpensive procedures. A direct summons drawn up by a bailiff results in the case being listed for hearing within the prescribed time limit of five days following service to the addressee, in accordance with section 52 of the Criminal Procedure Code.

4.13 Complaints accompanied by civil claims are addressed to the president of the competent court, who appoints the examining magistrate who will be responsible. In the present case, the complainant neither undertook a private prosecution by way of a direct summons nor lodged a complaint with a civil claim.

4.14 The court competent to consider a civil claim brought separately from a criminal action depends on the extent of the damages sought.[[15]](#footnote-15) The claim is filed with the court of first instance where the damages sought are less than or equal to 10 million CFA francs (CFAF) and with the high court where they exceed CFAF 10 million. This is usually done by means of a writ as provided for in sections 6 et seq. of the Civil and Commercial Procedure Code. The prescribed time limit between service of a writ drawn up by a bailiff and the first hearing is eight days, in accordance with section 14 of the Code. In the present case, the complainant chose not to pursue civil proceedings.

4.15 In addition, the available remedies are effective. The criminal law is binding on everyone in Cameroon, and judicial penalties are imposed on law enforcement officials who commit human rights violations, regardless of any disciplinary penalties that may be imposed. The courts have heard and hear cases of torture or cruel, inhuman, or degrading treatment involving law enforcement officials. Contrary to the complainant’s claims of impunity, where allegations are substantiated, the courts hand down guilty verdicts, impose penalties and award damages to the victims.

4.16 The *Ibrahim Bello* case, in which a police inspector and a police officer were prosecuted for torture and serious injury, offers a recent example. In a judgment of 6 May 2020, the Mbam-et-Inoubou High Court found them guilty of the offences in question, imposed penalties and awarded CFAF 50 million in damages to the victims.

4.17 Concerning the prison authorities specifically, in 2018, proceedings were instituted before the Bafia court of first instance against four prison guards, all of whom were remanded in custody, following the inhuman treatment of a prisoner. More generally, 10 cases were brought before Bamenda Military Tribunal in 2019 against a total of 31 members of the military. Judgments have already been handed down in seven cases, and prison sentences ranging from 12 months to 7 years were imposed for breaches of rules, destruction of property, kidnapping by fraud, abuse of function, retaining property belonging to another without just cause, rape, conditional threats, capital murder and failure to report. For example, the Tribunal sentenced a private first class to 7 years’ imprisonment for rape.

4.18 As at 7 November 2019, there were 48 pending cases before Buea Military Tribunal against a total of 88 members of the defence and security forces, who were being prosecuted for various offences, including breaches of rules, aggravated theft, capital murder, abuse of function, retaining property belonging to another without just cause, attempted murder, slight and simple harm, destruction of property, conditional threats, trespass, indecency with a child aged under 16 years resulting in rape, false arrest and false pretences. By that date, judgments had already been handed down in 5 cases, and prison sentences ranging from 12 to 18 months had been imposed. In addition, legal proceedings were initiated against two police officers in 2019 for improper use of a firearm and violence against a person in police custody.

4.19 The present communication is also manifestly unfounded, as the complainant has not provided any evidence to support his allegations regarding a denial of care at Yaoundé Central Prison, acts of violence, hooding or the use of handcuffs at Yaoundé Military Hospital. He has merely submitted with his complaint an illegible statement of which neither the author nor the content can be determined.

 Complainant’s comments on the State party’s observations on admissibility

5.1 In his comments of 23 June 2021, the complainant maintains that the State party has not provided sufficient evidence to support its claims regarding the care that he supposedly received in prison and at the hospital. The complainant refers to several reports by non-governmental organizations to challenge the State party’s assertions regarding current prison conditions in Cameroon. He also refutes some of the State party’s factual observations. It is not true that a member of his family remained at his bedside at all times, as his sisters were both removed from his hospital room by the Kondengui prison authorities on the evening of 19 May 2020 and had to wait until the following morning to return to see him. Moreover, he was not covered with a sheet from the waist down but from head to toe, like a corpse. On the pretext of potentially protecting him from intense heat and mosquitoes, he was subjected to actual inhuman treatment with severe psychological after-effects. Lastly, on the evening of 19 May 2020, he was chained to his hospital bed by the wrists, even though he was on a drip. This inhuman treatment had severe physical after-effects for the complainant.

5.2 With regard to the exhaustion of domestic remedies, the complainant filed complaints with the public prosecutor on 26 May and 26 June 2020, without receiving a reply, on the basis that articles 1, 11–14 and 16 of the Convention had been violated. It is therefore legitimate for him to file a complaint with the Committee.

5.3 Furthermore, none of the courses of action mentioned in the State party’s observations can be considered effective. Many human rights violations at the Kondengui prison, including cases of inhuman treatment, have been challenged before the various domestic courts. Hardly any of these challenges have been successful, owing either to a supposed lack of evidence or to physical violence perpetrated by Cameroonian law enforcement officials against several lawyers. These remedies therefore offer no reasonable prospect of success, impose excessive requirements in respect of the complaint and cannot remedy the situation at hand.

5.4 Regarding the level of substantiation of the complaint, the complainant explains that the authorities did not allow him to be photographed when he had a sheet over his head. It was therefore not possible to submit any visual evidence with the complaint. This is not an isolated case of ill-treatment. On 5 August 2020, T.T., a prisoner at the Kondengui prison, died at the central hospital in Yaoundé, having also been handcuffed to a hospital bed, as a result of the ill-treatment to which he had been subjected. Similarly, I.O., another prisoner, was chained to his hospital bed by prison authorities for several days. On 31 May 2021, I.O. had to leave Jamot Hospital in Yaoundé, even though he had yet to recover, as a result of the physical and psychological suffering caused by this ill-treatment.

 State party’s additional observations on the merits

6.1 In its observations of 28 June 2021, the State party reiterates its arguments regarding the availability and effectiveness of domestic remedies, which have not been exhausted, and the complaint’s lack of substantiation. In particular, it informs the Committee that the investigation opened by the State Counsel of the Mfoundi High Court in response to the complaint filed by the complainant with the public prosecutor of the Centre Region Court of Appeal is still ongoing. The results of the investigation will determine the appropriate legal action to be taken.

6.2 With regard to the merits of the complaint, the State party considers that, by limiting his claims of denial of care to May 2020 alone, the complainant implicitly admits that, since 22 November 2018, when he was sent to prison, he has always received medical care.

6.3 When he was sent to prison, the complainant, like any other prisoner, was entered in the prison register and placed in a building in the detention block in accordance with section 20 of Decree No. 92/052. The Decree establishes, inter alia, principles and rules to ensure the humane treatment of prisoners.

6.4 The complainant was not subjected to inhuman treatment either in prison or when he was hospitalized. In addition to the information described in paragraph 4.4 above, the State party points out that, in accordance with the law, Dr. Kevin Nkem Efon, principal prison officer and chief prison cardiologist for the Centre Region, carried out a prison medical visit on 23 November 2018. The medical visit revealed that the complainant had diabetes, a fungal infection and dental cavities. A treatment protocol was subsequently put in place for the provision of the appropriate care.

6.5 As part of this care, the complainant has been seen several times at the expense of the State, not only at the infirmary of Yaoundé Central Prison but also at the Yaoundé prison medical centre. Moreover, the prison director has always made logistical arrangements to ensure that, where circumstances so require, and at the expense of the State, the complainant is transferred to hospitals with more advanced equipment, such as Yaoundé Military Hospital, a referral hospital in the national public health system, where he has had multiple consultations.

6.6 Even during the COVID-19 pandemic, the State party continued to ensure that the complainant received medical care. It is important to note that, in May 2020, the State party carried out screening tests at a random sample of prisons, including Yaoundé Central Prison. As positive cases were identified, the Ministry of Health recommended that the national medical protocol for asymptomatic positive cases should be applied, on a voluntary basis, to the entire population in question (the acceptance rate was 97.6 per cent). The complainant consented to this treatment.

6.7 Beyond the complainant’s case, the State party is redoubling its efforts to improve health care for all prisoners, to which it allocated a budget of CFAF 1.05 billion in 2019. A total of 65,901 routine consultations took place. To address the need for equipment more advanced than that available in prisons, 1,455 cases were referred for consultations at external facilities, leading to 377 admissions to such facilities and even cases of evacuation abroad. In 2020, there were 180 admissions to external facilities and 1,617 consultations at such facilities.

6.8 With regard to the specific condition mentioned above, on 16 May 2020, following the finding that he was experiencing delirious spells, the complainant was immediately transferred to Yaoundé Military Hospital by the prison authorities. A consultation with the doctor on duty and test results obtained on the same day revealed that the complainant had hypoglycaemia, with a reading of 0.5 g/l (normal values fall between 0.6 and 1.2), sodium deficiency (hyponatraemia), potassium deficiency (hypokalaemia) and moderate anaemia. Further tests established that the complainant had neither COVID-19 nor a respiratory condition.

6.9 While the complainant has been in prison, and notwithstanding the fact that several items prohibited by the internal regulations of Yaoundé Central Prison have been found in his possession and subsequently confiscated, no disciplinary measures have ever been imposed on him.

6.10 There is no evidence to support the complainant’s allegations of inhuman treatment at Yaoundé Military Hospital. The State party reiterates the information contained in paragraph 4.6 above and notes that the director of Yaoundé Central Prison carried out several inspections at the hospital and spoke with the complainant and members of his family. No issues were flagged by his associates, the staff, visitors or the nurse’s aide.

6.11 Further evidence that the allegations of violence are baseless can be found in the fact that, while the members of the guard team rotated every 24 hours, the complainant saw no need to name the perpetrator or perpetrators of these acts or even to specify the time and date of the events.

6.12 Moreover, the temporary use of handcuffs as an instrument of restraint was justified in part by the risk of escape, as terrorist groups with which the complainant aligned himself had posted messages on social networks announcing attacks in Yaoundé and suggesting that they would storm the hospital to free him. It was therefore necessary – in view of the risks – to make appropriate arrangements to limit the possibility of escape.

6.13 The need for the imposition of an instrument of restraint should be assessed through the lens of appropriateness and proportionality. Such a measure was determined to be appropriate in view of the prisoner’s profile and the fact that he was in an external environment. It was proportional because the complainant was not immobilized all night but had handcuffs applied to only one hand, which afforded him the ability to move as needed. These handcuffs were temporarily removed whenever he so requested.

6.14 Rule 48 (1) (b) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) states that the measure of restraint used should be that which is reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed. In this regard, handcuffs were clearly the measure “reasonably available” to the prison authorities in this situation.

6.15 Rule 48 (1) (c) of the Nelson Mandela Rules states that instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present. In accordance with this relevant provision, the measure of restraint applied to the complainant at 8 p.m. on 19 May 2020 was removed at 6 a.m. on 20 May 2020, as there was deemed to be minimal risk of escape or attack in broad daylight. He was not handcuffed again until he was discharged from hospital.

6.16 The complainant’s allegations regarding extraction of information and coercion are not relevant. The complainant claims that prison staff subjected him to ill-treatment in order to extract information from him or coerce him in view of his links to terrorist groups. This was not the case.

6.17 Before the complainant was sent to prison, the investigation into his criminal acts had been completed, and all the evidence against him had already been collected. Moreover, well before the date of the alleged events, the examining magistrate of Yaoundé Military Tribunal had closed the preliminary inquiries and referred the complainant to the Tribunal, which had handed down a conviction on 20 August 2019. Consequently, in May 2020, there was nothing to be gained from extracting information from the complainant or coercing him.

6.18 Moreover, prison staff are not judicial police officers within the meaning of sections 79–81 of the Criminal Procedure Code, let alone judicial police agents. Consequently, they lack the competence to perform such tasks as collecting evidence or assisting a judicial police officer. It is therefore fanciful to claim that they sought to obtain information from the complainant or to somehow coerce him.

 Complainant’s comments on the State party’s additional observations on the merits

7.1 In his comments of 16 February 2022, the complainant maintains that his efforts to exhaust domestic remedies were unsuccessful owing to unreasonable delays.[[16]](#footnote-16) The State party asserts that an investigation was opened in response to the complaint filed by the complainant with the State Counsel on 26 May 2020 but does not explain why this investigation has been neither conducted nor concluded. The mere existence of laws that establish penalties for the crime of torture is not sufficient to demonstrate that effective domestic remedies are available to the complainant. In the present case, the complainant’s access to domestic remedies was impeded by acts and omissions on the part of public officials.

7.2 The State party has conceded that the complainant was denied prompt medical care and was taken to a military hospital only once his condition had deteriorated. According to the medical report submitted by the State party, the complainant was in a serious condition and required specialized care. Furthermore, in this report, the attending physician neither recommended nor ordered that the complainant should be handcuffed to his bed while receiving care.

7.3 The domestic authorities obtained the complainant’s medical record through false statements. He submitted with his complaint the request that he made to the prison authorities for the return of his medical record, which is still in their possession. The prison authorities at Kondengui prison, where the complainant is being held, received the request for his hospital record on 10 February 2022 but neither acknowledged receipt of this request nor returned the record. The State party has not argued that the complainant, in his poor state of health, attempted to escape, which justified subjecting him to acts of torture and other cruel, inhuman and degrading treatment by chaining him to the hospital bed. The State party has not contested that its prison officers interrogated the complainant without justification and struck him in the chest during the interrogation at the hospital in an attempt to force him to confess to an unfounded charge that he denied.

7.4 The State party has neither explained nor provided evidence that the complainant, who was seriously ill and in a military hospital, was in possession of illegal material and was aware that, according to information supposedly circulated on social media, unidentified persons were trying to free him from prison.

7.5 The State party violated the complainant’s rights under article 2 of the Convention in that it recognized and attempted to justify the acts of torture and ill-treatment against him on the basis of proportionality.

 Issues and proceedings before the Committee

 Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the complainant’s case has been brought to the attention of the Working Group on Arbitrary Detention, which rendered an opinion on the case in October 2022. However, it recalls that the mandate of the Working Group on Arbitrary Detention concerns, *ratione materiae*, the question of arbitrary deprivation of liberty and not torture.[[17]](#footnote-17) Accordingly, the Committee considers that the examination of the complainant’s case by this procedure does not render the communication inadmissible under this provision.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it must ascertain whether the complainant has exhausted all available domestic remedies, although this rule does not apply where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the alleged victim.[[18]](#footnote-18) The Committee notes that, according to the State party, the complainant did not avail himself of any of the three available domestic procedures. In particular, he did not consider the possibility of lodging a complaint accompanied by a civil claim with the competent examining magistrate or undertaking a private prosecution by way of a direct summons under the Criminal Procedure Code. Furthermore, he did not file a complaint under sections 83 and 135 of the Criminal Procedure Code with judicial police officers or the State Counsel, who receive complaints from persons who consider themselves to be victims of an offence.

8.3 However, the Committee notes that, according to the State party, following the complainant’s submission of a complaint to the public prosecutor of the Centre Region Court of Appeal on 26 May 2020, the public prosecutor ordered the State Counsel of the Mfoundi High Court to open an investigation, and the ensuing investigative actions are under way. Nevertheless, the Committee notes that, in his complaint of 26 May 2020, the complainant did not mention that he had been assaulted at the hospital by a police officer who allegedly struck him in the chest during an interrogation, while he was unwell, in an attempt to extract information from him. In addition, the complainant did not file a complaint with the authorities regarding his allegations that the prison authorities and staff members of Yaoundé Military Hospital had subjected him to torture and ill-treatment by refusing to provide him with treatment for respiratory issues similar to the symptoms of COVID-19 when he was in prison, causing him to fall into a coma. In this regard, the Committee recalls its jurisprudence, according to which mere doubts about the usefulness of remedies do not absolve a complainant from seeking to exhaust them.[[19]](#footnote-19) In the light of the foregoing, as the complainant has not provided any explanation as to why he did not file a complaint regarding these events at the domestic level, the Committee declares these aspects of the communication inadmissible under article 22 (5) (b) of the Convention.

8.4 Nevertheless, the Committee notes that, in the aforementioned complaint of 26 May 2020, the complainant stated that, on 16 May 2020, he had fallen into a diabetic coma in prison and claimed that, on the evening of 19 May 2020, he had been “treated roughly” when he was forcibly handcuffed, having tried to resist restraint, and when one of the hospital guards covered him with a sheet to stop mosquitoes from biting his face. Given that the State Counsel received the complaint on 26 May 2020, that, more than two years after the events, the investigation is still ongoing, and that the information received by the Committee does not suggest that any specific progress has been made in the investigation, the Committee considers that the application of this remedy has been unreasonably prolonged. As for the possibility of lodging a complaint accompanied by a civil claim or undertaking a private prosecution, the Committee concludes that, in the light of the foregoing, the remedies referred to by the State party would not have been effective in the present case. Accordingly, the Committee considers that it is not precluded, under article 22 (5) (b) of the Convention, from examining the complainant’s allegations that public officials subjected him to torture and ill-treatment by: (a) handcuffing him roughly; (b) restricting his liberty, as he could not move freely at the hospital and was handcuffed to the hospital bed during the night of 19 May 2020, causing him pain; and (c) covering his head with a sheet in the hospital bed.

8.5 The Committee recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 of its rules of procedure, it must rise to the basic level of substantiation required for the purposes of admissibility.[[20]](#footnote-20) The Committee notes that, according to the State party, the communication is manifestly unfounded. It recalls that, according to the complaint filed by the complainant on 26 May 2020, one of the guards covered him with a sheet to protect him from mosquitoes, which, as he complained, were biting his face. The Committee notes that, in the same complaint, the complainant did not provide any details as to how he had been treated roughly when handcuffs were applied and that, in his complaint to the Committee, he states that the handcuffs were applied too tightly but neither explains how this act constituted torture or cruel, inhuman or degrading treatment nor mentions any acts of violence. Furthermore, the Committee notes that, according to the State party, handcuffs were applied to only one of the complainant’s hands, from 8 p.m. on 19 May 2020, and were removed at 6 a.m. on 20 May 2020, as there was deemed to be minimal risk of escape or attack in broad daylight, and that handcuffs were not applied again until he was discharged from hospital. The Committee also notes that the complainant has not provided any details regarding the after-effects that allegedly resulted from the use of handcuffs for 10 hours or from other acts or omissions by prison or hospital staff.

8.6 The Committee refers to paragraph 38 of its general comment No. 4 (2017), according to which the burden of proof is upon the complainant, who has to present an arguable case.[[21]](#footnote-21) In the light of the foregoing, and in the circumstances of the present case, the Committee considers that the complainant has not discharged that burden of proof, having failed to provide sufficient information to establish that, when he was handcuffed and covered with a sheet at the hospital on the night of 19 May 2020, he sustained injuries or was subjected to other treatment that could be characterized as torture or cruel, inhuman or degrading treatment for the purposes of articles 1 or 16 of the Convention. Accordingly, the Committee considers that the complainant has failed to sufficiently substantiate his claims under articles 1, 2, 11–14 and 16 of the Convention for the purposes of admissibility.

8.7 In the light of the foregoing, the Committee declares the complaint inadmissible for failure to exhaust domestic remedies and for lack of substantiation, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure.

8.8 The Committee therefore decides:

 (a) That the communication is inadmissible under article 22 of the Convention;

 (b) That the present decision shall be communicated to the complainant and to the State party.

1. \* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022). [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija P‎ūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. [↑](#footnote-ref-2)
3. See Human Rights Watch, “Cameroon: Separatist Leaders Appeal Conviction: Grave Questions about Fairness of Trial”, 3 September 2019. [↑](#footnote-ref-3)
4. The complainant provides a copy of his complaint of 26 May 2020 to the public prosecutor. In this complaint, he states that, by the time that he was taken to hospital on 16 May 2020, he had fallen into a diabetic coma. [↑](#footnote-ref-4)
5. The complainant provided a medical slip from Yaoundé Military Hospital, dated 18 May 2020, which states that a physician requested a venous blood glucose test for him. [↑](#footnote-ref-5)
6. Together with his complaint, the complainant submitted his sister’s affidavit, dated 2 May 2020, in which she states that, on the evening of 19 May 2020, two guards told her and her sister that they had been ordered to handcuff the complainant. The guards asked them to tell the complainant to submit to being handcuffed. The sisters refused to do so out of concern for his health. [↑](#footnote-ref-6)
7. The complainant invokes article 2 of the Convention not in his initial complaint but in his later comments on the State party’s observations on the merits. [↑](#footnote-ref-7)
8. See European Court of Human Rights, *Ireland v. United Kingdom*, application No. 5310/71, judgment of 18 January 1978. [↑](#footnote-ref-8)
9. This text was amended by Law No. 2006/007 of 12 July 2016 on the Penal Code. According to the State party, in section 277-3 (5) of the Code, the term “torture”, which does not apply to pain or suffering arising from, inherent in or incidental to lawful sanctions, is defined as “any act by which acute pain or suffering, either physical, mental or psychological, is intentionally inflicted to a person by a public servant, a traditional leader or any other person acting in the course of duties either at his own instigation or with his express or implied consent, in order to obtain information or confessions from that person or from another, to punish her for an act that she or any other person has committed, or is presumed to have committed, to intimidate or overawe her or any other person, or for any other motive based on any discrimination”. [↑](#footnote-ref-9)
10. Cameroon, Law No. 2006/007 of 12 July 2016 on the Penal Code, sect. 277-3 (1)–(4). [↑](#footnote-ref-10)
11. Pursuant to section 21 (1) of the Penal Code, offences punishable by death or loss of liberty for a maximum of more than 10 years are classified as felonies; and offences punishable by loss of liberty or a fine, where the loss of liberty is more than 10 days but not more than 10 years and the maximum fine is more than CFAF 25,000, are classified as misdemeanours. [↑](#footnote-ref-11)
12. Cameroon, Criminal Procedure Code, sects. 289 and 407, and Cameroon, Law No. 2006/015 of 29 December 2006 on judicial organization, sects. 15 (1) and 18 (1). [↑](#footnote-ref-12)
13. See Cameroon, Criminal Procedure Code, sects. 40 et seq. and 157 et seq. [↑](#footnote-ref-13)
14. See Cameroon, Law No. 2009/004 of 14 April 2009 on the organization of legal assistance. [↑](#footnote-ref-14)
15. Cameroon, Law No. 2006/015 of 29 December 2006 on judicial organization, sects. 15 (1) and 18 (1). [↑](#footnote-ref-15)
16. See *Mukong v. Cameroon* ([CCPR/C/51/D/458/1991](http://undocs.org/en/CCPR/C/51/D/458/1991)) and *Engo v. Cameroon* ([CCPR/C/96/D/1397/2005](http://undocs.org/en/CCPR/C/96/D/1397/2005)). [↑](#footnote-ref-16)
17. *Niyonzima v. Burundi* ([CAT/C/53/D/514/2012](http://undocs.org/en/CAT/C/53/D/514/2012)), para. 7.1. [↑](#footnote-ref-17)
18. *Asfari v. Morocco* ([CAT/C/59/D/606/2014](http://undocs.org/en/CAT/C/59/D/606/2014)), paras. 8.1, 8.2 and 12.2. [↑](#footnote-ref-18)
19. See, inter alia, *S.K. and R.K. v. Sweden* ([CAT/C/47/D/365/2008](http://undocs.org/en/CAT/C/47/D/365/2008)), para. 11.3. [↑](#footnote-ref-19)
20. See, inter alia, *Z v. Denmark* ([CAT/C/55/D/555/2013](http://undocs.org/en/CAT/C/55/D/555/2013)), para. 6.3, and *K.A. et al. v. Sweden* ([CAT/C/39/D/308/2006](http://undocs.org/en/CAT/C/39/D/308/2006)), para. 7.2. [↑](#footnote-ref-20)
21. See also *T.M. v. Sweden* ([CAT/C/68/D/860/2018](http://undocs.org/en/CAT/C/68/D/860/2018)), para. 12.13. [↑](#footnote-ref-21)