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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2609/2015*, **

Communication submitted by:	Christophe Désiré Bengono (not represented by counsel)
Alleged victim:	The author
State party:	Cameroon
Date of communication:	25 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 May 2015 (not issued in document form)
Date of adoption of Views:	12 July 2021
Subject matter:	Criminal proceedings for misappropriation of public funds; prolonged pretrial detention
Procedural issues:	Exhaustion of domestic remedies; incompatibility with the provisions of the Covenant
Substantive issues:	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; arbitrary detention; imprisonment for non-fulfilment of a contractual obligation; arbitrary interference with family life
Articles of the Covenant:	2, 7, 9, 10, 11, 14, 15 and 17
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The author of the communication is Christophe Désiré Bengono, a national of Cameroon born on 8 May 1970. He claims that the State party has violated his rights under articles 2, 7, 9, 10, 14, 15 and 17 of the Covenant. The Optional Protocol entered into force for the State party on 27 September 1984. The author is not represented by counsel.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** 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, Carlos Gómez Martínez, 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.

The facts as submitted by the author

2.1 On 14 October 2008, the author was summoned by the Yaoundé police on suspicion of misappropriation of public funds and money-laundering to the detriment of the company Aéroports du Cameroun.[1] He was able to refute the accusations that same day, as shown by the preliminary investigation report of 25 November 2008 concerning the author and 10 other persons.[2] However, at 6.50 a.m. on 6 January 2010, the author was arrested in connection with the same allegations. On 7 January 2010, the public prosecutor attached to the Mfoundi Court of Major Jurisdiction issued an application requesting the investigating judge to open an investigation, stating that the police report of 25 November 2008 contained sufficient indications that the author and eight other persons had committed the acts in question.[3] On the same day, the author was charged and placed in pretrial detention by order of the investigating judge, without having been questioned about the allegations made against him, namely that he had colluded with others in order to fraudulently obtain or withhold sums of money belonging to Aéroports du Cameroun and had thus committed acts punishable under articles 74, 96 and 184 of the Criminal Code.[4]

2.2 On 24 February 2010, the author submitted a complaint for improper indictment by the prosecutor to the Deputy Prime Minister and the Minister of Justice. His complaint was never investigated.

2.3 The author was not heard by the investigating judge in connection with the alleged offences until 3 June 2010, that is to say, five months after he was placed in pretrial detention. The investigating judge issued two orders, on 6 July 2010 and 6 January 2011, extending the duration of the author's pretrial detention by six months each time and bringing the total period of pretrial detention to 18 months. On 17 August 2010, the author requested to be released in order to undergo surgery.[5] His request was refused by order of the investigating judge on 14 September 2010 on the grounds that it was necessary to preserve the evidence.

2.4 On 10 January 2011, the public prosecutor attached to the Mfoundi Court of Major Jurisdiction requested the investigating judge to extend the investigation on the basis of new facts and to charge the author with misappropriation of public funds. It was on this basis that the author was charged by the investigating judge at a hearing on 10 February 2011. The author pointed out to the investigating judge that the charges were the same as those filed against him on 7 January 2010. Nevertheless, on 14 February 2011, the judge issued another pretrial detention order for a period of six months. The author submitted a request for release on the same day but no action was taken in response. On 29 March 2011, the prosecutor again requested the investigating judge to extend the investigation, still on the basis of the same facts. On 19 April 2011, the author was charged once again in connection with those facts by the same investigating judge, who issued a third pretrial detention order.

2.5 On 27 May 2011, the author provided the investigating judge with his submissions on all the charges brought against him. By an order issued on 1 July 2011, the investigating judge decided to send the author and eight other persons for trial before the Mfoundi Court

[1] The author was an accountant and an accounting and finance director. The alleged offence was classified as misappropriation of public funds because, at the time of the events, the State held most of the company's capital.

[2] The police considered that there was reason to qualify the conclusions of an expert report on the involvement of the author and other persons in the acts of misappropriation and complicity of which the former director of Aéroports du Cameroun had been accused, as their actions had been performed in the exercise of their duties on the basis of the Director General's decisions and authorizations.

[3] In its observations of 3 April 2017, the State party mentions that the financial loss was equivalent to US$ 2,412,241.50.

[4] The author was informed that, since the case was before the investigating judge, he could no longer be heard by a police officer in connection with the same facts, except in the event of a request for judicial assistance.

[5] The author had been suffering from rhinosinusitis since 1999. On the basis of examinations carried out at La Cathédrale Medical Centre and Yaoundé University Hospital, he requested to be released in order to undergo surgery abroad, in view of the development of his nasal polyposis, because the equipment needed in order to gain access to the sphenoidal sinus is not available in Yaoundé.

of Major Jurisdiction.[6] The investigating judge extended the pretrial detention order of 14 February 2011 by six months on 16 August 2011 and again on 9 February 2012. On 25 August 2011, more than six months after the charges were filed on 10 February 2011, the author was questioned for the first and only time about the acts with which he had been charged.

2.6 During the first hearing before the Mfoundi Court of Major Jurisdiction, on 29 September 2011, the author presented the following preliminary objections: (a) he had been subjected to unlawful detention, as he had been held in police custody from 8 a.m. to 4 p.m. without being informed of the reason; (b) the expert report was void, because the experts had not been sworn in and were not registered on the national list; (c) he had not been informed about the expert report during the preliminary police investigation or the judicial investigation; (d) the committal order had not been signed by the registrar and the Court did not have criminal jurisdiction over the case; and (e) he had not been given the opportunity to confront the witnesses. By an interlocutory decision of 23 February 2012, the Court dismissed these objections. The Court asserted that investigators could call upon any person whom they considered qualified to provide any information that might be relevant to the investigation, and that expert reports were merely informational. It also found that the author had not provided any evidence of the irregularity of his detention by the police during the preliminary investigation, that he had not shown how he had been harmed by the fact that the operative part of the committal order did not refer to the applicable laws and that he had not provided the Court with all the information that it needed in order to determine which testimony or prosecution witnesses he wished to confront.

2.7 The author appealed against this decision on 24 February 2012; however, the chief registrar of the Mfoundi Court of Major Jurisdiction did not record the appeal until 4 July 2012.[7] The case was entered in the list of cases of the Criminal Division of the Centre Court of Appeal only on 21 August 2012, before being postponed to 18 September 2012 and then to 20 November 2012 because the Prosecutor General had failed to summon the party claiming damages.

2.8 On 20 November 2012, following the entry into force of Act No. 2011/028 of 14 December 2011 on the establishment of a special criminal court, as amended and supplemented by Act No. 2012/011 of 16 July 2012, the Centre Court of Appeal informed the defendants that the case would be transferred to the Special Criminal Court. The case file was sent on 27 February 2013, three months after the decision to transfer the case had been made. On 4 March 2013, the author requested the Special Criminal Court to order his release; his request was declared inadmissible on the grounds that the Court had not yet received the case file that had been sent on 27 February. On 1 April 2014, the author applied to the President of the Mfoundi Court of Major Jurisdiction for immediate release; his application was declared unfounded on 22 April 2014. The author appealed against this decision on 24 April 2014.

2.9 On 29 April 2014, the Special Criminal Court declared the author's appeal against the interlocutory decision of 23 February 2012 inadmissible on the grounds that the law establishing the Special Criminal Court had entered into force by then, meaning that decisions handed down by courts of major jurisdiction were subject to an appeal on points of law only and any other form of appeal against them was inadmissible.[8] On 18 July 2014, the Centre Court of Appeal rejected the author's application for immediate release. On 18 June 2015, the Supreme Court declared the author's appeal on points of law against the decision of 18 July 2014 to be admissible, but dismissed it on the grounds that such an appeal must be supported by a written application, otherwise it was liable to be rejected. According to the

[6] The charges were as follows: misappropriation of public funds, joint misappropriation of public funds, complicity in misappropriation of public funds, forging and making use of forged business and banking records, fabrication of evidence, personal interest in an undertaking and complicity, punishable under articles 74, 96, 97, 135, 168, 184 (1) and 314 of the Criminal Code.

[7] Article 443 (1) of the Code of Criminal Procedure states that the registrar must record the appeal "immediately".

[8] The author argues that the Special Criminal Court was not yet operational at the time of the appeal, as required by article 15 of Act No. 2011/028.

Supreme Court, not only had the author failed to submit anything in writing to support his appeal, but it was also clear from the case file and the author's own admissions that the criminal proceedings against him were still pending.

2.10 On 2 May 2014, the author filed a complaint with the Working Group on Arbitrary Detention. In November 2014, the Working Group issued an opinion in favour of the author in which it found that his detention was arbitrary inasmuch as it had no legal basis and it violated the right to a fair trial, and that it constituted a breach of the rights and freedoms guaranteed in articles 9 and 14 of the Covenant. In its conclusions, the Working Group requested the State party to release the author without delay and to take the necessary steps to redress the material and moral damages he had suffered by providing reasonable and appropriate compensation in accordance with article 9 (5) of the Covenant.[9] However, no action was taken by the State party.

2.11 In a record of final questioning of 30 December 2014, the Vice-President of the Special Criminal Court informed the author that he was accused of joint misappropriation of public funds, joint forgery and falsification of business and banking records, in violation of articles 74, 96, 184 (1) (a) and 314 of the Criminal Code. On the same day, the author was informed that the first hearing before the Special Criminal Court would take place on 14 January 2015. When that day came, the hearing was postponed to 13 February 2015, because the Office of the Prosecutor General had not summoned the party claiming damages. On 22 January 2015, the author filed another application for habeas corpus with the President of the Mfoundi Court of Major Jurisdiction, based on the opinion of the Working Group on Arbitrary Detention. Despite that opinion, on 30 June 2015, the Court declared the author's request for immediate release unfounded.

2.12 On 23 October 2015, the Special Criminal Court acquitted the author of misappropriation of funds and complicity in forgery of banking and business records for lack of evidence and ordered his release. However, the director of Yaoundé central prison refused to release the author, on the grounds that he was subject to other pretrial detention orders, namely those of 14 February and 19 April 2011, even though the orders in question had been issued in connection with the same offences and had already expired. On 26 October 2015, the Office of the Prosecutor General attached to the Special Criminal Court filed an appeal against the judgment of 23 October 2015, after the legal time limit of 48 hours and in respect of the author alone. This appeal remains pending.

2.13 On 27 October 2015, the author requested the Office of the Prosecutor General attached to the Special Criminal Court to cancel the pretrial detention orders of 14 February and 19 April 2011 that were preventing his release. On 30 October 2015, he filed another application for habeas corpus. On 5 November 2015, the Prosecutor General refused to order the author's release, on the grounds that the pretrial detention orders of 14 February and 19 April 2011, issued by the investigating judge of the Mfoundi Court of Major Jurisdiction, fell outside his jurisdiction. On 11 November 2015, the author again requested the Prosecutor General[10] to cancel the pretrial detention orders, on the grounds that they had expired, but no action was taken in response to his request.

2.14 Finally, on 19 November 2015, the judge ruling on the author's application for habeas corpus ordered that he be released and that the pretrial detention orders of 14 February and 19 April 2011 be cancelled. On 24 November 2015, this order was transmitted to the director of Yaoundé central prison, who once again refused to release the author. After being ordered to comply on 1 December 2015, the director finally granted the author's release.

2.15 On 18 December 2015, the author requested the Director General of Aéroports du Cameroun to lift the suspension of his employment contract and to provide reparation for the harm suffered. After receiving no response, he sent a reminder on 27 July 2016. On 28 July 2016, the Chairman of the Board of Directors of Aéroports du Cameroun informed the author that he could not grant the author's request, on account of the appeal filed by the Office of the Prosecutor General against the author's acquittal. On 29 July 2016, the author requested

[9] See A/HRC/WGAD/2014/46.

[10] According to the copy of the relevant document, his request was actually addressed to the President of the Special Criminal Court.

that the attachment of his bank accounts be lifted and that his personal vehicle and computer be returned to him. On 29 August 2016, his request was rejected by the Mfoundi Court of Major Jurisdiction on the grounds that the decision handed down in his case was not final and that it was for the court that had heard the case to rule on such matters.

2.16 As regards the author's state of health, he was suffering from acute nasal polyposis when he was arrested on 6 January 2010 and held in police custody, lying on a cement floor, for two days. It was not until 8.30 p.m. on 7 January 2010 that he was brought before the investigating judge. In view of the deterioration in his state of health, on 20 March 2010 he was granted permission to leave the prison to see a doctor. He underwent several scans and was admitted to Yaoundé University Hospital for palliative treatment on 27 July 2010, with the prosecutor's consent. His family arranged for him to have surgery in France on 8 November 2010, but all the requests for medical evacuation submitted by doctors to the President, the Prime Minister, the Minister of Health and the Minister of Justice were either rejected or ignored. After his condition worsened, the doctors decided to perform a partial operation on 4 February 2014. The author continued to receive hospital treatment while being detained at Yaoundé central prison.

The complaint

3.1 The author alleges that the State party has violated articles 2, 7, 9, 10, 14, 15 and 17 of the Covenant.

3.2 The author invokes article 7 of the Covenant in connection with the palliative treatment that he has received since his arrest, noting that all the requests for medical evacuation submitted by doctors were either rejected or ignored. The State party has not covered any of his medical expenses, even though the authorities are responsible for the worsening of his condition. The author's family has been forced to accumulate huge debts in order to pay for his palliative care and food.

3.3 The author claims that articles 9 (1)–(3) and 14 (3) (c) of the Covenant have been violated because: (a) he was taken into police custody without being notified of the reasons for his arrest and detention;[11] (b) he was detained for five months without having been questioned about the allegations made against him;[12] (c) he was tried for offences that had not been the subject of a judicial investigation; (d) his procedural objections were dismissed without any real reason by an interlocutory decision on 23 February 2012; and (e) the duration of his pretrial detention, which was extended repeatedly, exceeded the legal maximum of 18 months[13] and the maximum of 5 years' imprisonment that can be imposed for the offences with which he had been charged. The author also complains about delays and irregularities in the proceedings: a total of 26 months elapsed between his appeal against the interlocutory decision of 23 February 2012 and the decision on inadmissibility of 29 April 2014, even though article 437 (2) of the Code of Criminal Procedure states that the court of appeal must give its decision within seven days, counting from the day after the case file is received. Furthermore, 14 months elapsed between the transfer of the case to the Special Criminal Court and the Court's finding of inadmissibility, even though article 13 of Act No. 2011/028 states that the Court must settle any cases referred to it within a maximum of six months.

3.4 The author claims that, as a pretrial detainee, he was held in the same cell as convicted persons, in particularly harsh conditions,[14] in violation of article 10 (1) and (2) (a) of the Covenant. Given his state of health, the psychological bludgeoning to which he was subjected amounted to inhuman treatment and violated his human dignity.

[11] He was kept in police custody from 7.45 a.m. on 6 January 2010 until 8.30 p.m. on 7 January 2010.

[12] The author was brought before the judge on 7 January 2010, then charged and placed in pretrial detention. It was not until 3 June 2010 that he was questioned about the offences with which he had been charged.

[13] Cameroon, Code of Criminal Procedure, art. 221.

[14] Among other things, a mixed escort of prison guards and heavily armed police officers responsible for combating organized crime, a ban on visits for the first two months and no visits or communication with his minor children.

3.5 The author claims that he was not immediately informed of the allegations against him.[15] He adds that the so-called experts tasked with carrying out checks on the financial management of Aéroports du Cameroun were appointed irregularly, as they were not on the list of experts of the Centre Court of Appeal. Furthermore, their reports were never shared with the author to allow him to prepare his defence. The investigating judge showed a lack of impartiality when he reclassified the offences of which the author was accused,[16] doing so at a late stage and without informing the author in order to allow him to respond. The author was also not given the opportunity to confront the prosecution witnesses. In addition, the author contests the transfer of jurisdiction from the Mfoundi Court of Major Jurisdiction to the Special Criminal Court on the grounds that it constituted a violation of Cameroonian law and the Covenant. The author therefore considers that the State party has violated article 14 (1) and (3) (a), (b) and (e) of the Covenant. He also claims that his right to be presumed innocent under article 14 (2) of the Covenant was violated, because his personal property was confiscated even though a judgment to that effect had not been handed down, the property that was confiscated bore no relation to the alleged offences and the members of the court did not inform him of the charges against him.

3.6 The author alleges a violation of article 15 (1) of the Covenant, without providing further details. With reference to article 17 of the Covenant, the author claims that the events constitute arbitrary interference with his privacy, since his arbitrary detention and the media barrage against him have destroyed his family and disrupted the education of his 10 minor children, who have dropped out of school to avoid being constantly mocked by their classmates. The author notes that, in Cameroon, no support is provided for minors with a parent in pretrial detention.

3.7 The author claims that the State party has not fulfilled its obligation to ensure that persons whose rights or freedoms under the Covenant are violated have an effective remedy aimed at repairing the harm suffered and are able to have their right to such a remedy determined by a competent authority, in accordance with article 2 (3) of the Covenant. He considers that, in the present case, a domestic remedy ensuring the provision of reasonable and appropriate compensation in accordance with article 9 (5) of the Covenant, as requested by the Working Group on Arbitrary Detention, is non-existent, if not impossible.

3.8 On 15 September 2016, the author asserted that the appeal filed by the Office of the Prosecutor General against the judgment of 23 October 2015 would probably be allowed, because the President of the Special Criminal Court was the former Prosecutor General of the Centre Court of Appeal – that is, the supervisor of the public prosecutor attached to the Mfoundi Court of Major Jurisdiction who had initiated proceedings without any real legal basis against the author. Article 2 of the Covenant has therefore been violated. The author also alleges a violation of article 11 of the Covenant on the grounds that he received a detention order linked to the payment of costs following the judgment of 18 June 2015 and had to pay those costs in order to avoid imprisonment. This amounts to being sentenced for a debt. The author also maintains that, under domestic law, there is no entity responsible for the compensation of victims of improper detention in police custody or pretrial detention, nor is there any means of determining a person's right to such compensation, because, eight years after the entry into force of the Code of Criminal Procedure, the commission provided for in article 237 of the Code, which would assess and grant claims for compensation made under article 236 of the Code, has not yet been established. The remedy in question therefore exists in theory but not in practice.

State party's observations on admissibility and the merits

4.1 On 3 April 2017, the State party submitted its observations on admissibility and the merits, in which it argues that the communication should be declared inadmissible for non-exhaustion of domestic remedies and incompatibility with the provisions of the Covenant.

[15] The author raised the fact that he had not been informed, but the Mfoundi Court of Major Jurisdiction did not address this objection in its interlocutory decision of 23 February 2012.

[16] Acts initially classified as misappropriation of public funds were reclassified as complicity in forgery of banking and business records in the interlocutory decision of 23 February 2012.

Should the Committee find the communication to be admissible, the State party submits that it is without merit.

4.2 With reference to the order of 19 November 2015, whereby the judge ruling on the author's application for habeas corpus ordered his immediate release, the State party notes that it was because of the effectiveness and efficiency of its domestic remedies that the author was able to regain his freedom. In accordance with the Covenant, the national authorities have created effective mechanisms that may be used in cases of illegal or arbitrary detention, such as habeas corpus proceedings. The continued detention of a person despite a decision to acquit and discharge him or her is one of the scenarios covered by the law. The author made effective use of these remedies and was able to regain his freedom. It follows that his communication cannot be declared admissible on this basis.

4.3 As to the lawfulness of the author's detention, the State party contests the author's claim that, despite the opinion of the Working Group on Arbitrary Detention, the Supreme Court dismissed his appeal for immediate release on 18 June 2015, while the judge of the Mfoundi Court of Major Jurisdiction declared his request unfounded in an order issued on 30 June 2015. The State party argues that the opinion of the Working Group did not take into account the State party's response, which could not be submitted in time. The Working Group therefore did not have all the information that would have helped it to assess the lawfulness of the author's detention. As to the allegation that his detention was unlawful because he was kept in detention despite his acquittal on 23 October 2015, on the pretext that he remained subject to two pretrial detention orders, the State party considers that it is not the Committee's role to review the assessment of the facts and their classification.

4.4 According to the State party, remedies allowing for the provision of compensation are available under domestic law. In an order of 16 February 2016, the President of the Supreme Court noted the composition and effective establishment of the commission for the compensation of victims of improper detention in police custody or pretrial detention. The author did not check whether this commission existed by submitting a claim to it, even though that was the only way to assess whether or not it was operational. Furthermore, the author is mischievously trying to make it seem as though the remedies allowing for compensation are unavailable, even though he is not yet in a position to be able to submit a claim to this commission, because the appeal lodged by the prosecuting authorities against his acquittal remains pending and the commission examines only claims submitted by victims of improper detention in police custody or pretrial detention whose discharge or acquittal has become final.

4.5 As to the author's reinstatement, the State party considers that such a claim is inadmissible *ratione materiae*, since the right to work is not enshrined in the Covenant. In addition, the State party maintains that the author's request for the return of his property should have been submitted to the Special Criminal Court, not to the Prosecutor General attached to that court. This shows that the author failed to exercise a minimum of diligence in his pursuit of the available domestic remedies.

4.6 As to the merits of the case, with reference to article 9 (1) of the Covenant, the State party asserts that the author was detained in the context of judicial proceedings on a charge of misappropriation of public funds. Regarding article 9 (5), in addition to the fact that the author's detention was not arbitrary and that there are means of seeking reparation under domestic law, the State party recalls that the Committee's role is to assess whether the proceedings were conducted properly and in accordance with the Covenant and the Committee's general comments. The Committee has consistently left it to the national authorities to determine the procedure for seeking reparation.

4.7 Regarding the author's claims under article 14 of the Covenant that the time frames for handing down decisions and his right to equality before the courts were not respected, the State party explains that, in line with the principle of discretionary prosecution, the prosecuting authorities have the freedom to prosecute specific persons, based on the circumstances of the case, without this amounting to discrimination. The alleged violation of his right to trial within a reasonable time does not stand up to analysis. After the prosecuting authorities filed their appeal on 26 October 2015, the case file was sent to the Supreme Court. After the Prosecutor General – the appellant – was notified of the case file, he had 30 days to

submit further pleadings, otherwise he would be barred from proceeding. He submitted further pleadings on 8 January 2016 and the chief registrar of the Supreme Court notified the pleadings to the author's counsel, who had 30 days to file their observations in reply. They did so on 24 and 29 February 2016. The appellant was given 15 days to submit his observations in reply, before the case file was sent to the reporting judge responsible for preparing a report on the case. The case is currently being registered by the Supreme Court for investigation.

Author's comments on the State party's observations

5.1 On 11 May 2017, the author submitted comments on the State party's observations, noting that the State party had no real counterarguments. He points out that when he filed his initial complaint with the Committee on 25 February 2015, the compensation commission, which was established on 16 February 2016, did not yet exist.

5.2 The author notes that his request for compensation is based on the opinion rendered by the Working Group on Arbitrary Detention, in which the State party was requested to provide the author with reasonable and appropriate compensation in accordance with article 9 (5) of the Covenant. Furthermore, he believes that the courts' assessment of the facts of the case was clearly arbitrary and that there has been a denial of justice, as demonstrated in his initial submission.[17]

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee must first ascertain, in accordance with article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the author's case has been examined by the Working Group on Arbitrary Detention, which adopted an opinion on 19 November 2014. As the Working Group had already concluded its consideration of the case before the present communication was submitted to the Committee, the Committee will not address the issue of whether consideration of a case by the Working Group constitutes "another procedure of international investigation or settlement" within the meaning of article 5 (2) (a) of the Optional Protocol.[18] Consequently, the Committee considers that there are no obstacles to the admissibility of the communication under this provision.

6.3 The Committee notes that the State party contests the admissibility of the communication under article 5 (2) (b) of the Optional Protocol on the grounds that domestic remedies have not been exhausted.

6.4 The Committee notes the author's claim under articles 2 (3) and 9 (5) of the Covenant, through which he seeks to obtain reparation for his detention, which he describes as arbitrary. It notes, however, that the author has not raised the issue of reparation before the domestic courts. The Committee recalls that mere doubts about the effectiveness of domestic remedies do not absolve an author from the requirement to exhaust them and that the fulfilment of reasonable procedural rules is the responsibility of the author.[19] The Committee notes the information provided by the State party regarding the effective establishment of a commission for the compensation of victims of improper detention in police custody or pretrial detention by an order issued on 16 February 2016. It notes that the author is not in a position to be able to submit a claim for compensation to this commission, because the prosecuting authorities have lodged an appeal against his acquittal and the commission can

[17] On 25 May 2021, the author informed the Committee that the appeal filed by the Office of the Prosecutor General attached to the Special Criminal Court against the judgment of 23 October 2015 was still pending.

[18] *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 6.2.

[19] *Tonenkaya v. Ukraine* (CCPR/C/112/D/2123/2011), para. 7.4.

only examine claims submitted by victims whose discharge or acquittal has become final. The Committee notes that, since the author's acquittal is not final, his claims relating to improper pretrial detention and reparation for such detention remain pending before the domestic courts. The Committee recalls that, according to its jurisprudence, authors must avail themselves of all legal remedies in order to fulfil the requirement contained in article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective and available to the author.[20] Consequently, this part of the communication must be declared inadmissible under article 5 (2) (b) of the Optional Protocol.

6.5 The Committee notes the author's claim that he has been deprived of an effective remedy, in violation of article 2 of the Covenant, because the appeal filed by the prosecutor against his acquittal will probably be allowed. The Committee recalls that article 2 of the Covenant may be invoked by individuals only in relation to other provisions of the Covenant and considers that the author's claims in that regard should be declared inadmissible under article 2 of the Optional Protocol.[21]

6.6 As regards articles 7 and 10 (1) of the Covenant, the Committee notes, firstly, the author's claims that he was detained in conditions that were inhuman, given the worrying deterioration in his health and the State party's refusal to cover his medical expenses. The Committee notes that, according to the information submitted, the author has not raised these claims before the domestic courts. The Committee therefore considers that this part of the communication should also be declared inadmissible, under articles 2 and 5 (2) (b) of the Optional Protocol.[22]

6.7 The Committee notes, secondly, the author's claim that the conditions in which he was held and the way in which he was treated in pretrial detention contributed to the deterioration in his health, because the authorities refused to grant him access to appropriate medical care and, in doing so, subjected him to inhuman treatment, in violation of articles 7 and 10 (1) of the Covenant. The Committee notes that the author submitted numerous requests to the President and various ministries; however, he has not demonstrated that he raised these claims before the domestic courts. The Committee notes that, shortly after he was remanded in custody, the author was granted permission to leave the prison to see a doctor, was able to have several medical examinations, was admitted to hospital and underwent surgery outside the prison. Consequently, the Committee considers that the author has insufficiently substantiated his claim under articles 7 and 10 (1) of the Covenant for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes the author's claim that his rights under article 11 of the Covenant were violated insofar as he was at risk of being imprisoned for failure to pay costs following criminal proceedings. The Committee considers that the claim does not concern a failure to fulfil a contractual obligation; rather, it falls within the scope of criminal law. Accordingly, the Committee finds that this claim is incompatible *ratione materiae* with article 11 of the Covenant and is therefore inadmissible under article 3 of the Optional Protocol.[23]

6.9 The Committee notes the following claims made by the author under article 14 (1) and (3) (a), (b) and (e) of the Covenant: (a) his case was not heard by a competent and impartial tribunal; (b) he was not heard in connection with the alleged offences until five months after he was placed in pretrial detention; (c) he was tried for offences that had not been the subject of a judicial investigation; (d) there was a failure to transfer procedural documents; (e) his procedural objections were dismissed in the interlocutory decision of 23 February 2012 without any real reason; (f) the transfer of jurisdiction from the Mfoundi Court of Major Jurisdiction to the Special Criminal Court violated his right to a fair trial; and (g) he was not given the opportunity to confront the prosecution witnesses. The Committee notes that these claims, made by the author under article 14 (1) of the Covenant, relate to the application of domestic law by the courts of the State party. The Committee recalls that it is

[20] *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; and *Akwanga v. Cameroon* (CCPR/C/101/D/1813/2008), para. 6.4.

[21] *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.4.

[22] *Akwanga v. Cameroon*, para. 6.4; and *Foumbi v. Cameroon* (CCPR/C/112/D/2325/2013), para. 8.5.

[23] *Latifulin v. Kyrgyzstan* (CCPR/C/98/D/1312/2004), para. 7.2.

generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.[24] In addition, the Committee notes that the author has not specified the nature of the evidence or procedural documents to which he was denied access, nor has he stated, in relation to article 14 (3) (e) of the Covenant, which prosecution witnesses he was unable to confront. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.10 The Committee also notes the author's claim that his right to be presumed innocent was violated because his personal property was confiscated even though a judgment to that effect had not been handed down and because the property that was confiscated had nothing to do with the alleged offences, bearing in mind that the court had not indicated the charges against him. However, the Committee finds that the author has not explained how these procedural steps constitute a violation of the right enshrined in article 14 (2) of the Covenant and has insufficiently substantiated his claim for the purposes of admissibility. It therefore declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.11 The Committee further notes the author's claim that the State party violated his rights under article 15 (1) of the Covenant, because the time that he spent in pretrial detention exceeded the maximum custodial penalty that can be imposed for the offences with which he had been charged. In the absence of any other information to support this claim, the Committee considers that it has been insufficiently substantiated for the purposes of admissibility and therefore declares it inadmissible under article 2 of the Optional Protocol.

6.12 In the absence of any other information from the author regarding the exhaustion of domestic remedies in relation to article 17 of the Covenant, the Committee considers the communication inadmissible on that point.

6.13 Lastly, the Committee considers that the author's claim regarding his reinstatement is incompatible *ratione materiae* with the rights enshrined in the Covenant and is therefore inadmissible under article 3 of the Optional Protocol.

6.14 However, the Committee finds that the author has sufficiently substantiated his other claims for the purposes of admissibility and therefore proceeds to consider the merits of the claims made under articles 9 (1)–(3), 10 (2) and 14 (3) (c) of the Covenant.

Consideration of the merits

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

7.2 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 a periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives.[25] 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 informed of the reasons for his arrest until eight hours after he was taken into custody and that, after he was charged on 7 January 2010, and even after he was acquitted on 23 October 2015, he remained in pretrial detention until 1 December 2015. The Committee considers that the fact that the author was held in pretrial detention for over five years, until he was released on 1 December 2015, having been acquitted on 23 October 2015, constitutes an abuse of pretrial detention. That being the case and since the State party has not put forward any grounds that would justify the decision to keep the author in detention, the Committee finds a violation of article 9 (1)–(3) of the Covenant.

[24] *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.3; *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3; and *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6.

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

7.3 In view of the above, the Committee will not examine separately the author's claims under article 10 of the Covenant.

7.4 With regard to the claim that the proceedings were unduly delayed, the Committee notes the author's allegations that: (a) 26 months elapsed between his appeal against the interlocutory decision of 23 February 2012 and the decision on inadmissibility of 29 April 2014, even though article 437 (2) of the Code of Criminal Procedure states that such a decision must be given within seven days; and (b) 14 months elapsed between the transfer of the case to the Special Criminal Court and the Court's finding of inadmissibility, even though article 13 of Act No. 2011/028 states that the Court must settle any cases referred to it within a maximum of six months. The Committee further notes that the judgment on the merits was handed down 5 years and 10 months after the author was first placed in pretrial detention and that the appeal filed by the Office of the Prosecutor General attached to the Special Criminal Court against the judgment of 23 October 2015 is still pending, more than five years after it was filed. The Committee recalls that, under article 14 (3) (c) of the Covenant, everyone has the right to be tried without undue delay.[26] The State party has not put forward any reason that would justify these procedural delays or the long delay between the author being charged on 7 January 2010 and the judgment at first instance, acquitting him for lack of evidence and ordering his release, being handed down on 23 October 2015. The Committee is of the view that such a delay is all the more serious as the author had been in pretrial detention continuously since his arrest on 7 January 2010.[27] In the light of the information submitted to it and in the absence of an explanation by the State party, the Committee concludes that there has been a violation of article 14 (3) (c) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 9 (1)–(3) and 14 (3) (c) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to provide the author with adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations from occurring in the future.

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

[26] See, in particular, *Taright et al. v. Algeria*, para. 8.5.

[27] *Zogo Andela v. Cameroon* (CCPR/C/121/D/2764/2016), para. 7.4.