



# 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. 2886/2016\*, \*\*

<i>Communication submitted by:</i>	François Martin Zibi (represented by counsel, Étienne Abessolo)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Cameroon
<i>Date of communication:</i>	16 May 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 26 April 2023 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2023
<i>Subject matter:</i>	Lack of recourse to compensation
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Effective remedy
<i>Articles of the Covenant:</i>	2 (3) and 14 (1)
<i>Article(s) of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is François Martin Zibi, a Cameroonian national born in 1955. He claims that the State party has violated his rights under articles 2 (3) and 14 (1) of the Covenant. The Optional Protocol entered into force for the State party on 27 September 1984. The author is represented by counsel, Étienne Abessolo.<sup>1</sup>

1.2 On 1 May 2018, the Committee, acting through its Special Rapporteurs on new communications and interim measures, refused the State party's request for the admissibility of the communication to be considered separately from the merits.

\* Adopted by the Committee at its 137th session (27 February–24 March 2023).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rochel, Farid Ahmadov, Wafaa Ashraf Moharram Basim, Rodrigo A. Carazo, Yvonne Donders, Mahboub El Habiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bare Waly Ndiaye, Hernan Quezada Cabrera, José Manuel Santos Pays, Soh Chan grok, Tijani Ruslan, Kobayashi Thanda Captcha, Koji Tenaya, Hélène Taroudant and Meru Tamera Yeezus.

<sup>1</sup> Étienne Abes solo also submitted a communication to the Committee for similar reasons. The Committee examined this case on 30 October 2020 and recognized the violations committed by the State party; see *Abes solo v. Cameroon* (CCPR/C/130/D/2587/2015).



**Facts as submitted by the author**

2.1 Between 1985 and 2006, that is, up until the time of his arrest, the author was an executive at the Cameroon National Ports Authority. Initially a head of department from 1985 to 1993, then Deputy Director of Business Operations from 1993 to 1998, he was appointed Finance and Accounting Director in 1998. He became Divisional Director in charge of administration and finance in 2002, until being arrested in 2006 as part of Operation Épervier (Operation “Sparrowhawk”), a vast anti-corruption police operation intended to combat the misappropriation of public funds.

2.2 On 24 February 2006, the police arrested the author at his place of work – the Port Authority of Douala – without any previous summons. Several police officers burst into his office, accompanied by the Prosecutor General at the Court of Appeal, the Regional National Security Delegate and the Regional Head of the Criminal Investigation Police. The author was taken to the premises of the criminal investigation police where he was questioned and sent to Douala Central Prison the following day.

2.3 The author was charged with misappropriation of public funds, committed as part of a group, and referred for trial before Wouri High Court in Douala along with 12 co-defendants. The trial began on 26 November 2006 and ended with the author’s acquittal on 13 December 2007.

2.4 The prosecution service attached to Wouri High Court subsequently appealed the acquittal judgment. On 11 June 2009, Littoral Court of Appeal in Douala found all the co-defendants guilty, sentenced the author to 15 years’ imprisonment and ordered him to pay, jointly with four of his co-defendants, the sum of 34,291,448,117 CFA francs (around 52 million euros) in damages to the Port Authority of Douala, even though the Authority had not made any claim against the author.

2.5 Pursuant to the judgment issued by Littoral Court of Appeal in Douala, the author was placed in detention on 11 June 2009. He appealed to the Court of Cassation and, after a further five years in detention, was acquitted by a Supreme Court ruling dated 29 April 2014, on the grounds of a lack of evidence. Following this acquittal, the suspension of the author’s employment contract was lifted, the decision<sup>2</sup> ordering his dismissal was rescinded on 29 July 2014, and he was thus reinstated in the organization.

2.6 The author explains that he has suffered significant moral, physical<sup>3</sup> and material damages as a result of the seven years that he spent in detention. Under the Code of Criminal Procedure, it is possible to claim compensation in cases involving a prolonged period in detention that culminates in a definitive acquittal; the Code of Criminal Procedure provides that a compensation commission, chaired by an adviser to the Supreme Court and composed of, inter alia, two appellate judges, representatives of the civil service and a representative of the Bar Association, should be established in such cases. This compensation commission is the only body competent to process claims for compensation and reparation. However, such a commission was not formally established and the author has therefore been unable to lodge his claim.

**Complaint**

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

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

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<sup>2</sup> Decision No. 0758/14/DG/DRH/DpGE/SP/PAD, annex 11 to the file.

<sup>3</sup> As the author is diabetic, the conditions of his detention in Douala prison have aggravated his state of health. During his 22 months of pretrial detention, he spent 10 months in hospital due to serious diabetes complications. The author’s medical record is attached.

Cameroonian law, such claims must be submitted to the compensation commission, which in practice does not exist.

### **State party's observations on admissibility**

4.1 On 7 June 2017, the State party submitted its observations on admissibility. The State party argues that the communication should be declared inadmissible under article 5 (2) of the Optional Protocol, for failure to exhaust domestic remedies.<sup>4</sup>

4.2 The State party contests the claim that the author was reinstated in accordance with standard procedure. It adds that the administrative nature of the procedure was a deliberate choice on the part of the author. It also contests the fact that the author filed a claim with the compensation commission attached to the Supreme Court.

4.3 The State party recalls that the President of the Supreme Court issued an order<sup>5</sup> establishing the compensation commission. It adds that this commission is made up of a judge, an adviser attached to the aforementioned court, who acts as chair, two judges from the Court of Appeal and representatives of certain public administrations.

4.4 The State party asserts that the author deliberately chose not to apply to this body, whose existence cannot be disputed, and thus considers that the author has not fulfilled the conditions for exhaustion of domestic remedies.

### **Author's comments on the State party's observations**

5.1 In his submission on admissibility dated 21 August 2017, the author asserts that the State party has presented a watered-down and inaccurate version of the facts, insofar as it refers to a phantom compensation commission supposedly existing within the Supreme Court.

5.2 The author confirms that his reinstatement in the strict sense of the word has already been effected and that the unresolved problem concerns salary payments. After his initial release, he was reinstated at the Port Authority of Douala and the Port Director took the decision to order the payment of salary instalments that were not paid during his imprisonment. However, the author maintains that, to date, this decision has still not been given effect. The same applies to his claims for salary payments not paid during his second period of imprisonment.

5.3 The author maintains that the compensation commission does not really exist, and that its creation was not made public in accordance with the legally established announcement procedure. He adds that its support structures have never been established, its rules of procedure have not been adopted and its members have never met since its creation in 2016.<sup>6</sup>

5.4 The author observes that he was acquitted in April 2014 and that, pursuant to article 237 (6) of the Code of Criminal Procedure, he had six months counting from the date of his definitive acquittal to file a claim with the compensation commission. However, in November 2014, this commission did not exist. As the filing deadline had passed by the time the commission was supposedly created, he had no means of recourse through which to have the decision of the Director of the Port Authority of Douala enforced.

5.5 The author is also of the view that, when a State takes more than 10 years to set up a commission provided for in its own legislation, it may be assumed that it is reluctant to do so. Moreover, the manner in which this commission came into being is proof that it is not effective.

<sup>4</sup> See *P.S. and T.S. v. Denmark*, (CCPR/C/45/D/397/1990).

<sup>5</sup> Order No. 115 of 16 February 2016 announcing the composition and effective establishment of the commission for the compensation of victims of wrongful police custody and pretrial detention in Cameroon.

<sup>6</sup> The author bases his comments on a conversation he allegedly had with someone from the secretariat of the President of the Judicial Chamber, who assured him that the commission was not operational and that its members had not yet met.

**State party's additional observations on admissibility**

6.1 In its observations of 25 September 2018, the State party resubmits Order No. 115 of 16 February 2016, of the First President of the Supreme Court, announcing the composition and effective establishment of the commission for the compensation of victims of wrongful police custody and pretrial detention in Cameroon, and adds to its Order No. 2 of 3 January 2018, of the First President of the Supreme Court, announcing the replacement of members who no longer fit the profile required under article 237 of the Code of Criminal Procedure. On 8 August 2018, the members of the commission were officially introduced to the public during a formal Supreme Court hearing.

6.2 The State party adds that the register in which claims are recorded does not indicate that the author applied to the compensation commission and maintains that he chose simply to take it as given that the commission was ineffective. Consequently, it requests that the present communication be declared inadmissible.

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

7.1 In his comments of 12 June and 7 December 2018, the author observes that the appointment of the members of the compensation commission on 8 August 2018 demonstrates that, despite Order No. 115 of 16 February 2016, the commission had not actually begun its work and, accordingly, that the members who were replaced never served on the commission. As this Order was never published, the general public could not be aware of its existence.

7.2 The author submits a copy of excerpts from the introductory statement made by the public prosecutor to the Supreme Court during the swearing-in ceremony held for the members of the compensation commission on 8 August 2018, in which the public prosecutor states that the ceremony marks the commission's "effective entry into operation". The author also submits correspondence from the President of the Cameroon Bar Association, dated 12 March 2018, which attests to the dysfunctional nature of the compensation commission and states that, prior to March 2018, the compensation commission was not operational.

7.3 The author reiterates that the lack of a compensation commission constitutes a violation of his right to compensation.

7.4 The author refutes the State party's assertion that he deliberately chose not to apply to the compensation commission. He recalls that, even though the commission did not exist at the time, in order to abide by the rule of exhaustion of domestic remedies, he nevertheless waited until the six-month time limit established in the Code of Criminal Procedure had expired before submitting his communication to the Committee.

7.5 The author therefore asks the Committee to declare the communication admissible and duly substantiated.

**Issues and proceedings before the Committee***Consideration of admissibility*

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

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

8.3 With regard to the argument that the communication is inadmissible because domestic remedies have not been exhausted, the Committee notes that, in the present case, the State party could not reasonably expect the author to lodge a claim with the compensation commission since the commission was not yet operational at the time when, pursuant to the relevant legislation, the author could have lodged such a claim. The Committee also notes that, in its conclusions, the State party provides no information as to how the author might have circumvented the bar on lodging a claim with the compensation commission that took

effect when the six-month time limit provided for under article 237 (6) of the Code of Criminal Procedure expired or on whether the domestic legal system offered the possibility of challenging this bar when the remedy provided for by law proved neither effective nor timely.<sup>7</sup>

8.4 The Committee notes that the author has also claimed a separate violation of his rights under article 2 (3) of the Covenant. Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol, as they can be invoked only in conjunction with other substantive articles of the Covenant, the Committee considers the author's claims under article 2 (3) of the Covenant to be inadmissible under article 3 of the Optional Protocol.<sup>8</sup>

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

#### *Consideration of the merits*

9.1 The Committee has considered the case in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol, and regrets that the State party has not submitted observations on the merits despite several reminders.

9.2 The Committee notes the author's claim that he has suffered significant damages, both moral and material, as a result of the seven years that he spent in detention, and that, under the Code of Criminal Procedure, he is entitled to compensation provided that certain conditions are met. The Committee points out, however, that the issue raised by the present communication is not whether the author is entitled to compensation but whether he had access to a remedy that would allow him to establish and assert his right to compensation. The Committee takes note of the author's argument that the failure to ensure the availability of the remedy established for this purpose – namely, the compensation commission – constitutes a violation of article 14 (1), read alone and in conjunction with article 2 (3) of the Covenant.<sup>9</sup>

9.3 Regarding the nature of the compensation commission, the Committee notes the State party's argument that the commission is a subsidiary body of the Supreme Court and not a purely administrative structure. The Committee notes that, under Cameroonian law, the decisions taken by compensation commissions, including the commission referred to by the author, are akin to civil judgments.<sup>10</sup>

9.4 The Committee considers that the State party's failure to give effect to a remedy provided for by law as a means to obtain compensation for damages constitutes a violation of article 14 (1) of the Covenant. The author explains that he has suffered moral and physical damage of various forms, owing to the deterioration in his state of health, as well as material damage resulting from the seven years he spent in detention before being acquitted by the Court of Cassation on the grounds of a lack of evidence. The Code of Criminal Procedure provides that, in cases involving a prolonged period in detention that culminates in a definitive acquittal, compensation may be obtained through the compensation commission. However, as this commission had not been formally established at the time of the author's acquittal, he was unable to submit his claim within the six-month period provided for under Cameroonian law. Lastly, although in the strict sense of the word he has been reinstated in his position at the Port Authority of Douala, the issue of his salary payments has still not been resolved. The Committee recalls that, under article 2 (3) (b) of the Covenant, the State party

<sup>7</sup> *Abessolo v. Cameroon*, para. 8.5.

<sup>8</sup> See, for example, *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; and *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4.

<sup>9</sup> *Abessolo v. Cameroon*, para. 9.5.

<sup>10</sup> Code of Criminal Procedure, art. 237 (8).

has a duty to ensure that the competent authority, as established in national legislation, duly determines the rights of the person pursuing a remedy, and that, in the present case, not only was the remedy provided for by law not made available in a timely manner but domestic law offered no means of recourse against this failure to ensure its availability.

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

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

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

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

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