

# 416/12 Jean-Marie Atangana Mebara v. Cameroon

Communication 416/12 -Jean-Marie Atangana Mebara v. Cameroon

## Summary of the Complaint

1. On 26 July 2012, the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received from Mr Jean-Marie Atangana Mebara, of Cameroonian nationality, a Complaint submitted pursuant to Article 55 of the African Charter on Human and Peoples' Rights (the African Charter).
2. The Complaint was submitted against the Republic of Cameroon (the Respondent State or Cameroon), a State Party to the African Charter <sup>1</sup> .
3. The Complainant submits that between 1997 and 2007 when he occupied several ministerial posts in the Government of Cameroon, he received and implemented instructions for which he was accused of embezzlement. After being held in custody on 1 August 2008 by the judicial police in Yaoundé, he was handed over to the State Counsel of the Yaoundé High Court on 6 August 2008. On the same day, he was charged, detained and imprisoned at the Yaoundé Central Prison.
4. The Complainant was indicted on five counts, including the embezzlement or attempted embezzlement, in collaboration with other individuals, of huge sums of money in connection with the purchase of a presidential plane and other related transactions. The Complainant submits that he first appeared before a judge in June 2009, after close to a year following his detention.
5. The Complainant further submits that on 30 September 2009, the examining magistrate brought a sixth charge against him for misappropriation of public funds and issued a new remand warrant. He avers that as a result of this warrant, his detention was extended to 30 March 2011 whereas the statutory detention period was due to expire on 6 February 2010, in accordance with the Cameroonian criminal law which provides for a maximum pre-trial detention period of eighteen (18) months. At the Complainant's request, the Investigation Chamber of the Court of Appeal quashed the sixth charge and issued an order on 3 December 2009 for further investigation.
6. On 18 December 2009, the examining magistrate again indicted the Complainant and issued a new remand warrant for misappropriation of funds allocated for the purchase of a presidential plane. The Complainant contends that this new indictment was for the same facts on which the Investigation Chamber's annulment ruling had been made.
7. A petition for the annulment of the new indictment was dismissed by the examining magistrate whose decision was upheld by the Investigation Chamber. The Complainant contends that as a result of the new indictment, his detention was extended to 18 June 2011 whereas the statutory maximum detention period should have expired on 6 February 2010.
8. On 11 January 2010, the examining magistrate ordered the separation of the proceedings arising from the indictment of 6 August 2008 and ordered a partial referral on 3 February 2010. The Complainant was notified of the decisions on 5 February 2010, the date of expiry of the statutory maximum pre-trial detention period of eighteen (18) months. The orders were due to the fact that the investigation of some of the charges had been completed, while for the other charges they were still ongoing given that all the suspects had not been identified, interrogated or that the charges were yet to be clarified.
9. The Complainant filed a petition for an annulment of the separation order on 9 February 2010. The examining magistrate did not respond until seven (7) months later when he made a dismissal ruling on 27 September 2010. This decision was upheld by the Investigation Chamber.
10. The Complainant further submits that by the time the matter was referred to the trial court, on 29 July 2010, he was being prosecuted on six charges, two of which were the subject of a committal order and a

partial no-case ruling. As such, the Complainant states, the examining magistrate upheld the four other charges for further investigation. For three of these charges resulting from the original indictment of 6 August 2008, the detention period had expired on 6 February 2010 and for the sixth charge brought on 18 December 2009, the detention period was due to expire on 18 June 2011.

**11.** Regarding one of the charges upheld for investigation, the Complainant submits that he was heard only once and that no further investigation was conducted concerning the other charges. He further states that on 17 June 2011, that is, the day before the expiry of the pre-trial detention for the last charge, he was served with a new separation order relating to the portion still under investigation and a new committal order issued on the same grounds as for the first separation orders, namely that the investigation had not been concluded. A petition was filed for the annulment of the second separation order, but the examining magistrate had not responded after a year.

**12.** Following the second separation order, three charges were laid before the trial court, while two others were still being investigated. On 3 May 2012, the High Court of Yaoundé, Mfoundi, acquitted the Complainant of all the three counts for which he was being prosecuted and ordered his release on 4 May 2012.

**13.** On 4 May 2012, the same day of his release, the Complainant was summoned to report to the office of the examining magistrate on 8 May 2012, but when his lawyers went to that office on 7 May 2012 to consult the case file, they were unable to have access to the file because the examining magistrate was absent. According to the Complainant, it then became clear that the date and venue of the meeting had been changed unilaterally without consultation with his lawyers. Thus, in the morning of 7 May 2012, the day before the meeting, the examining magistrate went very early to the prison to indict the Complainant once again in the absence of his lawyers. The Complainant avers that the new indictment and the detention attached thereto were based on charges for which a judicial investigation had already been opened and an initial indictment made on 6 August 2008.

**14.** Lastly, the Complainant submits that his petition filed on 9 May 2012 for an annulment of the indictment had elicited no response on 26 June 2012, the date the Commission was seized of the matter.

### **Articles alleged to have been violated**

**15.** The Complainant alleges a violation of Article 7 of the African Charter.

### **Procedure**

**15.** The Complainant alleges a violation of Article 7 of the African Charter.

### **Prayers**

**16 .** The Complainant prays the Commission to:

- Urge Cameroon to urgently put an end to the said violations;
- Set a short timeframe for the Respondent State to release the Complainant;
- Set a short timeframe for the Respondent State to organize a trial on specific and justifiable charges; and
- Instruct the Respondent State to pay the Complainant the sum of eight hundred million (800,000,000) CFA francs in damages for the four years of unlawful detention.

**17.** The Complaint was received at the Secretariat on 21 June 2012. The latter acknowledged receipt of the same on 22 June 2012.

**18.** At its 12<sup>th</sup> Extraordinary Session held from 30 July to 4 August 2012 in Algiers, Algeria, the African

Commission on Human and Peoples' Rights (the Commission) considered the Complaint and decided to be seized thereof. On 10 August 2012, the Secretariat informed the Respondent State of the decision and transmitted to the latter a copy of the Complaint. On 14 August 2012, the Secretariat informed the Complainant of the decision and requested the latter to submit arguments on admissibility.

**19.** On 5 October 2012, the Complainant submitted his arguments on admissibility. The Secretariat acknowledged receipt of the same on 13 November 2012 and forwarded the arguments to the Respondent State on the same day.

**20.** On 11 April 2013, the Respondent State submitted its rebuttal. The Secretariat acknowledged receipt of the same on 3 May 2013 and forwarded it to the Complainant on the same day.

**21.** On 2 June 2013, the Complainant submitted his response to the observations of the Respondent State. The Secretariat acknowledged receipt of the same on 14 June 2013 and transmitted a copy to the Respondent State on the same day. On 2 August 2013, the Respondent State transmitted its additional comments to the Secretariat. Since then, there has been no further written exchanges between the parties.

**22.** At its 54<sup>th</sup> Ordinary Session, 15<sup>th</sup> Extraordinary Session and 16<sup>th</sup> Extraordinary Session, the Commission considered the Communication and deferred its decision on admissibility due to time constraints.

**23.** On 10 May 2014, during its 55<sup>th</sup> Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola, the Commission considered the Communication and declared it admissible. On 22 May 2014, the Secretariat informed the parties of this decision and requested the Complainant to submit on the merits.

**24.** On 23 July 2014, the Complainant submitted his observations on the merits which were received at the Secretariat on 6 August 2014. The latter acknowledged receipt thereof and forwarded the same to the Respondent State on 3 September 2014. The Respondent State failed to submit its observations within the sixty-day period.

**25.** At its 17<sup>th</sup> Extraordinary Session held from 19 to 28 February 2015 in Banjul, The Gambia, the Commission considered the Communication and decided to grant the Respondent State a final extension to submit its observations within thirty days. The Respondent State failed to submit within this period. On the date of this decision, after a total period of eleven (11) months, the Secretariat had still not received any response.

**26.** On 15 June 2015, the Complainant submitted to the Commission a request for the indication of provisional measures, including his release and the replacement of the newly appointed judges of the Supreme Court who had previously been part of the prosecution team. The Commission decided not to request for provisional measures to avoid prejudging the merits of the case. The Commission also decided to prioritize the consideration of the Communication. The Secretariat informed the Complainant of this decision on 22 June 2015.

## **The Law on Admissibility**

### **Complainant's Submissions on Admissibility**

**27.** The Complainant submits that the Communication meets all the admissibility conditions under Article 56 of the African Charter. However, the arguments put forward by the Complainant focus on the provisions of Article 56(5), namely the requirement of exhaustion of local remedies.

**28.** In this regard, the Complainant submits that local remedies are unavailable, unworkable and ineffective. Secondly, the Complainant contends that he cannot be required to have exhausted local remedies since the remedy sought relates to the fact that the case is being unduly prolonged.

**29.** Regarding his first allegation, the Complainant claims that there are no available or effective remedies

in terms of being able to compel Cameroonian courts to expedite the trial process. Thus, he argues, even if it is assumed that such remedies do exist, he has exhausted them. In this regard, he cites the petitions for the annulment of certain orders issued by the examining magistrate to which both the magistrate and the Inquiry Control Chamber responded promptly. Besides, the Complainant contends, it is rather the failure to respond to some other petitions or the unusually long time taken to do so that renders the remedies unavailable and ineffective.

**30.** The Complainant submits that the Special Criminal Tribunal which became operational on 15 October 2012, that is, after four years of custody and proceedings before the ordinary courts, cannot be considered as an available and effective remedy in the circumstances of this case. This reform, he further contends, has only served to prolong his detention.

**31.** Regarding his second contention, the Complainant submits that, as a result of the foregoing, the procedure has been unduly prolonged by the multiple and unwarranted adjournments; that it has been punctuated by numerous hindrances as reported in the summary of the Complaint. In support of the allegation that the procedure has been unduly prolonged, the Complainant argues that the interrogation did not begin until eleven (11) months into his pre-trial detention.

**32.** In addition, the Complainant submits that the four separation orders issued by the examining magistrate prolonged the proceedings whereas the Cameroonian Criminal Procedure Code does not provide for separation in any of its provisions. Moreover, he argues that the committal orders were aimed at maintaining the validity of the remand warrants. On this same point, he further submits that between two separation orders, the examining magistrate did not conduct any investigation whereas the grounds for the separation orders were that some of the charges required further investigation.

**33.** Regarding remedies that are actually available, the Complainant submits that they were ineffective due to the fact that they failed to respond to the petitions filed or that they were unduly prolonged beyond the reasonable or legally prescribed period. In support of these allegations, the Complainant argues that one year after the filing of the petition for annulment of the second separation order, no action had been taken.

**34.** Concerning a similar petition filed against the first separation order, the judge took seven (7) months to respond and did so in the negative. The Complainant further argues that some of the decisions had the effect of prolonging his detention up to a total period of four (4) years whereas the statutory maximum period under Cameroonian law is eighteen (18) months.

**35.** In summary, the Complainant concludes that some local remedies were not available or effective, while those available were unduly prolonged, thus exempting him from exhausting them.

### **Respondent State's Submissions on Admissibility**

**36.** The Respondent State does not contest the fact that the Communication meets the conditions under Article 56 of the African Charter, with the exception of the provision relating to the use of disparaging or insulting language (paragraph 3) and that prescribing the exhaustion of local remedies (paragraph 5).

**37.** The Respondent State submits that the Complainant used insulting language against the Government of Cameroon. In this regard, the Respondent State cites an excerpt from the Complainant's observations in which he claims that the proceedings brought against him were only initiated "to conceal the largely negative balance sheet of the regime that has been in power for thirty years and to gain credibility with international donors," and that the process is merely "a hoax aimed at scapegoating a number of senior officials".

**38.** The Respondent State submits that such statements are vexatious and do not meet the requirements of Article 56(3) of the African Charter. The Respondent State cites the Commission's decision in the case of *Ligue Camerounaise des Droits de l'Homme v. Cameroon* and requests that the Communication should be declared inadmissible.

- 39.** Concerning the exhaustion of local remedies, the Respondent State, without meaningfully contesting the facts as reported by the Complainant, submits that in the circumstances of the case, remedies existed and were effective, but that the Complainant failed to exhaust them. In addition, the Respondent State argues that the procedural timeframes were reasonable.
- 40.** Concerning the availability and effectiveness of remedies, the Respondent State contends that the Complainant had the opportunity of seizing the judicial authorities in charge of the case to request the annulment of several decisions or appeal against decisions delivered at first instance or on appeal. According to the Respondent State, the responses to these petitions and the decisions of the trial courts are evidence of the effectiveness of local remedies.
- 41.** In addition, the Respondent State underscores that acquittal decisions were rendered in favour of the Complainant and that the latter lodged an appeal against a conviction decision which is still pending before the Supreme Court. The Respondent State concludes that remedies have not been exhausted.
- 42.** Regarding the issue of remedies being prolonged, the Respondent State argues that an assessment of the length of the procedure must take into account not only the complexity of the case and the conduct of the parties, but also the legal framework of procedural time frames.
- 43.** As regards the complexity of the case, the Respondent State argues that the nature of the facts as reported and the status of the individuals involved dictated the conduct of the proceedings. This complexity called for many investigations and the developments in the investigations required several separations. With particular regard to the separations, the Respondent State notes that such separations are administrative procedural measures and not judicial measures and that they are dictated by the requirements of the procedure.
- 44.** Citing Section 150 of the Cameroonian Criminal Procedure Code, the Respondent State argues that the examining magistrate is allowed to carry out all acts that he deems necessary for the discovery of the truth and that subsequent findings may warrant an extension of the initial charges. Moreover, the Respondent State submits that the separation measures were not personally targeted at the Complainant as they gave rise to other proceedings in which other people were indicted in connection with this particular case.
- 45.** To justify the length of time taken by the examining magistrate to decide the case, the Respondent State submits that the Complainant's allegations stem from a subjective assessment of the conduct of criminal investigation. To support this assertion, the Respondent State submits that 170 investigations were conducted between the first indictment and the interrogation and that after referral to the Court, the magistrate conducted 356 investigations relating to the remaining aspects between 29 July 2010 and 7 May 2012. The Respondent State further submits that at the time the Complainant was indicted, 438 cases were pending before the magistrate investigating his case, some of them involving people who had been detained for more than eighteen (18) months.
- 46.** Still on the issue of the procedure being prolonged, the Respondent State argues that the situation was rather due to the Complainant's refusal to respond to several warrants from the magistrate. The Respondent State is satisfied that in less than four (4) years of proceedings, such a complex case has been able to go through three stages: judicial investigation, trial at first instance and trial on appeal.
- 47.** Finally, the Respondent State avers that the new legal framework introduced in Cameroon makes the timeframe of proceedings as reasonable as possible since, for instance, under the law establishing the Special Criminal Tribunal, the magistrate must conclude the judicial investigation within 180 days of the initial indictment, and the first hearing must be held within 30 days of the committal order. The Respondent State further notes that the same Tribunal must deliver its decision within a maximum period of nine months, that the Supreme Court must hear and decide any matter referred to it within six months, and that requests for release must be processed within forty-eight hours.
- 48.** In conclusion, the Respondent State considers that remedies existed, that they were effective and that the procedural timeframes were reasonable. In addition, the Respondent State argues that the proceedings

are still pending before the national courts and that remedies have thus not been exhausted.

### **Analysis of the Commission on Admissibility**

**49.** The Communication was submitted in accordance with Article 55 of the African Charter under which the Commission is mandated to receive and consider Communications other than those of State Parties. For Communications to be declared admissible, they must meet the conditions laid down in Article 56 of the African Charter.

**50.** The Commission notes that the points of disagreement between the parties relate to the provisions of Articles 56(3) and 56(5) of the African Charter. The Commission notes that all the other admissibility conditions have been met.

**51.** To begin with Article 56(3) which prohibits the use of disparaging or insulting language directed against the Respondent State, the Commission recalls its constant jurisprudence and notes that the language prohibited must be directed against the State Party, its institutions or the African Union. In addition, compliance with this provision is intended to avoid a situation where Communications submitted to the Commission would indicate an intention to undermine the integrity and status of the institution concerned, as well as to discredit it.

**52.** Thus, in the case of *Ilesanmi v. Nigeria* , the Commission found that the fact that the Complainant called the President of the Republic "corrupt" and declared that he had received bribes, kickbacks from drug traffickers was aimed at ridiculing, discrediting the institution and therefore constitutes the use of disparaging or insulting language. <sup>2</sup>

**53.** However, in the case of *Bakweri Lands Claims Committee v. Cameroon* , <sup>3</sup> the Commission held that the mere fact that the Complainant claimed that "the President of the Republic wielded extraordinary powers so as to influence the judiciary and that the judiciary is partial and lacked independence" cannot be considered insulting. The Commission considered that this is a mere allegation depicting the Complainant's comprehension of the functioning of State entities .

**54.** In this case, the Commission notes that the language contested by the Respondent State is actually contained in the Complainant's observations. In paragraph 3 of the submission, it can indeed be read that: Faced with a largely negative balance sheet, the regime, which has been in power for thirty years, has come up with a hoax to scapegoat a number of senior officials, on the trumped-up charge of misappropriation of State funds, for the sole purpose of gaining credibility in the eyes of international donors.

**55.** In view of the meaning and purpose of the requirement under Article 56(3) of the African Charter and in light of the jurisprudence cited above, the Commission considers that the excerpt from the Complainant's submission is targeted generally at the regime in power without, however, insulting or disparaging any particular State authority or institution. In addition, the language merely expresses the Complainant's opinion about the performance of the regime and the quality of some of its reforms. The Commission thus concludes that such language cannot be considered insulting.

**56.** With regard to the exhaustion of local remedies, the Commission recalls that the Complainant is required to exhaust local remedies only when such remedies are available, effective and sufficient <sup>4</sup> , and are not unduly prolonged. A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint. <sup>5</sup>

**57.** If one of these characteristics happens to be lacking, local remedies cannot meet the requirements laid down in Article 56(5) of the African Charter. The Commission notes that the parties disagree on two major points. The first point relates to the availability and effectiveness of local remedies, while the second is about the remedies being unduly prolonged.

**58.** Regarding the first point, the Commission notes that the Complainant had the opportunity to challenge the various decisions either before the examining magistrate or before the competent court of appeal. From the facts submitted, it emerges that the parties agree that the various petitions for annulment filed by the Complainant elicited a response, except for the petition for annulment of the second separation order. In the Commission's opinion, it appears that the lack of response to that petition cannot lead to the conclusion that the remedy was unavailable but rather that it was ineffective. The Commission thus concludes that this particular remedy was available but was not effective.

**59.** In this Communication, the dispute about the effectiveness of local remedies is closely connected with that of the remedies being unduly prolonged. In this case, the Complainant's allegations of ineffectiveness are based primarily on the fact that the remedies in question were unduly prolonged. At this stage, the Commission will determine if the remedies were actually unduly prolonged.

**60.** In its jurisprudence, the Commission has conducted its assessment of local remedies being unduly prolonged on a case-by-case basis, depending on the circumstances and merits of each case. For example, in deciding the cases of *Modise v. Botswana*<sup>6</sup> and *Association of Victims of Post Electoral Violence and Interights v. Cameroon*,<sup>7</sup> the Commission considered that given that local remedies lasted ten and five years respectively, they were unduly prolonged. In the case of *José Alidor Kabambi et al. v. DRC*,<sup>8</sup> a period of one year and eight months was considered unusually long, especially in view of the legal timeframe prescribed by the law of the Respondent State, the facts of the case and the special circumstances of the Complainants.<sup>9</sup>

**61.** In this case, on the issue of the procedure being prolonged, the Commission notes that the Complainant's petition for the annulment of the first separation order elicited no response until seven (7) months later when it was dismissed. Similarly, the petition for annulment of the second separation order produced no outcome after one year of waiting. In a case involving the deprivation of liberty, the time taken to respond to a simple petition for annulment, filed before the same judicial authority that issued the order being challenged, is obviously long.

**62.** Cameroon's criminal law confirms this position given that under Section 275(1) of the Criminal Procedure Code, for example, it is provided that the Inquiry Control Chamber shall hear and determine the appeal within thirty (30) days after receiving the application. Better still, Section 275(2) provides that in case of remand in custody - as is the case here - it shall be bound to deliver its ruling within ten (10) days after receiving the application. Even though Cameroon's Criminal Procedure Code is silent on the timeframe within which the examining magistrate is required to respond to petitions for annulment of orders issued by him, the Commission is of the view that such a timeframe cannot be significantly longer than the prescribed timeframe for appeals brought before the Inquiry Control Chamber.

**63.** In any event, in view of the abovementioned provisions, the Commission finds that the periods of seven (7) months and one year taken by the magistrate to respond to petitions for annulment of the separation orders are well beyond the statutory timeframes. In light of the foregoing and given that the timeframes prescribed by the law are in compliance with obligations under the African Charter, the Commission concludes that the remedies concerned have been unduly prolonged.

**64.** Regarding the effect of the prolonging on the quality of remedies, the Commission is of the view that this particular prolonging extended the entire procedure. In fact, a response within a reasonable timeframe would have allowed the Complainant to receive remedies from the higher court and thereby influence the total length of his detention. Regarding the prolonging of the total length of his detention, the Complainant's complaints also concern the multiplicity of procedural acts.

**65.** Regarding the issue of the multiplicity of procedural acts, the Commission notes that under Section 145 of Cameroon's Criminal Procedure Code (2005),<sup>10</sup> the examining magistrate may perform any acts which he deems necessary for the discovery of the truth, including, among others, bringing new charges. Moreover, even if the Code does not expressly provide for separation, such an act is universally recognized in procedural practice as falling within the administrative jurisdiction of the judge.<sup>11</sup>

**66.** As such, the Commission is of the view that if the ground for separation is to avoid delaying the trial of an aspect of ongoing proceedings, the ultimate goal of such an act should be to accelerate the entire process and ensure expeditious justice. Where the accused has been deprived of his liberty, the objective of the separation must be to avoid prolonging the pre-trial detention for the charges concerned. In this case, the reasons for such a procedural act must relate exclusively to the need to perform the procedures necessary for the preparation of the case.

**67.** In this case, it appears that the successive separations and indictments focused on the same charges without, however, facilitating the preparation of the case on those charges. In other words, the separations ultimately turned out to be unjustifiable since the goals sought were not achieved. The multiplication of procedural acts resulted in prolonging the detention - at least for some of the charges - beyond the maximum period allowed by Cameroonian criminal legislation.

**68.** The goal would have been reached and the due diligence sought by the separation orders achieved if the case had reached the trial stage, at least for the charges concerned. From the facts of the Communication, it appears to the Commission that the complaint raised by the Complainant is not so much about his release, but rather about the right to see the end of the proceedings and to know his fate within a reasonable period.

**69.** To justify the prolonging of the remedies, the Respondent State cites the heavy workload of the examining magistrate in charge of the case and points out that the same magistrate was also dealing with many other cases involving people whose detention period had exceeded the maximum statutory period of eighteen (18) months. The Commission is of the view that this argument confirms the non-compliance with the statutory timeframes which in this case are deemed to be the reasonable time. The Respondent State has an obligation, under the African Charter, to ensure effective remedies, at least by respecting its own national legislation. <sup>12</sup>

**70.** The Commission notes that in actual fact, under the circumstances of this Communication, the commencement of the prolonging of remedies dates back to the beginning of the proceedings and is evidenced by the detention of the Complainant for a period of eleven (11) months before the first interrogation. In the course of the proceedings, the detention continued to be extended without any reasons being given for such extensions. In total, nearly four years elapsed since the first indictment without any clarification of some of the initial charges.

**71.** The Commission notes that in the particular circumstances where a person's guilt has not yet been proven, freedom should remain the rule and detention the exception. This rule is also enshrined in Section 221(1) of Cameroon's Criminal Procedure Code which provides for a maximum detention period of eighteen (18) months and the release of the accused unless he is detained for other reasons. The merit of such a requirement is that it guarantees the effectiveness of justice by speeding up its procedures. Thus, any delay suffered by a procedural act that exceeds the limits prescribed by law - the national legislation in this case - cannot be reasonable.

**72.** The Commission takes note of the willingness of the Respondent State to resolve problems related to the length of local remedy procedures as evidenced by the establishment of a Special Criminal Tribunal whose prescriptions relating to trial timeframes are definitely an improvement. However, the Commission finds that the reform only goes to confirm the issue of non-compliance with the legal and reasonable timeframes by the national courts. The proof is that the establishment of the Special Criminal Tribunal was not able to prevent the prolonging of the trial period. The establishment of the Tribunal was subsequent to the occurrence of all the delays observed above. The same observations apply to the proceedings pending before the Supreme Court.

**73.** In summary, regarding the issue of local remedies being prolonged, the Commission finds that the proceedings initiated against the Complainant by the judicial authorities of the Respondent State were marked by a multiplicity of procedural acts, lack of response or delayed response to local remedies sought and non-compliance with the legal timeframes. This situation caused delays in the proceedings without any reasons being offered subsequently in justification. The Commission concludes that, in the circumstances



of this case, local remedies were unduly prolonged.

## **Decision of the Commission on Admissibility**

**74.** In view of the foregoing, the African Commission on Human and Peoples' Rights declares the Communication admissible in accordance with Article 56 of the African Charter.

## **Consideration of the Merits**

### **Complainant's Submissions on the Merits**

#### **Alleged violation of Article 6**

**75.** The Complainant submits that the unlawful nature of the various actions taken by the prosecuting authorities and the refusal to comply with the ruling ordering his release led to his excessive and arbitrary detention. In support of this argument, the Complainant underscores the abuse of the several separation and committal orders and extensions of detention.

**76.** The Complainant contends that the several separation and committal orders contributed to circumventing the requirement to observe the statutory maximum detention period of 18 months failing which the accused should be released unless there are other charges against him. The Complainant submits that in this manner, the judicial authorities created new artificial charges that are identical to the previous charges without conducting any investigation to justify the successive separation orders.

**77.** Among other evidence of the abuse of the prosecution process, the Complainant submits that the examining magistrate's committal order and remand warrant of 7 May 2012 are illegal since they were issued in disregard of the ruling of 3 May 2012 in which the Mfoundi High Court (Yaoundé) acquitted the Complainant of all charges and ordered his release.

**78.** Regarding the High Court ruling mentioned above, the Complainant contends that the refusal by the judicial authorities of the Respondent State to comply therewith violates his right not to be arbitrarily detained. The Complainant further states that as soon as his release order was signed on 4 May 2012, the Court President, the State Counsel and his deputies all disappeared from their offices to avoid signing his discharge form to be handed to the prison superintendent for execution. The Complainant avers that the said persons only reappeared in the morning of 7 May 2012 and that by the time the release order finally reached the prison administrator, the latter had received a few hours earlier a new committal order and remand warrant. These new acts were based on the charges contained in the previous orders.

**79.** According to the Complainant, the new prosecution orders issued illegally on 7 May 2012 were used as a pretext by the prosecuting authorities to prolong his detention which had already become unlawful several months prior to this date. As a result of this prolonged detention, the Court of Appeal tried the Complainant and, on 8 October 2012, sentenced him to 15 years' imprisonment whereas there was a new law which did not allow the appeal of judgements passed by the High Court regarding the misappropriation of public funds. Still on the basis of this continued detention, the Complainant was tried by the Special Criminal Tribunal which was later established.

**80.** The Complainant concludes that these measures taken between 2008 and 2013 on the basis of charges which had already led to the initial indictment of 6 August 2008, despite their unlawful nature and in violation of a court decision, engage the responsibility of the Respondent State under Article 6 of the Charter.

#### **Alleged violation of Article 7**

**81.** Regarding the violation of Article 7 of the Charter, the Complainant submits that the Respondent State failed in its obligation to respect or protect the right to be presumed innocent, the right to defence and the right to be tried within a reasonable time by an impartial court or tribunal.

#### **The right to be presumed innocent, Article 7(1)(b)**

**82.** In order to justify a violation of the right to be presumed innocent, the Complainant mentions the several public statements made by Government authorities clearly stating that the officials arrested as part of the "Operation Sparrow Hawk" had embezzled funds for which they had been summoned and detained. As evidence, the Complainant underscores an interview granted by the Vice-Prime Minister and Minister of Justice to the daily newspaper *Le Jour*, No. 710 edition published on 16 June 2010. Citing an excerpt from the interview, the Complainant quotes the following statement made by the Minister: "I challenge anyone to prove that those who have been arrested are innocent...Those who say they are innocent have cleverly hidden what they have stolen".

**83.** The Complainant further underscores the statement made by the Minister of Communication during a press conference broadcast on the national television station CRTV. Mentioning those detained as part of the "Operation Sparrow Hawk", the Minister stated that: Those people embezzled these funds in order to prepare for the next presidential election . As such, the Complainant concludes that these statements violate the provisions of Article 7(1)(b) of the Charter.

#### **The right to defence, Article 7(1)(c)**

**84.** To support this allegation, the Complainant submits that five (5) months after his detention, his lawyers were unable to have access to the investigation file. In particular, the Complainant contends that regarding the indictment of 7 May 2012 which resulted in a new remand warrant issued against him, the examining magistrate prevented him from having access to his lawyers; that informed by the magistrate on 4 May 2012 at 4 pm that the latter would like to hear the Complainant on May 8 in his office, the magistrate visited the prison on May 7 to issue a new indictment and keep the Complainant in detention in violation of express provisions of the Code of Criminal Procedure.

**85.** The Complainant submits that this change of venue and date was part of an unfair procedure which deprived him of his right to be assisted by his lawyers. The Complainant further avers that on 8 May 2012, the date of the meeting, no action had been taken by the magistrate. Moreover, having gone to the magistrate's office on 7 May 2012 to consult the case file in preparation for the meeting of May 8, his lawyers were unable to have access to the file because the magistrate was absent and did not leave any instruction to that end.

#### **The right to be tried within a reasonable time by an impartial court or tribunal, Article 7(1)(d)**

**86.** The Complainant alleges the unreasonably prolonged procedures and the partiality of the judicial authorities. In this regard, the Complainant submits that up to the time of the drafting of this merits decision, he was still waiting for a final court judgement after six (6) years of detention following his indictment on 6 August 2008. The Complainant submits that after a first period of six (6) months, his detention was extended to an additional period of twelve (12) months without him being heard even once by the examining magistrate.

**87.** The Complainant asserts that the several unwarranted and unlawful prosecution and investigation measures extended his detention unnecessarily while new measures were taken on the eve of the expiration of the ongoing detention period. While his detention was constantly being prolonged, the investigations justifying his detention were not conducted. Also, the various petitions filed against these measures were simply ignored or received a very late response to the point of rendering the petitions useless.

**88.** In order to prove the partiality of the prosecuting and investigating authorities, the Complainant maintains that there was an abuse of procedure given the numerous schemes to delay his trial. In this regard, he cites the abuse of separation whereas this measure is not provided anywhere in the Cameroon Criminal Procedure Code. The Complainant contends that despite the separation orders and the successive deferrals, the examining magistrate still did not resolve the charges which were not difficult to resolve after close to four (4) years of investigation, but rather introduced new charges by separating the

charges that were the subject of the initial indictment.

### **Respondent State's Submissions on the Merits**

**89.** As indicated under the procedure, the Respondent State did not submit any observations on the merits despite being given more time than it is provided in the Commission's Rules of Procedure and despite the reminder sent.

### **Analysis of the Commission on the Merits**

**90.** In accordance with the provisions of Rule 105(1) of the Commission's Rules of Procedure, the parties have sixty (60) days to present arguments and evidence on the merits. The Secretariat ensures that submissions are transmitted to the other party and that the deadline is respected.<sup>13</sup> In the present Communication, the Commission notes that the above procedure was indeed respected. However, due to time constraints, the Commission deferred its consideration of the Communication to its successive sessions. As such, the Respondent State enjoyed an implicit additional period of nine (9) months in addition to the period of two (2) months provided in the Rules of Procedure.

**91.** Moreover, the Secretariat sent a reminder letter to the Respondent State, following the decision adopted by the Commission during its 17<sup>th</sup> Extraordinary Session (February 2015) to grant a final one-month deadline to parties that did not submit observations within the deadline stipulated in the Rules of Procedure. Despite these letters sent by DHL, the Respondent State failed to submit the required observations. As such, the Commission decides to consider the Communication on the basis of the information in its possession, in accordance with its practice.<sup>14</sup>

### **Complainant's additional arguments and prayers**

**92.** In addition to the arguments developed at the admissibility stage, in particular on the alleged violation of Article 7 of the Charter, the Complainant alleges the violation of his right to liberty and to the security of his person protected under Article 6 . Before considering the merits of the Communication, the Commission will first of all examine the Complainant' additional arguments which include other prayers.

**93.** In this regard, the Commission is of the view that substantial additional submissions are admissible insofar as they are not based on new facts, are not inconsistent with the issues addressed at admissibility, the author can substantiate and the other party cannot successfully contest. Regarding the facts, the Commission notes that they do not differ between admissibility and merits except that the Complainant recounts a continuation of the violations illustrated mainly by the trial before the Special Criminal Tribunal and the appeal before the Specialized Section of the Supreme Court. The facts on which are based the arguments on the violation of Article 6 cannot thus be considered as new.

**94.** Regarding compliance with admissibility conditions, the facts on which is based the allegation of the violation of Article 6 are closely linked to those concerning the violation of Article 7 . Indeed, the facts alleged at the admissibility stage and relating to the deprivation of liberty were the subject of appeals before the national courts. Moreover, the Complainant sufficiently substantiates the allegations of violation of Article 6 . Lastly, even if the Respondent State defaulted, the Commission, by default judgement, ensures the cogency of the arguments put forward by the Complainant.

**95.** By virtue of the foregoing, the Commission admits the Complainant's additional arguments and prayers. Regarding consideration of the merits, the Commission notes that the arguments on the violation of Article 7 provide detailed information and complement the entire procedure. Considering that the length of detention and the nature of the measures that facilitated it are determining elements in assessing the arbitrary character of detention, the Commission is of the view that it is necessary to start by examining the arguments on the violation of Article 7 .

## Violation of Article 7(1)(b)

**96.** Article 7(1)(b) of the Charter stipulates that: "Every individual shall have the right to have his cause heard. This comprises: (b) The right to be presumed innocent until proved guilty by a competent court or tribunal". In this case, the Commission has to determine if statements made by Government authorities can be considered as capable of violating the right to be presumed innocent. In fact, there is the need to determine the persons on whom there is the obligation to be presumed innocent in a case pending before the courts.

**97.** From the letter of the provisions of Article 7(1)(b) , it emerges that the goal of the right to be presumed innocent is to avoid passing judgement on a suspect before a ruling is issued by the competent court. In other words, it is a matter of refraining from influencing the decision of the trial court. The next question that arises is to know who is capable of influencing the competent court.

**98.** In the case of *Law Office of Ghazi Suleiman v. Sudan (I)*, the Commission concluded that: "...the fact that State officers carried out the publicity aimed at declaring the suspects guilty of an offence before a competent court establishes their guilt violates their right to be presumed innocent".<sup>15</sup>

**99.** The European Court of Human Rights adopts a similar position in the case of *Konstas v. Greece* where it decided that it is in violation of the right to be presumed innocent, the fact that the Deputy Minister of Finance and the Prime Minister of Greece referred to a case pending before the court by stating that it was an unprecedented scandal of deliberate and planned embezzlement of eight million euros and for referring to the suspects as "crooks".<sup>16</sup> As such, the Court targets Government employees and stresses the importance of the wording used by representatives of the State in remarks made before a person has been tried and found guilty of an offence .<sup>17</sup>

**100.** In a significant manner, the Court considered by recalling its constant jurisprudence that the presumption of innocence cannot cease to apply until a final judgement is passed. The Court also extended this right to include appeal proceedings.<sup>18</sup> In another decision, the Court extended the persons targeted to include "public officials".<sup>19</sup> Whereas for his colleagues their virulence and peremptory nature constituted the determining factors, the Court considered the specific political post of the Minister of Justice. As such, the Court concluded that: "As Minister of Justice he embodied, par excellence, the political authority responsible for the organisation and the proper functioning of the courts. He should therefore have been particularly careful not to say anything that might give the impression that he wished to influence the outcome of proceedings pending before the Court of Appeal".<sup>20</sup>

**101.** In addition to these unequivocal jurisprudential examples, the Commission notes that, in civil law jurisdictions applying the inquisitorial system where the prosecution acts under the authority of the Minister of Justice who is a member of the executive, the public statements of this authority must be exemplarily impartial and unequivocally neutral. This is the case given that the impression given to the public about a possibility and an intention to influence justice is much more pronounced and plausible in this case.

**102.** In the present Communication, the Commission notes that the statements made by the Cameroonian Minister of Justice and Minister of Communication clearly refer to a group of former political figures detained as part of the Operation Sparrow Hawk , including the Complainant. Regarding the posts occupied, the Minister of Justice has direct links with the judicial and prosecuting authorities while the Minister of Communication speaks officially on behalf of the Government of the Respondent State.

**103.** Regarding the substance of the statements, the terms "theft", "embezzlement" and "are not innocent" used by these authorities clearly denote a presumption of guilt. Lastly, these statements were made when the Complainant was still awaiting a final judgement. The Commission thus concludes that the Complainant's right under Article 7(1)(b ) of the Charter has been violated.

#### Violation of Article 7(1)(c)

**104.** Article 7(1)(c) of the Charter stipulates that: "Every individual shall have the right to have his cause heard. This comprises: (c) The right to defence, including the right to be defended by counsel of his choice". In his submissions, the Complainant raises two specific cases of violation of the right to defence: the impossibility for his lawyers to have access to the case file and the notification of a new charge in their absence at a crucial stage of the proceedings.

**105.** In its jurisprudence, the Commission has dealt with many cases on the right to defence. <sup>21</sup> Regarding access to case files and legal representation, the Commission recalls its decision in the Saro-Wiwa case where it concluded that the right to defence was violated after the defence was denied access to the evidence on which the prosecution was based and that files and documents which were required by the accused for their defence were removed from their residences and offices when they were searched by security forces . <sup>22</sup>

**106.** Moreover, the right to defence stems from the need for the accused to be able to use the services of a specialist who is well informed about the procedure and the substantial issues, in order to guarantee his rights from the beginning of the proceedings. As such, in the case of *Avocats Sans Frontières (on behalf of Bwampamyé) v. Burundi*, the Commission held that the right to defence also implies that at each stage of the criminal proceedings, the accused and his counsel should be able to reply to the indictment of the public prosecutor and should, in any case, be the last to intervene before the court retires for deliberations. <sup>23</sup> As a result, it is the right to defence that is actually violated in circumstances where the defence cannot have access to information on which the indictment is based. This conclusion applies to the need to be assisted by a lawyer of one's own choosing.

**107.** Lastly, the Commission provides specific information on the right to defence in its *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* . The relevant provisions stipulate that the accused or the accused's defence counsel has a right "to facilities which assist or may assist the accused in the preparation of his or her defence, to all relevant information held by the prosecution that could help the accused exonerate him or herself, and ... It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time..." <sup>24</sup>

**108.** In the case of the present Communication, the lawyers were only able to have access to the investigation file five (5) months following the detention of the Complainant. Moreover, while waiting for a summons due for 8 May 2012 for the purpose of notification, the lawyers went to the office of the examining magistrate on the eve of that date to consult the case file. They were unable to do so since the latter was absent and did not leave any instruction to that end, whereas at that very moment he was at the prison to notify the Complainant of another charge and his continued detention. These measures seriously prevented access to information and thus violated the right to defence.

**109.** By virtue of the above reasons, and regarding in particular the right to have the presence and assistance of lawyers of the Complainant's own choosing, the Commission notes that this right has to be guaranteed by the Respondent State at each stage of the proceedings. <sup>25</sup> The schemes used by the judicial authorities in this case seriously violate the right to legal representation. The gravity of these schemes derive from the fact that they led to the violation of a court decision ordering the Complainant's release and extended the latter's detention. As such, the Commission concludes that the rights protected under Article 7(1)(c) have been violated.

#### Violation of Article 7(1)(d)

**110.** Article 7(1)(d) guarantees: "The right to be tried within a reasonable time by an impartial court or tribunal". The Complainant submits that these provisions were violated, indicating that he was detained beyond the maximum statutory detention period and the lack of diligent measures justifying the relevance of the successive extensions obtained by the several separations of the initial charges. The Commission will begin by examining the argument on the lack of trial within a reasonable time (first point) before examining the allegation of partiality (second point).

**111.** Regarding the first point, the Commission notes that from the letter of the aforementioned provisions, there is the right to be tried and the right to be tried within a reasonable time. In its jurisprudence on the assessment of the reasonableness of the timeframe for trial, the Commission adopts the criteria used by the European Court in the case of *Buchholz v. Germany*.<sup>26</sup> In the case of *Article 19 v. Eritrea*, the Commission adopted three assessment criteria: the complexity of the case, and the conduct of the applicant and of the relevant authorities of the Respondent State.<sup>27</sup>

**112.** Moreover, in the case of *Pagnouille (on behalf of Mazou) v. Cameroon*, the Commission held that two (2) years of proceedings without any trial and without being given any reason for the delay constituted a violation of the right to be tried within a reasonable time.<sup>28</sup> In the case of *Centre for Free Speech v. Nigeria* concerning a two-year period of detention without trial, the Commission laid emphasis on the need for cases involving pre-trial detention to be tried as expeditiously as possible.<sup>29</sup>

**113.** Regardless of the circumstances, the Commission is of the view that a period of seven (7) years of pre-trial detention without any final judgement cannot obviously be considered as a reasonable period. The same circumstances led to this conclusion in the case of *Abubakar v. Ghana*.<sup>30</sup>

**114.** In this case, at the time the matter was seized by the Commission, the Complainant had been in pre-trial detention for a period of close to four years (44 months) whereas the criminal law of the Respondent State provides for a maximum of 18 months, unless there are other charges against the Complainant. In total, it took a period of six (6) years of pre-trial detention at the time the Commission took a decision on admissibility and seven (7) years at the time of the present decision, without any final judgement being passed against the Complainant.

**115.** It is important to note that despite the about ten measures taken by the judicial authorities within that period of time, the case did not make any significant progress. In seven (7) years of pre-trial detention, the Complainant was served six (6) remand warrants, four (4) separation orders and four (4) committal orders without any of the successive charges being different from those of the initial indictment of August 2008. The situation was worsened by the violation of a decision of the Yaoundé Mfoundi High Court ordering the release of the Complainant after four (4) years of remand in custody. Under such circumstances, the Complainant obviously did not enjoy the right to be tried within a reasonable time.

**116.** Regarding the second point on the impartiality of the trial court, the Commission notes that according to jurisprudence, the question of impartiality may derive from internal and external factors relating to the judge himself or other competent authorities in the organisation of the judicial system.<sup>31</sup> The principle covers the subjective impartiality of a judge and the objective impartiality of a court.<sup>32</sup> In fact, the aim is to guarantee an apparent impartiality. The burden to prove such impartiality lies with the party which makes the allegation.

**117.** In the present Communication, the Commission is of the view that the Complainant failed to prove impartiality, both from the objective and subjective points of view. That said, the Commission notes that in his arguments buttressing his request for provisional measures dated 15 June 2015, the Complainant recounts that he is still being prosecuted by the Centre Region Court of Appeal and the Supreme Court. He states that in the course of the proceedings, magistrates who had previously been part of the prosecution team have been appointed judges. Considering the close interaction between this alleged impartiality and the continued pre-trial detention, the Commission decides to do a joint consideration with the alleged violation of Article 6 of the Charter.

#### **Violation of Article 6**

**118.** Article 6 of the African Charter stipulates that: *"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."* From the facts of this Communication, it appears to the Commission that the following questions have to be answered regarding the alleged violation of Article 6 of the Charter: was the Complainant's detention based on and continued

under conditions previously laid down by law? Were the length of the pre-trial detention and the refusal to implement a release decision reasonable or were they arbitrary?

**119.** In general, the Commission considers as arbitrary, a prolonged detention without trial. The Commission held this position in the case of *Ouko v. Kenya* where the Complainant had been detained for ten (10) months without trial.<sup>33</sup> Detention for an indefinite period of time was also considered as a violation of Article 6 of the Charter in the case of *Free Legal Assistance Group and Others v. Za?re*.<sup>34</sup>

**120.** Regarding the grounds for and conditions of detention, in the case of *Chambala v. Zambia*, the UN Human Rights Committee considered as arbitrary a detention for a period of twenty-two (22) months without any grounds for detention.<sup>35</sup> Moreover, in its decision in the case of *Gorji-Dinka v. Cameroon*, the Committee concluded that arbitrariness is not to be equated with "against the law", but must include one of the elements such as: reasonable and necessary in all the circumstances.<sup>36</sup>

**121.** Furthermore, in the case of *Michel Thierry Atangana Abega v. Cameroon*, the UN Working Group on Arbitrary Detention held that when the violation of the right to a fair trial is of such gravity, it gives the deprivation of liberty an arbitrary character. The same applies to the lack of legal grounds for detention, including after serving the sentence.<sup>37</sup> The Working Group adopts the same position in the case of *Karim Wade v. Senegal*.<sup>38</sup>

**122.** The European Court adopts the same assessment criteria for the reasonableness or arbitrariness of detention. Deciding in particular on pre-trial detention, the Court reiterates the principle that the person detained must be tried within a reasonable time or released during the proceedings.

**123.** For example, in the case of *Letellier v. France*, the Court opined that reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices.<sup>39</sup> In its relevant conclusion, the Court considered that the grounds for detention must continue to justify the deprivation of liberty. This includes in particular, as well established in jurisprudence on pre-trial detention, the need to prevent the suspect from escaping, to prevent pressure being brought to bear on the witnesses and to preserve evidence.<sup>40</sup>

**124.** While laying emphasis on the need not to exceed the reasonable period, the Court verifies, as in the case of *Gérard Bernard v. France*, that there are relevant and sufficient grounds, and that the competent national authorities displayed "special diligence".<sup>41</sup>

**125.** In the present Communication, the Commission notes that despite the fact that separation is not provided for under Cameroon Criminal Procedure Code, it was abused by the judicial authorities as noted above. The extension of the detention period was made possible particularly as a result of the abuse of this measure which is not provided for by the law.

**126.** Moreover, it is especially the lack of relevance and sufficiency of the grounds invoked to support the separation orders and to continue the detention which pose a problem. With more than ten separation and committal orders issued within a minimum period of four (4) years, the grounds for detention did not differ since the initial indictment. Moreover, at the admissibility stage, the Respondent State mostly presented arguments on the grounds for denying release. In this case, the Respondent State failed to argue the need to prevent the suspect's escape, to preserve evidence and to prevent pressure on the witnesses.

**127.** Lastly, in such a long procedure, it cannot be considered that the authorities displayed the required diligence for a case involving pre-trial detention. The situation was aggravated by the refusal by the authorities to release the Complainant when after four (4) years of pre-trial detention the court found him not guilty and acquitted him of all the charges against him. The legality of detention is of paramount importance as underscored by the Working Group in the cases of *Michel Thierry Atangana Abega v. Cameroon* and *Karim Wade v. Senegal* which share strong similarities with the present Communication.

**128.** The Commission notes that following an appeal proceedings which was not allowed by the law, the Complainant was later sentenced by the Centre Region Court of Appeal to 15 years' imprisonment. He was

also tried by a Special Tribunal that was subsequently established. At the time of this decision, proceedings are still ongoing against him at the Supreme Court.

**129.** In this regard, the Commission is of the view that the present consideration is about alleged violations of the provisions of the Charter concerning the proceedings that led to the decision to release the Complainant which was not subject to appeal. The various violations alleged in this Communication were the subject of appeals before the competent national authorities without success.

**130.** The subsequent appeal proceedings and before the Supreme Court were conducted in violation of the law or on the basis of charges subsequent to the release decision whose authority was violated by the Respondent State. Even considering the appeal proceedings and before the Supreme Court, the rights protected under Articles 6 and 7 of the Charter have already been violated.

**131.** By virtue of these reasons, the Commission is of the view that the Complainant's detention is arbitrary. As such, it is necessary to conclude that Article 6 of the Charter has been violated. On the other hand, since the Complainant failed to prove the impartiality of the national courts, the Commission cannot take a decision on the violation of the related right.

## **Prayers of the Complainant**

### **Declaration of violation**

**132.** The Complainant requests the Commission to find and declare that the Respondent State failed to meet its obligation, under Article 26 of the Charter, to guarantee the independence of the courts... Unfortunately, the Complainant does not, at any point in his submissions, develop arguments to support the alleged violation of Article 26 of the Charter. As such, the Commission cannot accede to this request.

**133.** On the other hand, on the basis of its analysis in this regard, the Commission concludes that the provisions of Articles 6 , 7(1)(b) , 7(1)(c) and 7(1)(d) of the Charter have been violated.

**134.** Having admitted his arguments and concluded in this respect, the Commission has to consider the prayers of the Complainant. The right to reparation for damages suffered as a result of the violation of the rights guaranteed by the Charter has been consolidated in the Commission's jurisprudence. Reparation may take different forms depending on the rights violated and the factors of the case, ranging from administrative and judicial measures to financial compensation.<sup>4 42</sup>

**135.** Depending on the case, the Commission quantifies full reparation for lack of taking as reference the specific requests of the Complainant.<sup>43</sup> . In any event, the reparation has to be fair, adequate, effective, sufficient, appropriate, satisfactory to the victim and proportionate to the damage suffered.<sup>44</sup>

## **Release**

**136.** From the arguments developed above, it appears that the judicial authorities of the Respondent State ignored the authority of the judgment of the High Court by using schemes to prevent its implementation. The subsequent measures taken to keep the Complainant in detention also violate the said ruling as well as the procedure of the appeal. In any event, the detention became arbitrary notwithstanding any subsequent action which may have derived concerning the same facts and on the basis of the same charges. Under such circumstances, it is necessary to demand the release of the Complainant pending the outcome of any other ongoing proceedings.

## **Sanctioning perpetrators of the violations**

**137.** The Commission has clearly established the violation of a number of rights relating to fair trial and liberty of the human person. It appears that the administrative and judicial authorities took measures which led to these violations. The Commission is of the view that it is necessary to sanction the perpetrators in order to prevent a recurrence of the established violations. The Commission will thus proceed to consider



the related requests.

## **Reparation**

**138.** The Complainant requests to be compensated the amount of eight hundred million (800,000,000) CFA francs in material and non-material damages, in particular for a minimum of four (4) years of unlawful detention. The Commission has already recalled the constant principle of the right to financial compensation following a violation of the Charter. Financial compensation applies in cases of violation of the right to a fair trial and the right to liberty and security of the human person.

**139.** In cases sharing significant similarities with the present Communication, the UN Working Group on Arbitrary Detention adopts financial compensation without necessarily specifying the amount.<sup>45</sup> On the other hand, in the cases of *Othman (Abu Qatada) v. United Kingdom*<sup>46</sup> and *Claude Baudoin v. France*,<sup>47</sup> the European Court ordered that the Respondent States should pay twenty-nine thousand (29,000) and twenty thousand (20,000) euros respectively in damages for arbitrary detention. The length of detention was three years in the former case and twenty-seven years (of automatic psychiatric internment) in the latter case.

**140.** In two cases where it concluded that there was a violation of the right to a fair trial and the right to liberty, the ECOWAS Court of Justice awarded one hundred thousand (100,000) dollars in the case of *Chief Ebrimah Manneh v. Gambia*<sup>48</sup> and two hundred thousand (200,000) dollars in the case of *Musa Saidykhan v. Gambia*.<sup>49</sup> In the two cases, the length of detention did not exceed two years at the time of the Court's ruling.

**141.** In this case, the Complainant does not provide any scale for calculating the amount of eight hundred million (800,000,000) CFA francs requested. As such, the issue has to be addressed by the Commission, especially as the judicial authorities of the Respondent State who would have decided the matter are involved in the established violations. Moreover, it is a case of a very political nature. Lastly, the length of detention is close to seven (7) years at the date of the present decision whereas the maximum detention period under Cameroonian law is eighteen (18) months.

**142.** In assessing the amount, it should also be noted that until his detention, the Complainant was working as a Senior Research Fellow and occupied senior posts in Government. His prolonged detention brought his professional activities to a standstill while his reputation was ruined due to the presumption of guilt that he was subjected to before the public. Considering the facts of the case, the Complainant's situation, the nature of the violations and the relevant practice of human rights bodies, the Commission is of the view that compensation in the amount of four hundred million (400,000,000) CFA francs would be fair.

**143.** The Commission notes that under Rule 112(2) of its Rules of Procedure, in the event of a decision against a State Party, the parties shall inform the Commission in writing, within one hundred and eighty (180) days of being informed of the decision, of all measures taken or being taken by the State Party to implement the decision of the Commission.

## **Decision of the Commission on the Merits**

**For the above reasons, the Commission:**

**144.** Declares that there is no need to rule on the request to find a violation of Article 26 of the Charter.

**145.** Declares that the Republic of Cameroon has violated the provisions of Articles 6 , 7(1)(b) , 7(1)(c) , and 7(1)(d) of the Charter. As such:

1. Urgently requests the Republic of Cameroon to order the immediate release of the Complainant;
2. Urgently requests the Republic of Cameroon to take prompt and appropriate measures to sanction all Government employees responsible for the violations perpetrated against the Complainant;

3. Requests the Republic of Cameroon to pay the Complainant the sum of four hundred million (400,000,000) CFA francs as compensation for the material and non-material damages suffered as a result of the established violations;
4. Further requests the Republic of Cameroon to report in writing, within one hundred and eighty (180) days of notification of this decision, on the measures taken to implement these recommendations.

**Adopted during the 18<sup>th</sup> Extraordinary Session of the African Commission on Human and Peoples' Rights held from 29 July to 8 August 2015 in Nairobi, Kenya**

- 1 The Republic of Cameroon ratified the African Charter on 20 June 1989.
- 2 Communication 268/03 (2005) AHRLR 52 (ACHPR 2005) paras 38-40.
- 3 Communication 260/02 (2004) AHRLR 37 (ACHPR 2004) para 48
- 4 See Sir Dawda K. Jawara v Gambia Communication 147/95 and 149/96 (2000) AHRLR 107 (2000) para 31
- 5 See Jawara para 32
- 6 Communication 97/93 (2000) AHRLR 30 (ACHPR 2000) para 69
- 7 Association of Victims of Post Electoral Violence and Interights v. Cameroon Communication 272/03 (2009) AHRLR 47 (ACHPR 2009)
- 8 Communication 408/11 ACHPR 2013 ; see also Ben Salem v. Tunisia (2007) AHRLR 54 (CAT 2007) para 8.5
- 9 In some cases, the Commission also took into account the political situation and the legal history of the country, as well as the nature of the complaint. See, for example, Zimbabwe Lawyers for Human Rights et al. v Zimbabwe (2008) AHRLR 120 (ACHPR 2008) paras 58 and 60.
- 10 Law No 2005/007 of 27 July 2005.
- 11 S Braudo, Private Law Dictionary (Dictionnaire du droit privé) , <http://www.dictionnaire-juridique.com/definition/jonction.php> (consulted on 27 September 2013).
- 12 Association of Victims of Post Electoral Violence & Interights v. Cameroon op. cit. para 67.
- 13 See Rule 105(2).
- 14 See Institute for Human Rights and Development in Africa v. Angola Communication 292/04 (2008) AHRLR 43 (ACHPR 2008) para. 34. Also see Social and Economic Rights Action Center & Center for Economic and Social Rights v. Nigeria Communication 155/96 (2001) AHRLR 60 (ACHPR 2001) and Union Inter africaine des Droits de l'Homme and Others v. Angola Communication 159/96 (2000) AHRLR 20 (ACHPR 1997).
- 15 Law Office of Ghazi Suleiman v. Sudan (I) Communication 222/98 and 229/99 (2003) AHRLR 134 (ACHPR 2003) para 56. Underlined by the Commission.
- 16 Konstas v. Greece (ECtHR 24 May 2011) paras 14-16.
- 17 Paras 32-33.
- 18 Konstas para 36 ; Englert v. Germany (ECtHR 9 October 1985) para 35 ; Nölkenbockhoff v. Germany, Application No. 10300/83
- 19 Kouzmin v. Russia (ECtHR 18 March 2010).
- 20 Konstas paras 42-45.
- 21 See among others Civil Liberties Organisation and Others v. Nigeria Communication 218/98 (2001) AHRLR 75 (ACHPR 2001) ; Law Office of Ghazi Suleiman (I) v. Sudan op. cit. ; Article 19 v. Eritrea Communication 275/03 (2007) AHRLR 73 (ACHPR 2007)
- 22 International Pen and Others (on behalf of Saro-Wiwa) v. Nigeria Communications 137/94, 139/94, 154/96 and 161/97 (2000) AHRLR 212 (ACHPR 1998) paras 99-101.
- 23 Avocats Sans Frontières (on behalf of Bwampamyé) v. Burundi Communication 231/99 (2000) AHRLR 48 (ACHPR 2000) para 28.
- 24 African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001) Guidelines N(3)(d), N(3)(e)(3)(i-v)
- 25 Guideline N(1)(d1).
- 26 Buchholz v. Germany (ECtHR 6 May 1981)
- 27 Article 19 v. Eritrea op. cit. paras 97-100.
- 28 See Pagnoule Communication 39/90 (2000) AHRLR 57 (ACHPR 1997).

- 29** Centre for Free Speech v. Nigeria Communication 206/97 (2000) AHRLR 250 (ACHPR 1999) paras 19-20.
- 30** Communication 103/93 (2000) AHRLR 124 (ACHPR 1996) paras 10-12.
- 31** See among others Civil Liberties Organisation and Others op. cit. (trial of civilians by military tribunals); Olo Bahamonde v. Equatorial Guinea (2001) AHRLR 21 (HCR 1993) (courts under the control of the Executive).
- 32** See Piersack v. France (ECtHR 1982) (objective and subjective impartiality); Remlic v. France (ECtHR 1996) (subjective impartiality); Morel v. France (ECtHR 2000) (objective impartiality).
- 33** See Ouko v. Kenya Communication 232/99 (2000) AHRLR 135 (ACHPR 2000) paras 20-21.
- 34** Communications 25/89, 47/90, 56/91 and 100/93 (2000) AHRLR 74 (ACHPR 1995) para 42.
- 35** See Chambala v. Zambia Communication 856/1999 (2003) ARHLR 27 (HRC 2003) para 7.2
- 36** Gorji-Dinka v. Cameroon Communication 1134/2002 (2005) AHRLR 18 (ACHPR 2005) para 5.1.
- 37** Michel Thierry Atangana Abega v. Cameroon Views A/HRC/WGAD/2013/38 of 13 November 2013.
- 38** See Views A/HRC/WGAD/2013/04 of 20 April 2015.
- 39** Letellier v. France (ECtHR 26 June 1991) paras 35-53.
- 40** See Letellier op. cit.
- 41** Gérard Bernard v. France (ECtHR 26 September 2006) paras 37-48.
- 42** See Good v. Botswana op. cit. para 245 ; Antoine Bissangou v. Congo Communication 253/02 (2006) AHRLR 80 (ACHPR 2006) ; Embga Mekongo Louis v. Cameroon Communication 59/91 (2000) AHRLR 60 (ACHPR 1995) para 2.
- 43** See Good op. cit.
- 44** See Loayza Tamayo v. Peru (1998) , Velasquez (1989) , Aloeboetoe v. Suriname (1993) of the Inter-American Court of Human Rights; Djot Bayi v. Nigeria (2009) of the ECOWAS Court of Justice. Also see, in general, REDRESS Reaching for justice: The Right to Reparation in the African Human Rights System (2013).
- 45** For more recent cases, see the cases of Michel Thierry ATANGANA ABEGA and Karim WADE op. cit.
- 46** (ECtHR 17 January 2012).
- 47** (ECtHR 18 November 2010).
- 48** ECW/CCJ/JUD/03/08 of 5 June 2009.
- 49** ECW/CCJ/JUD/08/10 of 16 December 2010.