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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1962/2010

Decision adopted by the Committee at its 107th session (11–28 March 2013)

Submitted by:	S.N.A. (not represented by counsel)
Alleged victim:	The author
State party:	Cameroon
Date of communication:	7 February 2008 (initial submission)
Document reference:	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 August 2010 (not issued in document form)
Date of decision:	25 March 2013
Subject matter:	Arbitrary arrest and detention of a person accused of belonging to a separatist movement
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right of self-determination, prohibition of torture and cruel and inhuman treatment, right to liberty and security of person, respect for the inherent dignity of the human person, prohibition of arbitrary or unlawful interference with privacy, freedom of expression
Articles of the Covenant:	Articles 1, 7, 9, 10, 17 and 19
Article of the Optional Protocol:	Article 5, paragraph 2 (b)

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Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (107th session)

concerning

Communication No. 1962/2010*

Submitted by:	S.N.A. (not represented by counsel)
Alleged victim:	The author
State party:	Cameroon
Date of communication:	8 February 2008 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 May 2013,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is S.N.A., a Cameroonian citizen born on 23 September 1938 in Grand Babanki, North Province, Cameroon. He considers himself to be a victim of violations by Cameroon of articles 1, 7, 9, 10, 17 and 19 of the International Covenant on Civil and Political Rights.[1] The author is not represented by counsel.

1.2 On 18 October 2010, at the State party's request, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to consider the admissibility of the communication separately from its merits.

The facts as submitted by the author

2.1 As a journalist working for the newspaper *The Grass Landa*, the author was assigned to cover the celebration of the fortieth anniversary of the establishment of the Southern Cameroons National Council (SCNC), an English-speaking separatist organization, on 1 October 2001. While performing his duties in Bamenda, the author was

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili et Ms. Margo Waterval.

[1] The Optional Protocol entered into force for the State party on 27 September 1984.

arrested without a warrant by gendarmes, who then tortured him and held him in a cell located on Bamenda's main shopping street.[2] The tools of his trade, including his recording equipment, were confiscated by the authorities, who suspected that they could be used as transmitters to communicate with the outside world. He was denied the right to communicate with his family or friends. He was stripped and thrown into an unventilated cell, where he remained for more than 24 hours without food or access to a lawyer. At about 2 p.m. the next day he was transferred to the Gendarmerie, where he was interrogated. After the author's wife interceded, verifying that he was a journalist, he was released. The author was severely traumatized by the arrest and interrogation.

2.2 On 21 September 2005, as the author was accompanying a group of SCNC associates on a fact-finding mission to Fundong in Boyo Department, he stopped along the Bello road to visit a friend. He had just sat down in the friend's home when a black Government car drove onto the property. Mr. Chili Abdou, Subprefect of Belo, accompanied by two gendarmes, a civilian and the Brigade Commander of the Gendarmerie of Belo, asked the author and his friends to hand over their identity documents. They were then taken to the Gendarmerie station, where they were held for six days. They slept on a cold cement floor that smelled strongly of faeces and urine because detainees urinated and defecated directly on the floor. On the sixth day, they were brought before the Public Prosecutor of Fundong, legal proceedings were initiated, and they were formally charged with engaging in separatist activities, but were released on bail. The charges were later dropped for lack of evidence. The judge did not, however, order any redress for their arbitrary arrest and torture.

2.3 On 29 December 2006, as the author was having a drink with a friend in a café near the hospital roundabout in Bamenda, about six police officers addressed him in French and pointed at him, saying he was a wanted man. They ordered him to follow them. He was taken to the station of Mobile Intervention Group (GMI) No. 6 of Bamenda,[3] where he was ordered to reveal the contents of the bag he was carrying with him. The papers he was carrying included historical documents on the SCNC separatist movement's demands for self-determination. The police officers told him that he was in possession of documents issued by an illegal organization, which constituted a violation of the territorial integrity of the Republic of Cameroon. The author argued that he was a journalist with the right to seek, receive and convey information. His mobile phone was seized. He was thrown into a cell and was not given any food until the next day. However, his family and lawyer were immediately notified of his arrest, and he was able to see his family the next day. On 30 December 2006, he was transferred to the criminal investigation service, where he was held with a dozen other detainees. He was held in prison, in conditions that he characterizes as inhumane, until 3 January 2007. During his detention he was not given any blankets or sheets and slept directly on the floor. His family brought him clothes so he could cover himself. On 3 January 2007, he was brought before the Bamenda Public Prosecutor, who signed his pretrial detention order. The author was then transferred to Bamenda central prison. The judge dismissed the case on 2 October 2007 but did not grant the author any compensation.

2.4 The author reported these violations of his rights to the National Commission on Human Rights and Freedoms, which was unable to obtain compensation. As he considered that the judiciary was merely an extension of the executive branch and was therefore not independent of it, the author did not bring the matter before the courts. The Cameroonian

[2] The author does not specify in which building he was held or whether the cells were managed by the Gendarmerie or were private places of detention.

[3] In its submission the State party refers to GMI No. 1, not No. 6.

courts considered the author's allegations when he was brought before the judge at the time of his detention, but no redress was granted.

The complaint

3.1 The author considers that he has exhausted the available domestic remedies since, as a member of SCNC, a liberation movement fighting for independence for Southern Cameroons, he has been prevented from obtaining compensation through the competent judicial bodies.

3.2 The author considers that the State party has violated his rights under articles 1, 7, 9, 10, 17 and 23 of the Covenant.[4]

State party's observations on admissibility

4.1 On 4 October 2010, the State party contested the admissibility of the communication. Following a brief review of the facts, the State party emphasizes that the author has not exhausted domestic remedies as provided for under article 5, paragraph 2 (b), of the Optional Protocol.

4.2 In fact, the only step taken by the author was to petition the National Commission on Human Rights and Freedoms. He did not make use of any judicial appeal procedure to seek compensation for the harm he allegedly suffered, and he simply presumes that the judicial authorities lack independence. The State party considers that the author's argument that legal remedies are not available to him is merely a pretext for not fulfilling his obligation to exhaust domestic remedies, even though he did provide a copy of the order to dismiss the case, dated 2 October 2007, to support his claim. In that decision, the judge clearly stated that there was no basis on which to prosecute the author for the offence of separatism under articles 74 and 111 of the Criminal Code. This is not an isolated case. Other cases against SCNC activists charged with the same offence have also been dismissed.[5] If the accusation of a lack of independence on the part of the Cameroonian judiciary were well founded, then one could expect that all alleged secessionist acts would be punished rather than resulting in dismissals. In the case at hand, the judges demonstrated their independence by dismissing the actions brought by the prosecution.

4.3 The State party adds that the Cameroonian courts have repeatedly upheld charges against police officers accused of committing acts of torture and other types of violence against members of the public. The State party cites two such cases.[6] The author cannot legitimately invoke general assumptions about the independence of the judiciary as a justification for failing to exhaust domestic remedies.[7] The State party therefore asks the

[4] The author does not provide any argument to support the individual allegations.

[5] The State party cites the case of *The Prosecution v. Nfor Ngala and nine other*s, dismissed on 6 December 2007.

[6] The State party cites the case of a police inspector named Stephen Ngu, who was sentenced on 24 October 2005, with immediate effect, to 5 years' imprisonment for torture and 3 years' imprisonment for inflicting serious injuries, and the case of Police Commissioner Miagougoudom Bello and Mr. Boubaki Modibo, who were found guilty of murder on 27 October 2006 and sentenced, with immediate effect, to 10 years' and 15 years' imprisonment, respectively. However, the charges were then reduced to manslaughter and complicity, and the penalty for Miagougoudom Bello was lowered to 5 years' imprisonment, 2 of which were to be served immediately. Mr. Boubaki Modibo was acquitted.

[7] The State party cites the Committee's jurisprudence in communication No. 397/1990, *P.S. v. Denmark*, inadmissibility decision of 22 July 1992, para. 5.4, and communication No. 1374/2005, *Kurbogaj v. Spain*, inadmissibility decision of 14 July 2006, para. 6.3.

Committee to declare the communication inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Author's comments on the State party's submission

5.1 On 10 December 2010, the author submitted his comments on the admissibility of the communication.

5.2 The author briefly recalls the history of the SCNC movement and explains that since the movement's celebration of the fortieth anniversary of the independence of Southern Cameroons, its members and sympathizers have seen the number of acts of harassment, arbitrary detention and torture targeting them increase time and again. The author cites several examples of members who have suffered such violations of their rights.

5.3 In his view, the central issue addressed in his communication is whether the Cameroonian judiciary is free from Government interference in matters concerning SCNC members suspected of committing or attempting to commit secessionist acts. The author considers that domestic remedies are not available to such suspects, and thus to him, and never will be, as such persons have been denied the right of self-determination. The courts established by the central State, which serve as both judge and prosecutor, cannot be regarded as independent courts qualified to dispense justice to Southern Cameroonians. It would be suicidal for Southern Cameroonians to have recourse to that justice system while they struggle to restore the territorial integrity of Southern Cameroons.

5.4 Contrary to the State party's claims, the dismissal of charges of 2 October 2007 does not testify to the independence of the judiciary, but rather highlights the negligence of the prosecution in its preparations for the legal proceedings against the author. In this regard, the author quotes a letter sent by the Prefect of Mezam to the Bamenda Public Prosecutor on 23 July 2007 in which he acknowledged that the author had been arrested without a warrant and stated that the gendarmes had acted on the orders of the Mezam Division, but pointed out that such arrests would no longer take place, as the Prefect would not fail to ask the Prosecutor for instructions before proceeding. The author believes that this letter constitutes a recognition of the lack of an independent judiciary.

5.5 The author adds that relations between the separatist movement and the State party have broken down and that SCNC members therefore need special safeguards and guarantees that they will be able to exercise their rights freely. The author believes that the justice system is corrupt and closely tied to the executive branch and that it therefore cannot be considered to be a system that provides access to justice. The author mentions that he unsuccessfully lodged a complaint of a violation of his rights with the National Commission on Human Rights and Freedoms.

5.6 On 10 December 2010, at the author's request, the non-governmental organization ALL for Cameroon expressed its views on the question of the exhaustion of domestic remedies in the case at hand. It states that the Cameroonian judiciary is not independent, given that the Head of State is the president of the Supreme Council of Justice and the Minister of Justice serves as a deputy prime minister.

5.7 This NGO added that, although a judge may dismiss a case, it would be very difficult for a judge to take a decision against the central State without a fear of reprisal. Furthermore, the fact that proceedings are initiated against SCNC members for secessionist acts attests to the tension that prevails owing to this issue. Even if in some cases the courts might decide that citizens have been victims of human rights violations, enforcement of these decisions is problematic and generally non-existent.

5.8 Although the judge dismissed the charges against the author on 2 October 2007, the case has not been removed from the docket, and the prosecutor can resume prosecution of

the author at any time. He therefore cannot be considered to be a man at liberty who is free from pressure. Any proceedings initiated against the State party would take years to complete and would saddle the author with enormous attorney and court fees.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that, according to the State party, the author has not exhausted the available domestic remedies, since the only step that he has taken is to lodge a complaint before the National Commission on Human Rights and Freedoms and he has not availed himself of any legal remedy to seek compensation for the harm he claims to have sustained. The Committee further notes that, according to the State party, the author simply presumes that the judicial authorities lack independence, even though those same authorities dismissed the charges against the author on 2 October 2007. The State party also asserts that this was not an isolated case, as charges against other SCNC members have also been dismissed. The Committee notes the author's argument that the courts established by the central State, which act as both judge and jury, cannot be considered to be independent courts capable of dispensing justice for Southern Cameroonians and that any proceedings initiated against the State party would take years to complete and would involve enormous attorney and court fees for the author.

6.3 The Committee notes that the author rejects the State party's judicial system outright on the grounds that it cannot be competent to deal with the claims and aspirations of Southern Cameroonians who wish to secede from the central State. The author therefore presumed that the judiciary lacked independence without providing evidence of a lack of such independence or impartiality on the part of the judicial authorities in his own case.

6.4 The Committee recalls that, although it has recognized in its jurisprudence that it is not necessary to exhaust domestic remedies when they have no chance of being successful, merely doubting their effectiveness does not absolve the author of a communication from the obligation to exhaust those remedies.[8] In the case at hand, the author has not provided the Committee with sufficient information to enable it to conclude that the domestic remedies are ineffective. In addition, the Committee recalls that the reference made in article 5, paragraph 2 (b), of the Optional Protocol to "all available domestic remedies" primarily concerns judicial remedies.[9] Under these circumstances, it follows that the author of the communication has not fulfilled his obligation to exhaust domestic remedies. The communication is therefore inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That this decision shall be transmitted to the State party and to the author of the communication.

[8] See communication No. 1511/2006, *García Perea v. Spain*, inadmissibility decision of 27 March 2009, para. 6.2.

[9] See communication No. 1159/2003, *Mariam Sankara et al. v. Burkina Faso*, Views adopted on 28 March 2006, para. 6.4.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]