

# No. 38/2013 (Cameroon)

## Communication addressed to the Government on 12 August 2013

### Concerning Michel Thierry Atangana Abega

#### **The Government has not replied. The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in Council resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in Council resolution 24/7 of 26 September 2013. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, as established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

#### **Submissions**

##### *Communication from the source*

3. Michel Thierry Atangana Abega, a national of Cameroon and France, was born on XX June XXXX in Yaoundé, Cameroon. He is a financial officer. On 8 July 1994, Mr. Atangana was appointed head of a steering committee to oversee major road projects by the President of Cameroon, Mr. Paul Biya.

4. On 20 April 1997, Titus Edzoa, who is close to Mr. Atangana, announced his intention to stand for President at the 1997 elections.

5. On 12 May 1997, Mr. Atangana was taken in for questioning without a warrant by special force units of the special operations task force and then detained by the criminal investigation department in Yaoundé.

6. Mr. Atangana has been held in detention since the day of his arrest. According to the source, the conditions of detention of Mr. Atangana seriously endanger his physical and mental health: he was placed from day one in total solitary confinement in a basement cell of the Secretariat of State for Defence without access to health care or communication with the outside world, in particular his family.

7. The source asserts that government authorities are holding Mr. Atangana's support for an opposition figure during the 1997 elections against him.

8. On 3 October 1997, Mr. Atangana was sentenced to 15 years' imprisonment for embezzlement, attempted embezzlement of public funds and complicity in influence peddling.

9. On 27 April 1999, Mr. Atangana's sentence was upheld by the Court of Appeal.

10. On 23 October 2003, his sentence was upheld by a higher, cassational court.

11. On 23 October 2008, or more than 11 years since Mr. Atangana's conviction, Pascal Magnaguemabe, the investigating judge of the Mfoundi court, dismissed all charges against Mr. Atangana.

12. On 3 February 2009, at the request of the prosecution and without notifying the accused, the investigating division of the Centre Province Court of Appeal set aside the dismissal order and brought the case before the *tribunal de grande instance* (court of major jurisdiction) of Mfoundi, in violation of the right to a fair hearing and of article 275 of the Code of Criminal Procedure in particular. The trial lasted from 27 October 2009 to 21 March 2012.

13. On 4 October 2012, Mr. Atangana was sentenced again for the same acts to 20 years in prison and 5 years' civil imprisonment. Mr. Atangana filed an appeal against that decision with the higher, cassational court.

14. According to the source, 15 years after the events, whereas Mr. Atangana has served the sentence initially imposed and a dismissal order has been issued, the new sentence cannot be regarded as a mere judicial decision. According to the source, it is impossible to invoke any legal basis justifying Mr. Atangana's continued detention for acts for which he has served the sentence that had been handed down on 3 October 1997. According to the source, the imprisonment of Mr. Atangana is therefore arbitrary in nature.

15. The source states that Mr. Atangana's detention, conviction and imprisonment were in violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. According to the source, the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty of Mr. Atangana an arbitrary character.

16. The source maintains that Mr. Atangana is a political prisoner.

#### *Response from the Government*

17. The Government has neither replied to the communication within 60 days nor asked for an extension of the deadline. In the absence of a response from the Government and in accordance with its working methods, the Working Group is able to render an opinion only on the basis of the information provided by the source.

#### **Discussion**

18. According to information provided to the Working Group, Mr. Atangana was arrested on 12 May 1997 without a warrant from the competent authorities and has been deprived of his liberty ever since, i.e. for the past 16 years for supporting a candidate who stood against Paul Biya, President since 1982, in the 1997 presidential elections. Mr. Atangana was tried and sentenced to 15 years' deprivation of liberty for embezzlement, attempted embezzlement of public funds and complicity in influence peddling. The sentence was upheld on appeal to both the Court of Appeal and a higher, cassational court.

19. Mr. Atangana is imprisoned in inhuman conditions, without adequate ventilation and unable to communicate with the outside world or his family.

20. Although the investigating judge of the Mfoundi court dismissed the charges in 2008, at the request of the prosecution and without notifying the accused, the case was referred to the *tribunal de grande instance* of Mfoundi, which upheld the initial sentence and thereby led to Mr. Atangana's continued detention to date.

21. In addition to serving the sentence imposed in 1997, Mr. Atangana was convicted a second time for the same acts. He was given a new sentence of 20 years' deprivation of liberty and a further 5 years' imprisonment for failure to pay his debts. One year later, the application for judicial review of this arbitrary decision had yet to be granted.

22. None of the facts reported have been refuted by the Government.

23. The information provided to the Working Group indicates that, following his arrest without a warrant from the competent judicial authorities, on 12 May 1997, Mr. Atangana was held in police custody for 52 days before he was brought before the court, on 3 July 1997. Thus, Mr. Atangana's deprivation of liberty between 12 May and 3 July 1997 is arbitrary and falls under category I of the categories applicable to the consideration of cases submitted to the Working Group.

24. The Working Group was informed that the defence lawyers had been given late notice of the hearing date, preventing them from exercising procedural rights in due form. The lawyers considered that they should not take part in the hearing because of the lack of procedural safeguards. In addition, the hearing took place in the lawyers' absence at unusual hours, with the presentation of the public prosecution's case going long past 5 p.m., until 4 a.m. the following day.

25. According to the Working Group, Mr. Atangana was tried and convicted for exercising his right to freedom of opinion and expression and his right to participate in the government of his country, directly or through freely chosen representatives, which are rights enshrined in articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 25 of the International Covenant on Civil and Political Rights. Therefore, his deprivation of liberty since 3 July 1997 is arbitrary and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group.

26. The lack of an arrest warrant and Mr. Atangana's detention in police custody for 52 days before being brought before the judicial authorities constitute arbitrary detention under category III of the categories applicable to the consideration of cases submitted to the Working Group.

27. In the opinion of the Working Group, it is clear that none of the judicial bodies involved in Mr. Atangana's very long period of deprivation of liberty were impartial, as is evidenced by a great many facts: Mr. Atangana was convicted without the benefit of the services of his defence lawyers; his lawyers were not notified of the hearing dates, which reportedly did not leave them the time necessary to prepare and argue an adequate case for the defence; and Mr. Atangana's right to be released pending the trial was flouted on the pretext of securing his appearance and ensuring that he served his sentence, as was his right to be tried promptly and to enjoy the presumption of innocence.

28. Moreover, he was punished under criminal law for personal debt, the principle of *ne bis in idem* was breached, i.e. he was tried twice for the same acts, and the trials spanned several years, all of which are in violation of articles 7, 8, 9, 10 and 11, paragraph 1, of the Universal Declaration of Human Rights and articles 10, 11, 14, paragraphs 1, 2, 3 (a) to (e), and 7 of the International Covenant on Civil and Political Rights.

29. All the facts since 3 July 1997 amount to very serious violations of fair trial standards and, therefore, fall under category III of the categories applicable to the consideration of cases submitted to the Working Group.

### **Disposition**

30. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Michel Thierry Atangana Abega, from 12 May to 3 July 1997, as ordered by the judicial authorities of Cameroon, was arbitrary and fell under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group. His deprivation of liberty since 4 July 1997 is arbitrary and falls under categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

31. The Working Group recommends that the Government of Cameroon should immediately release Mr. Atangana.

32. It further recommends that the Government should investigate the facts and punish those responsible for depriving Mr. Atangana of his liberty.

33. The Working Group requests the Government to award Mr. Atangana compensation for the harm caused by being deprived of his liberty since 12 May 1997.  
[Adopted on 13 November 2013]