



International Covenant on Civil and Political Rights

Distr.: General
2 December 2014
English
Original: French

Human Rights Committee

Communication No. 2325/2013

Decision adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Jean Emmanuel Kandem Foubi
<i>Alleged victim:</i>	The author
<i>State party:</i>	Cameroon
<i>Date of communication:</i>	18 November 2013 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 30 December 2013 (not issued in document form)
<i>Date of decision:</i>	28 October 2014
<i>Subject matters:</i>	Legality of detention; detention conditions
<i>Substantive issues:</i>	Prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; right of all persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person
<i>Procedural issues:</i>	Non-substantiation; exhaustion of domestic remedies; incompatibility with the Covenant's provisions
<i>Articles of the Covenant:</i>	Articles 1, 2, 4 (para. 2), 5 (para. 2), 6, 7, 9 (paras. 1 and 4), 10, 11, 12, 14 (paras. 1, 2 and 3 (c)) and 15 (para. 1)
<i>Articles of the Optional Protocol:</i>	Articles 2, 3 and 5 (para. 2 (b))

[Annex]

GE.14-23228 (E)



* 1 4 2 3 2 2 8 *

Please recycle



Annex

Decision of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2325/2013*

Submitted by: Jean Emmanuel Kandem Foubi

Alleged victim: The author

State party: Cameroon

Date of communication: 18 November 2013 (initial submission)

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

Meeting on 28 October 2014,

Having concluded its consideration of communication No. 2325/2013, submitted by Jean Emmanuel Kandem Foubi under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1.1 The author of the communication dated 18 November 2013, with additional information received on 11 December 2013, is Jean Emmanuel Kandem Foubi, a French national born on 17 January 1970 in Mbo-Bandjoun in Cameroon, resident in France and currently detained in Cameroon. He claims that Cameroon has violated his rights under articles 1, 2, 4, paragraph 2, 5, paragraph 2, 6, 7, 9, paragraphs 1 and 4, 10, 11, 12, 14 and 15 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Cameroon on 27 September 1984.

1.2 On 30 December 2013, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided to issue a request for interim measures under rule 92 of the Committee's rules of procedure, requesting that the State party take into consideration the author's health and ensure that all irreparable damage to his health be prevented.

* The following members of the Committee took part in the consideration of the communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

1.3 On 12 May 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, accepted the request of the State party that the admissibility of the complaint be considered separately from the merits.

Factual background

2.1 Between March 2006 and December 2007, the author developed a new money transfer concept called “Transfert Services”, an alternative to money transfer based on an integrated information technology platform connecting local businesses. “Transfert Services” allows persons from developing countries residing in Western countries to respond directly to the needs of their loved ones by giving them access to goods and services through the platform. Between 2008 and 2009, the author created a start-up business, Hope Finance, in order to develop the platform, whose activities were aimed at diasporas until 2010.

2.2 The author then decided to develop the platform so that it could also target States and public authorities in Africa. In 2010, he created an information technology platform aimed at local governments and the mobilization of funding through a website (www.devhop.com). In 2010, the author also created a new business, Hope Services, to support this new activity. Hope Finance and Hope Services subsequently formed the Hope Group, with each company acting independently in the countries where the author carried out his activities (France, Belgium, the United States of America, Côte d’Ivoire, Benin, Senegal, Burkina Faso, the Democratic Republic of the Congo and Cameroon).

2.3 On 21 July 2011, having presented his project at a conference organized in Cameroon by the Ministry of the Economy, the author, through Hope Finance, signed a mutual agreement regarding the provision of an “integrated information technology platform to mobilize non-debt-creating resources for the funding of community development plans and the growth and employment strategy”. On 31 May 2011, the author created a company named Hope Services SA in Cameroon, for the purpose of managing the partnership with the Government. The website www.devhop.com was officially launched on 22 November 2012. In April 2013, the author was invited to Cameroon to finalize the terms of the operating agreement with the Ministry of the Economy governing the exclusive outsourcing of public services to the Hope Group, as set out in the contract of 21 July 2011.

2.4 In Cameroon, various criminal complaints of fraud, aggravated fraud and falsification of private business documents were filed against the author. On 6 May 2013, during his stay in the State party, the author’s passport was confiscated by the public prosecutor. On 10 May 2013, a warrant for his arrest was issued and he was taken into police custody. On 14 May 2013, his detention in custody was extended until 16 May 2013 after further complaints were filed against him. Between 10 and 22 May 2013, the police held various hearings and confrontations relating to the five complaints against the author. He remained in police custody until 22 May 2013, when he was placed in pretrial detention under warrants issued on 22 May, 27 June, 9 October and 4 November 2013. The author complains that, while in police custody, he was forced to sleep on the floor of an unventilated cell measuring approximately 8 m² with 20 other persons. He also states that he was attacked by other detainees in New Bell Prison on 28 June 2013 and that his complaints to the prison services have come to nothing.

2.5 The first complaint of fraud was lodged on 9 December 2012 by Dieudonné Kengoum Bouketcha, who claims to have given money to the author in order to purchase shares in Hope Finance France. Mr. Kengoum then discovered that the author was the only shareholder of the company in question and he has never received a return on his investment. In his criminal complaint, Mr. Kengoum states that he was informed by third parties that the author was a notorious con man in France and that he had informed other complainants of the author’s presence in Cameroon. Moreover, Mr. Kengoum had brought

proceedings against Hope Finance in France. On 2 April 2013, the tribunal de grande instance (court of major jurisdiction) of Bobigny in France found that it lacked the material competence to rule on Mr. Kengoum's petition for the reimbursement of his shares. The case had been referred to the Paris Commercial Court and is currently under way.

2.6 On 8 May 2013, a second complaint of fraud was lodged by a French company, Logis SA, relating to non-payment by Hope Santé SA Cameroon, a company of which the author denies knowledge, which had commissioned it to transport medical materials. Between 10 and 14 May 2013, three further complaints of fraud were lodged against the author.¹

2.7 During his detention, the author requested, by letter dated 26 July 2013, a proposal from the Government for reconveyance given its failure to outsource public services following a challenge to the clause on the exclusive outsourcing of public services set out in the contract signed on 21 July 2011. On 2 August 2013, the author was informed by the Ministry of the Economy that the Government wished to terminate the contractual exclusivity granted to the Hope Group, acquire the DevHope tool with a view to using it autonomously and independently and negotiate with the author regarding the complete handover of the platform. The author states that he drew up a proposal on 8 August 2013 under pressure and coercion.² He claims that the significant financial returns expected from DevHope to fund development projects in Cameroon are the reason for the legal and media conspiracy of which he was a victim, so that the Government could seize the technical and economic resources associated with the project by stripping the author of them.

2.8 On 18 July 2013, the author filed a habeas corpus petition with the President of the Wouri Douala tribunal de grande instance,³ in which he disputed his arrest, detention in police custody and pretrial detention as illegal, without, however, referring to the conditions of his detention or the incidents with other detainees.⁴ In its decision dated 18 September 2013, the court rejected the petition, stating that the author's arrest and detention in police custody had been in accordance with the regulations governing them, that his custody had lasted 72 hours, including the extension signed by the public prosecutor, and that his pretrial detention was justified because he was being prosecuted and did not have an address in Cameroon. On 18 September 2013, the author lodged an appeal against that decision with the President of the Court of Appeal, claiming that the Cameroonian courts were not competent, that his detention was illegal, that the statute of limitations for some of the offences had expired and that some of the allegations had been incorrectly classified and related not to criminal matters but to civil and commercial disputes.⁵ On 8 November 2013, that appeal was rejected. The Court of Appeal upheld the decision of the tribunal de

¹ The first complaint, lodged by Patrick Mboma, related to shares he had allegedly acquired in Hope Finance France SAS. The second complaint, lodged by Idriss Carlos Kameni, concerned sums of money given by him to the author as a loan or capital for Hope Finance, on the pretext of forming a microfinance company. The third complaint, lodged by Roger Nono, also concerned a loan contract with Hope Finance France.

² The documentation provided shows that a committee was established by the Government in October 2013 to supervise "possible negotiations with the CEO of Hope Finance"; that the possible transfer of property could take the form of an immediate transfer, lease-purchase or temporary transfer; and that the Ministry could invite the author to transfer property.

³ Under article 584, paragraph 1, of the Code of Criminal Procedure: "The President of the tribunal de grande instance of the place of arrest or detention of a person, or any other judge of that court appointed by them, shall have jurisdiction to hear applications for immediate release based on grounds of illegality of arrest or detention or failure to observe the formalities prescribed by law."

⁴ In his written conclusions of 9 September 2013, the author specifically invoked articles 9, 10, 11 and 12 of the Covenant.

⁵ After his appeal, the author again filed additional conclusions on 23 September 2013 and written conclusions on 7 October 2013.

grande instance rejecting the request for the immediate release of the author. It ruled that his immediate release could have been ordered if his detention were based solely on the remand warrant issued by the investigating judge of the Wouri Douala tribunal de grande instance dated 27 June 2013, given that it did not indicate the duration of its validity and was not followed by an order to place him in pretrial detention. Nevertheless, the Court recalled that the author was also the subject of a pretrial detention warrant lawfully issued by the public prosecutor of the Douala-Bonanjo Court of First Instance. It also considered that only the trial court could rule on the lack of competence invoked by the author. On 13 November 2013, the author lodged an appeal on points of law against the Court of Appeal ruling. On several occasions between 14 and 21 November 2013, he attempted unsuccessfully to obtain a copy of the Court of Appeal ruling by going to the courts administration service. He also requested a copy of the ruling in letters addressed to the courts administration service dated 22 and 29 November 2013, of which the service acknowledged receipt. On 7 October and 3 December 2013, the author lodged petitions for release with the Wouri Douala tribunal de grande instance and the Douala-Bonanjo Court of First Instance. To those petitions he attached letters from persons able to guarantee his legal representation.

2.9 The author has described other steps that he has taken to secure his release. As a technical partner of the Government, he informed the Office of the President of the Republic of his situation in letters dated 15 June, 19 August⁶ and 4 September 2013. Furthermore, on 1 and 11 October 2013, the author requested that the Attorney General and the Minister of Justice intervene and drop all criminal proceedings against him. On 17 October 2013, he submitted another request for intervention to the Court of First Instance dealing with his case. On 21 October 2013, the judge investigating the complaints lodged by Mr. Mboma and Mr. Kameni closed the investigation and ruled that the charges against him were sufficient, referring the case to the Wouri Douala tribunal de grande instance.

2.10 The author states that he suffers from ptosis, a rare neurodegenerative condition manifesting mainly in frequent attacks affecting the eye, occipital lobe and lumbar region, weakening his left eye.⁷ Following a medical examination carried out in a specialized centre in France, an outpatient surgical procedure was scheduled to take place in Paris on 25 July 2013.⁸

2.11 On 19 October 2013, while he was detained, the author suffered a serious bout in which his left eye was completely inflamed and his vision was obstructed, and which caused total hemiplegia of his right side.⁹ The author received care from the medical centre at New Bell Prison, which then referred him to specialists, and a series of medical consultations took place.¹⁰ Expert medical reports from those specialist establishments concluded that adequate care for his condition could not be provided in Cameroon. Furthermore, the chief medical officer of the prison informed the author verbally that he

⁶ In his letter dated 19 August 2013, the author informed the Office of the President that he had been granted parole.

⁷ A medical report from his physician in Cameroon, dated 4 November 2013, confirms that the author has been receiving treatment since 2011 and that he suffers from a potentially fatal degenerative eye condition.

⁸ The attached admissions note from the Adolphe de Rothschild Ophthalmology Foundation in France explains that a short outpatient surgical procedure was planned for 25 July 2013 and that the author was to have been admitted the night before. The documents from the French medical file provided by the author demonstrate that he has undergone various eye examinations (including MRI), but do not indicate that these relate to a degenerative nervous disorder.

⁹ This incident is confirmed by the medical certificate dated 21 October 2013, issued by a physician at Laquintinie Hospital.

¹⁰ At Laquintinie Hospital on 21 October and 21 December 2013 and at Ad Lucem Hospital in Douala on 25 November 2013.

had written a confidential report on his health for the Attorney General, dated 3 December 2013. The author states that there is a risk that the disabilities ensuing from the bouts might become irreversible without appropriate care and that a new bout could affect his vital organs. On 21 October 2013, the author submitted a request for intervention on grounds of health to the Douala-Bonanjo Court of First Instance, the Wouri Douala tribunal de grande instance and the Littoral Region Court of Appeal in Douala, so that he could be evacuated and receive the necessary care in France. He also notified the Attorney General in a letter dated 3 December 2013 and the President of the Republic on 7 January 2014.¹¹

2.12 On 17 February 2014, the author stated that on 16 January 2014, he had approached the National Commission on Human Rights and Freedoms, explaining his situation, particularly with regard to his health problems. On 21 January 2014, the President of the National Commission wrote to the author informing him that he had taken up the case with the Attorney General of the Court of Appeal and had sent a copy of the letter to the Minister of Justice, requesting urgent measures regarding his case. The National Commission also visited the prison from 22 to 24 January 2014 and subsequently highlighted the author's case as cause for concern during a press conference.

2.13 On 31 December 2013, the author's counsel met in person with the Attorney General, who recommended that he appeal to the Secretary of State for Prison Administration. On 2 January 2014, therefore, the author informed the latter of his situation and the granting of interim measures by the Committee. The author explains that, following contact between the French Consul General and the Attorney General on 29 January 2014, he was transferred to Laquintinie Hospital in Douala on 30 January 2014, which then referred him to Douala General Hospital, where he was admitted from 31 January to 14 February 2014. In its report of 14 February 2014, Douala General Hospital indicated that it did not have a department specializing in the care required by the author and recommended that he should be transferred to a specialized centre, without, however, indicating that he should be repatriated to France.¹² On 14 February 2014, the author was returned to the prison's medical centre after an agreement had been reached between the prison and the hospital without his knowledge. Although the hospital is a public institution, the author claims to have been returned to prison because he could no longer pay the costs of his hospital stay and the prison's financial difficulties meant that it could not pay for his medical care. On 17 February 2014, he wrote a letter to the Office of the President to inform it of the latest developments.

2.14 In a note dated 21 February 2014, the author submitted additional information reiterating all of his allegations relating to the complaints lodged against him, his arrest and detention, as well as those concerning the incompetence of the Cameroonian criminal courts and the incorrect classification of the allegations. He also reiterates that he has been the victim of a judicial conspiracy motivated by the Government's desire to acquire his property rights. He believes that the habeas corpus proceedings relating to his release were not completed and were marred by procedural flaws because of the complicity of the judicial bodies. The author again highlights that he needs to be evacuated because of his health, as well as the steps that he has taken with the authorities in that regard.

¹¹ The Committee decided to grant interim measures on 30 December 2013.

¹² The report indicates that the neurological attack could have been a psychiatric manifestation linked to severe depression with psychosomatic attacks and that it is essential to review the rare disease that he may suffer and owing to which, he claims, he should be included in a trial protocol in order to identify its possible link to the current clinical picture (right hemiplegia of probably psychogenic origin linked to a major depressive syndrome).

The complaint

3.1 The author considers that his arrest, detention in police custody and pretrial detention are illegal and violate article 9 of the Covenant because the Cameroonian criminal courts do not have territorial and material jurisdiction. In that respect, he recalls that he is a French citizen, that the offences of which he is accused relate to acts committed outside Cameroon and that the complaints against him, which are strictly commercial in nature, do not relate to criminal law and have lapsed. The author considers that his custody exceeded the maximum legal period permitted by Cameroonian law¹³ because, although he was taken into police custody on 10 May 2013 and the custody period could be extended only until 16 May 2013, he remained in police custody from 10 to 22 May 2013, on which date he was placed in pretrial detention. The author maintains that the four detention warrants are illegal for the same reasons. Regarding the first detention warrant of 22 May 2013, the author recalls that the allegations had already been the subject of a decision by the judge at Bobigny tribunal de grande instance, referring the case to the Paris Commercial Court, which had summoned the author to a hearing on 5 September 2013. The author also considers the detention warrant of 27 June 2013 to be illegal because it did not specify the duration of the pretrial detention, as required by article 219 of the Cameroonian Code of Criminal Procedure.

3.2 The author also considers his arrest, detention in police custody and pretrial detention to be arbitrary because he was detained as part of a judicial conspiracy organized against him with the aim of extorting his intellectual property rights over his invention and depriving the Hope Group of the exclusive rights granted to it to exploit the user licence purchased by the State party.

3.3 In relation to articles 7 and 10 of the Covenant, the author recalls that, during his detention in police custody, he was forced to sleep on the floor of an unventilated cell measuring approximately 8 m² with 20 other persons. He states that after being transferred to New Bell Prison, he was attacked on 28 June 2013 by other detainees and that his complaints to the prison services came to nothing. He also describes the harsh conditions under which he was transferred from New Bell Prison to the hearings. He maintains that his health has declined because of his detention and recalls in this regard that he has appealed to different court presidents, as well as to the prison authorities, regarding the bout that he suffered on 19 October 2013 because of the decline of his health in detention and the need to evacuate him to France so that he may receive the necessary care. The author asserts that the authorities' failure to act, despite his various efforts, and their refusal to grant him bail so that he could undergo the surgery scheduled for 27 July 2013 constitute inhuman or degrading treatment because he was at risk of blindness and disability. He considers that the detention warrants of 27 June, 9 October and 4 November 2013 were measures designed to intensify the degrading treatment to which he was already being subjected. He claims that the treatment he suffers in prison is a result of the fact that the prison authorities divulged information about him, including suggesting that he was an international con man who cheated the State. Therefore, the author maintains that the State party has violated articles 7 and 10, paragraph 1, of the Covenant.

3.4 The author also states that he is a victim of a violation of article 11 of the Covenant because he was imprisoned for contractual disputes stemming from partnership agreements (regarding Mr. Mboma and Mr. Kengoum) and loan contracts (regarding Mr. Kameni and

¹³ Article 119, paragraph 2, of the Code of Criminal Procedure: "(a) The time allowed for remand in custody shall not exceed 48 hours, renewable once; (b) This period may be extended on a second occasion on an exceptional basis, with the written approval of the public prosecutor; (c) Reasons shall be given for each extension."

Mr. Nono) and from no legal relationship in the case of Logis SA. He also states that he was involved in these disputes merely as a representative of two corporations.

3.5 Regarding the violation of article 12, the author considers that he was prevented from returning to France freely not only because he was arrested and detained, but also because the public prosecutor confiscated his passport. He adds that the derogations under article 12, paragraph 3, do not apply to his case, given that he could not be considered a threat to public order, health or national security.

3.6 The author also cites violations of articles 14, paragraph 3 (c) and 9, paragraph 4, in view of the authorities' excessive delays in ruling on his request for immediate release and treatment in a health emergency. The author recalls that his request for habeas corpus of 18 July 2013 was not ruled on until 18 September 2013, while the Douala tribunal de grande instance usually rules on immediate release cases every Wednesday. He also recalls that the Court of Appeal handed down its ruling only on 8 November 2013 and that the habeas corpus proceedings therefore lasted four months, while approximately 10 days is usually sufficient. He states that he mentioned this excessive delay in discussions during proceedings. Furthermore, he believes that the appeal on points of law that he lodged with the Supreme Court is uncertain, given that the Court is not subject to any time constraints in handing down rulings and could take several years to do so. He adds that the authorities have not responded to his multiple requests regarding his health.

3.7 In his note of 21 February 2014, the author adds that he is also a victim of violations of his rights under articles 6, paragraph 1, 14, paragraphs 1 and 2, and 15, paragraph 1, of the Covenant.

3.8 The author states that his right to health and life as protected by article 6, paragraph 1, of the Covenant was violated because of the failure of the authorities to act, even though he had repeatedly alerted them to his declining health. Furthermore, he underscores that the numerous anomalies arising in his case can be explained by the bias of the judicial authorities, which have not acted with the required independence, in violation of article 14, paragraph 1. In that regard, the author maintains that the actions of the public prosecutor's office merely reflected the Government's wishes and that the justice officials demonstrated their dependence on the Government. He again states that the courts have acted in collusion with the complainants and that he is the victim of persecution by the political and judicial authorities of the State party. Regarding article 14, paragraph 2, he states that he did not benefit from the presumption of innocence, by virtue of which the State party should have accorded priority to his health, rather than his detention. While conceding that no sentence has yet been passed by the Cameroonian courts, the author maintains that the allegations are not punishable in France, while his French nationality required the State party to verify whether the acts that he was alleged to have committed were indeed established as offences. The author therefore considers that the allegations were made against him in violation of article 15, paragraph 1, of the Covenant.

3.9 Lastly, the author alleges that his property rights were violated and considers that a joint reading of the preamble and articles 1 and 2 of the Covenant and the Committee's jurisprudence could cover the protection of his intellectual property.¹⁴

3.10 Regarding the exhaustion of domestic remedies, the author claims that the domestic remedies of the State party are both unavailable and ineffective and that, therefore, he should not be obliged to continue pursuing domestic remedies for his communication to be admissible before the Committee. He recalls that although they were dealing with an urgent

¹⁴ The author cites communications Nos. 1853/2008, *Atasoy v. Turkey*, Views adopted on 29 March 2012; 1854/2008, *Sarkut v. Turkey*, Views adopted on 29 March 2012; and 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000.

request for immediate release, the Douala tribunal de grande instance and the Court of Appeal did not act with their habitual speed, since the procedure lasted almost four months. The author believes that the excessive delay and the unwarranted protraction render the remedy ineffective. The author indicates that any new remedy to contest the two latest detention warrants of 9 October and 4 November 2013 would be ineffective in this context and that it would be unreasonable to require him to use procedures that have already proved fruitless.

3.11 Regarding the appeal on points of law that he lodged with the Supreme Court on 13 November 2013, the author complains that he has not received a copy of the Court of Appeal ruling of 8 November 2013, a document vital to the appeal proceedings. He indicates that the ruling was not sent to him until 26 February 2014 and believes that the courts of the State party have deliberately obstructed proceedings, making his appeal impossible. Furthermore, the author explains that there is no specific procedure under Cameroonian law requiring the Supreme Court to rule urgently in cases of arbitrary detention and that, consequently, the ordinary appeals procedure can last for more than a year, or even several years. He therefore insists that this remedy, too, cannot be considered effective with regard to the Covenant. The author adds that the Court of Appeal is the highest domestic court to rule on immediate release because Cameroonian law does not allow the judgements of the Court of Appeal in respect of habeas corpus petitions to be referred to the Supreme Court for rulings on points of law.¹⁵ Additionally, the author maintains that, even if the Supreme Court were considered an effective remedy, the refusal of the judicial authorities to grant him a copy of the Court of Appeal ruling of 8 November 2013 has made it inaccessible.

State party's observations on admissibility

4.1 In its submission of 12 March 2014, the State party disputes the admissibility of the communication, emphasizing that the author has failed to exhaust all available domestic remedies as provided for under article 5, paragraph 2 (b), of the Optional Protocol. The State party provided observations in relation only to the allegations of violations of articles 7, 9, 10, 11, 12 and 14.

4.2 The State party clarified the facts submitted by the author concerning the three cases in which he is the subject of legal proceedings brought by private individuals before the Cameroonian courts. The first case, which is pending before the Douala-Bonanjo Court of First Instance, was brought by Mr. Kengoum, who lodged a complaint against the author on 9 December 2012 for fraud. In respect of the complaint, the State party submits that the author convinced Mr. Kengoum to hand over 65 million CFA francs, or approximately 100,000 euros, to Hope Finances (subsequently Hope Services) under false pretences. The State party explains that, following a preliminary inquiry, the author was placed in pretrial detention on 22 May 2013 and was brought before Douala-Bonanjo Court of First Instance on 24 May 2013 for an initial hearing. On 14 August 2013, the Court of First Instance ordered the release of the author in a preliminary ruling on condition of payment of bail, set at 68,250,000 CFA francs, or approximately 104,000 euros.¹⁶ In connection with the same case, the State party adds that at the 11 December 2013 hearing, when the release ruling of 14 August 2013 had yet to be enforced, the author's counsel submitted a new application for release, which was dismissed as unfounded.

4.3 The State party indicates that the second case against the author followed a complaint of fraud brought by Logis SA, represented by Martin Nyamsi, whereby the

¹⁵ The author refers to articles 584 et seq. of the Code of Criminal Procedure.

¹⁶ The author failed to mention this ruling in the facts submitted. The pretrial detention order of 22 May 2013 submitted by the author contains a handwritten note for the same amount of bail.

author, acting as a representative of Hope Santé, instructed the aforementioned company to transport goods to Cameroon and refused to pay the costs of 17,639,835 CFA francs, or 27,000 euros. The author was charged after a preliminary inquiry and placed in pretrial detention on 19 October 2013, on the basis of a judicial inquiry that was opened against him and remains pending. The State party explains that the third case resulted from complaints brought against the author, on 10 May 2013 by Patrick Mboma for aggravated fraud, forgery and counterfeiting, and on 14 May 2013 by Idriss Carlos Kameni and Roger Nono for fraud, respectively.¹⁷

4.4 With regard to the alleged violation of articles 7 and 10 of the Covenant concerning the break in the author's medical care and the alleged ill-treatment he suffered during his imprisonment, the State party refers to the Committee's jurisprudence, whereby the claim under article 7 of the Covenant concerning the author's state of health was declared inadmissible by the Committee, given that this argument had not been brought before the domestic courts.¹⁸ The State party emphasizes that, in the present case, the facts relating to the alleged violations of articles 7 and 10 were not brought before any national court and were not subject to any judicial remedy. The State party also contends that the claim under article 14, paragraph 3 (c), of the Covenant was not brought before any judicial authority and adds that the alleged failures of the judicial services could have been brought before the administrative courts for examination, on the basis of an action for damages.

4.5 With regard to the alleged violations of the rights to liberty and security in relation to the arrest and detention of the author and the confiscation of his passport, the State party recalls that, in its preliminary ruling of 14 August 2013, the Douala-Bonanjo Court of First Instance ordered the author's release, subject to the payment of bail, in accordance with articles 224, paragraph 1, and 232, paragraph 1, of the Code of Criminal Procedure.¹⁹ The State party specifies that, according to article 232, paragraph 1, of the Code, bail serves to guarantee, where applicable, the reimbursement of costs incurred by a civil claimant, reparation of damages resulting from the offence and payment of fines and legal expenses. It adds that the provisions upon which the decision of the Court of First Instance was based are compatible with article 9, paragraph 3, of the Covenant, which provides that release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. The State party contends that the author chose to ignore the Court of First Instance's decision of 14 August 2014 in order to bring before the same Court another application for release. The Court of First Instance rejected this new application on 20 January 2014 on the grounds that the first decision had yet to be enforced, owing to the author's failure to post bail.

4.6 With regard to the author's claim under article 11 of the Covenant, the State party rejects the argument that the acts of which the author is accused should be considered as commercial disputes rather than criminal offences. It contends that the issue of the evaluation and classification of those acts is currently before its courts, which have yet to take a position on the matter, and it is therefore not for the Committee to rule on it.²⁰

¹⁷ Mr. Kameni allegedly lent 150,000 euros to Hope Finance, which has never been repaid.

¹⁸ The State party refers to communication No. 1494/2006, *Chadzjian et al. v. the Netherlands*, decision of inadmissibility adopted on 22 July 2008.

¹⁹ Article 224, paragraph 1, of the Code of Criminal Procedure: "Any person lawfully remanded in custody may be granted bail on condition that they meet one of the conditions referred to in article 246 (g), in particular to ensure that they appear either before the judicial police or the competent judicial authority."

²⁰ The State party refers, in particular, to communications Nos. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2; 1031/2001, *Weerasinghe v. Sri Lanka*, decision of inadmissibility adopted on 31 October 2007; 1141/2002, *Gougnin and Karimov v. Uzbekistan*, decision of inadmissibility adopted on 1 April 2008; and 1161/2003, *Kharkhal v. Belarus*, decision of

4.7 On the question of the exhaustion of domestic remedies, the State party maintains that the Littoral Region Court of Appeal, by its ruling of 8 November 2013,²¹ ruled in its capacity as an appellate court on the author's petition for habeas corpus and declared itself not competent.²² With regard to the author's claim of lack of access to appeal on points of law, the State party contends that the author stated falsely and without supporting evidence that consideration of his appeal would last several years, although similar appeal cases in which a special procedure had not been enacted were heard within a significantly shorter time frame than that claimed by the author. In this respect, the State party cites the example of the Supreme Court's judgement in April 2013 following an appeal lodged on 5 November 2012 against a ruling of the investigations oversight body of the Court of Appeal, in which the Supreme Court not only quashed and set aside the Appeal Court's decision but also dismissed the appellant's application for release on bail.²³ The State party points out that the Littoral Region Court of Appeal's ruling of 8 November 2013 is attached to its submission, and therefore maintains that the author's argument concerning the lack of access to the decision is unsubstantiated. The State party further contends that the author was remiss in that he failed to pay the deposit set by the President of the Court of Appeal by order of 10 December 2013 to cover the cost of copying his file, as required by article 44, paragraph 3 et seq., of Act No. 2006/016 establishing the organization and functioning of the Supreme Court. The author similarly neglected to respond to the registrar's notice served to his lawyer on 3 February 2013 in that regard. The State party submits that it was this lack of diligence which delayed the Supreme Court's preparation and consideration of the author's case.

Author's comments on the State party's submission

5.1 On 7 April 2014, the author commented on the State party's submissions on admissibility.

5.2 The author considers that the State party's presentation of the facts is largely incomplete and omits essential information regarding the lack of territorial and material jurisdiction of its courts. He provides additional information concerning the alleged facts in the five criminal cases against him. With regard to the case brought by Mr. Mboma, the author contests the State party's allegation that Mr. Mboma had given him money. Hope Finance SAS is a company that, in accordance with its legal obligations in France, held board meetings and had annual accounts audited by an accounting firm, of which Mr. Mboma was the assistant managing director.

5.3 Regarding the failure to provide the President of the Court of Appeal's ruling, the author maintains that he repeatedly requested a copy through his lawyers. He claims that the ruling had not been drafted on 13 November 2013, when his lawyers went to the registry to lodge the appeal against it. The author therefore contends that the State party's argument that the ruling was available on the same day as the decision was pronounced, 8 November 2013, is merely an attempt to place the courts beyond reproach. He reiterates that the registrar did not notify him of the ruling until 26 February 2014, but that the registrar's signature on the ruling is dated 8 December 2013, which corresponds to a Sunday, in other words a non-working day. In addition, the ruling does not bear the judge's signature, only that of the chief registrar, contrary to article 9 of Act No. 2006/015 of 29

inadmissibility adopted on 31 October 2007.

²¹ The State party's submission erroneously mentions 13 November 2008 instead of 8 November 2013. The date on the ruling reads 8 November 2013.

²² The Court of Appeal ruling, however, declares the Court incompetent to consider the pleas put forward by the author and upholds the decision of the Court of First Instance rejecting the author's application for immediate release.

²³ Decision No. 31/P of 4 April 2013, *Puene Françoise v. Public Prosecutor*.

December 2006 on the organization of the judiciary. The judgement cannot legally be used to lodge an appeal on points of law and the author criticizes the State party for having sought to ensure that the Supreme Court dismiss the appeal. The author further notes that the Court of Appeal had dismissed his appeal in public session by declaring itself not competent, which is contrary to articles 586 and 587 of the Code of Criminal Procedure and constitutes a miscarriage of justice, on the grounds that the written ruling fails to mention the Court's competence. The author contends that these inconsistencies clearly result from the State party's attempts, as part of the campaign of criminal persecution against him, to cover up the misconduct of the judiciary and mislead the Committee.

5.4 Concerning the exhaustion of domestic remedies, the author is surprised at the State party's silence regarding the lack of follow-up given to the legal remedies sought before all the administrative and judicial authorities, and maintains that he availed himself of all effective and available domestic remedies. He further cites the various forms of correspondence sent by his lawyer in respect of his illegal detention and state of health.

5.5 The author further contends that habeas corpus is the only procedure provided for under Cameroonian law, in accordance with article 584 of the Code of Criminal Procedure, whereby petitions on grounds of illegal arrest, detention or failure to observe the formalities prescribed by law can be heard. He submits that contrary to release on bail, which is optional, immediate release should be mandatory in cases of human rights violations by the judicial authorities. The author contests the State party's strict interpretation of arbitrary detention, which includes other violations of the law such as unforeseeable, inappropriate or unfair detention.

5.6 The author further notes that the Court of Appeal mentions in its ruling that its rulings are final, and does not indicate any other remedy available to the parties. He reiterates that the Code of Criminal Procedure does not provide for further appeals against Court of Appeal rulings in respect of habeas corpus petitions and that, consequently, the Court of Appeal is the highest court in such cases. The author further notes that no appeal on points of law has ever been brought against Court of Appeal rulings involving habeas corpus. He considers that the law does not provide for the referral of cases to the Supreme Court as a court of cassation since it does not establish a legal time limit within which the Court must rule on applications for immediate release, which is inconsistent with the urgent nature of such requests and should be recognized as a legal failing. In the absence of a clearly defined time limit, as for example in the case of tribunaux de grande instance (courts of major jurisdiction), the author submits that cassation is not an effective remedy in this regard. He contends that the State party's response is inaccurate insofar as it refers to supposedly similar cases in which the Supreme Court was effective, but which did not involve arbitrary detention. According to the author, the State party admits in its submission that no special procedure before the Supreme Court is provided for in habeas corpus cases. The author recalls that he contends, as a subsidiary argument, that if the Supreme Court is a court of appeal, the steps taken by the State party to obstruct the drafting of the ruling and the exceptionally long delays have rendered this remedy inaccessible.

5.7 The author considers that his requests for release on bail were not an effective remedy within the meaning of the Covenant and that the arbitrariness of the judicial authorities rendered his requests ineffective. Except for the initial request made in June 2013, which was granted in such a perverse manner as to amount to a refusal, all of his requests were deliberately ignored by the State party. The author emphasizes that the approval of his release on 14 August 2013 was calculated, as a second detention order had just been issued by a different judge in another case and that, consequently, posting bail would not have changed the situation, contrary to what the State party claims. Regarding the bail, it would have sufficed to accept the partnership agreement between the State party and Hope Group, of which the author is the legal representative, as collateral. The author

claims that the number of detention warrants against him and the number of cases assigned to hand-picked judges enable the State party to keep him in detention in order to divest him of his rights over DevHope.com.

5.8 The author repeats his arguments regarding the violation of his right to health and recalls the steps he has taken with the authorities to secure his repatriation. In addition, he indicates that he filed another habeas corpus petition on 7 March 2014, based solely on grounds of the violation of his right to health, as a form of torture and inhuman or degrading treatment, with a view to his immediate release. Given that it is an emergency measure, he laments the fact that the Douala tribunal de grande instance has yet to rule on the petition, one month after it was filed. The author repeats his comments regarding the violation of article 11, to the effect that the charges laid against him by the Cameroonian authorities, especially for fraud, were deliberately arbitrary in order to support the legal conspiracy against him. He repeats that he is also the victim of a miscarriage of justice, in violation of articles 14, paragraph 1, and 15, paragraph 1, and thus considers that all the judicial actions of the authorities are void under national and international law and constitute a violation of article 14, paragraph 1, of the Covenant.

5.9 Lastly, the author describes the outcome of the proceedings in the case brought by Mr. Kengoum, explaining that, despite his health and his motion of 21 March 2014 to postpone the deliberations of the Douala tribunal de grande instance and to reopen the proceedings, he was sentenced in absentia on 26 March 2014 to 18 months in prison and a fine of 75 million CFA francs, without his witnesses being heard or his lawyers being allowed to plead his case. As a result of this conviction, he can no longer request release on bail.

Additional information submitted by the author

6.1 On 23 May 2014, the author submitted additional information on admissibility and an update on the pending criminal cases. He accuses the State party of bad faith in the context of this communication and repeats his allegations concerning violations of articles 6, paragraph 1, and 7, of the Covenant. The author also alleges a violation of his rights under the preamble and articles 1, 2, 4, paragraph 2, and 5, paragraph 2, of the Covenant.

6.2 Regarding the exhaustion of domestic remedies, he maintains that domestic remedies could not possibly be effective given that the State party is using the courts for extrajudicial purposes. He repeats that, with regard to habeas corpus, the Supreme Court was neither an accessible nor an effective remedy.

6.3 The author indicates that, on 2 May 2014, he was sentenced to 2 years in prison in the case brought by the French company Logis SA, despite his motion of 23 April 2014 to postpone the hearing and his motion of 29 April 2014 to have the judge removed. He appealed his conviction on 12 May 2014. The author criticizes the fact that he has not yet received the written decision in either of the two cases in which he has been convicted.

6.4 The Ministry of Public Health ordered an expert medical examination to determine a course of treatment. The examination took place on 12 May 2014, confirming previous assessments of the author's visual problems and hemiplegia and recommending that, as a precautionary measure, the author should receive care in an adequately equipped hospital.

State party's additional observations

7.1 The State party submitted additional observations on 19 August 2014, in response to the comments provided by the author. The State party reiterates its arguments concerning the inadmissibility of the communication.

7.2 Moreover, the State party provides an explanation for the irregularities alleged by the author in respect of the Court of Appeal ruling of 8 November 2013. It draws the Committee's attention to the fact that the author finally admitted that the ruling had indeed been sent to him. It recalls that the author's appeal on points of law was registered on 13 November 2013 and adds that it made sense that a letter was sent after receipt of the appeal, as doing so would form part of the course of constituting the file, in the same way as other procedures such as payment of the cost of copying the file. The State party refutes the author's allegation that the copy of the ruling sent to him was not signed. It explains that copies of decisions are sent out unsigned and that only originals, filed in the court registry and designated "Minutes", are signed. The registry issues certified true copies of originals by affixing a seal on the last page of the decision, which guarantees the authenticity of the document. Moreover, the State party declares that the ruling that was sent to the author was not modified in any way after it was handed down and that it contains a number of reasoned paragraphs dealing with the lack of jurisdiction of the Court of Appeal.²⁴

7.3 With regard to the exhaustion of domestic remedies, the State party refers to article 37, paragraph (a), of Act No. 2006/016 of 29 December 2006 on the organization and functioning of the Supreme Court, which provides that the "Judicial Chamber is competent to deal with appeals against final rulings handed down by courts and tribunals in civil, commercial, criminal and social cases and in cases involving traditional law." The State party indicates that the author's understanding of the term "final ruling" is incorrect, in that a final ruling may be subject only to an appeal on points of law, while a first instance decision may be subject to appeal. It indicates that cassation was indeed the course available in respect of the Court of Appeal ruling.

7.4 Lastly, the State party recalls that the author confirms in his comments that he had been granted release on bail, although he had avoided doing so in his previous submissions.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

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

8.3 The Committee notes that the State party contests the admissibility of the communication on the grounds that domestic remedies have not been exhausted as defined in article 5, paragraph 2 (b), of the Optional Protocol.

8.4 The Committee notes the author's claims under article 9, paragraphs 1 and 4, of the Covenant regarding his allegedly unlawful and arbitrary arrest, police custody and detention and his claims under article 14, paragraph 3 (c), regarding the excessive length of the habeas corpus proceedings before the national courts. The Committee takes note of the State party's argument that the author has not exhausted domestic remedies given that he

²⁴ The State further refers to the following excerpts: "The discussion that Kandem Foubi believed he must engage in about failing to fulfil the conditions of flagrancy is beyond the competence of a habeas corpus judge and falls within the jurisdiction of a trial judge ..."; "The place in which the funds were remitted and the starting point of the alleged statute of limitations were discussed; a habeas corpus judge would not be able to adjudicate on these issues without exceeding his competence."

has appealed to the Supreme Court against the Court of Appeal ruling of 8 November that confirmed the first-instance decision regarding the habeas corpus petition. The Committee further notes the author's allegations of a miscarriage of justice, bad faith on the part of the State party and judicial bias. It also notes that, according to the author, available remedies to challenge his detention are neither effective nor accessible and that, consequently, derogation from the requirement to exhaust domestic remedies is justifiable. The Committee recalls that, although 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.²⁵ The Committee notes that the author submits with this communication his habeas corpus petition and appeal against the decision of the Wouri Douala tribunal de grande instance, in which he invoked his rights under articles 9 and 14 of the Covenant. The Committee observes that the Supreme Court has not yet ruled on the appeal lodged by the author on 13 November 2013. Moreover, the Committee considers that the author has not submitted sufficient information for it to conclude that the pending appeal is ineffective. The Committee further considers that the author has failed to demonstrate, for the purposes of admissibility, that the conduct of the domestic courts amounted to arbitrariness or a denial of justice. Accordingly, the Committee considers that the author has not fulfilled his obligation to exhaust domestic remedies and finds the alleged violations of articles 9, paragraphs 1 and 4, and 14, paragraph 3 (c), inadmissible under articles 2 and 5, paragraph 2 (b), of the Optional Protocol.

8.5 Under articles 7 and 10 of the Covenant, the Committee notes, firstly, the author's allegations with regard to the inhuman conditions of his detention while in police custody. The Committee points out that, according to the record, the author has not brought any such claims before the national courts either. The Committee recalls its jurisprudence to the effect that authors must avail themselves of all judicial remedies in order to fulfil the requirement of article 5, paragraph 2 (b), of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.²⁶ Accordingly, the Committee considers these claims to be inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.²⁷

8.6 Secondly, the Committee notes that, according to the author, the conditions and progress of his detention at New Bell Prison contributed to the deterioration of his health, because of the refusal of the authorities to allow him access to appropriate medical care, which would constitute inhuman treatment in violation of articles 7 and 10 of the Covenant. The Committee notes that the author contends that he has taken many steps to exhaust available domestic remedies, while the State party submits that the author has not brought these claims before the national courts and no legal remedy has been sought in respect of them. The Committee points out that from the onset of the symptoms of his illness on 19 October 2013, the author requested repatriation to France on medical grounds in letters dated 21 October 2013 and sent to all the courts involved in the cases against him.²⁸ The Committee observes that the State party simply declares that domestic remedies have not been exhausted, without indicating which remedies were in fact available to the author. The Committee therefore considers that the available information does not demonstrate that domestic remedies have not been exhausted with regard to the claim of a violation of

²⁵ See communication No. 1511/2006, *García Perea v. Spain*, decision of inadmissibility adopted on 27 March 2009, para. 6.2.

²⁶ See communications Nos. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5; and 1813/2008, *Akwanga v. Cameroon*, Views adopted on 22 March 2011, para. 6.4.

²⁷ See *P.L. v. Germany*, para. 6.5; and *Akwanga v. Cameroon*, para. 6.4.

²⁸ Request sent to the presidents of the Douala Court of First Instance, the Wouri Douala tribunal de grande instance and the Douala Court of Appeal.

articles 7 and 10 pertaining to the decline of the author's health in prison. However, in the light of the information made available to it, the Committee notes that the author was taken into the care of the medical centre of New Bell Prison from the onset of his symptoms, that he was examined by various physicians outside the prison, and that he had undergone numerous medical examinations, including one ordered by the Ministry of Public Health in May 2014. The Committee therefore considers that the author has not sufficiently substantiated his claim under articles 7 and 10 of the Covenant for the purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.7 The Committee takes note of the author's allegations that his rights under article 11 were violated because, according to him, he was imprisoned for breach of contract. The Committee recalls its jurisprudence to the effect that the prohibition of detention for debt, enshrined in article 11 of the Covenant, does not apply to criminal offences related to civil debts and that, in the case of fraud and negligent or fraudulent bankruptcy, the offender may be punished with imprisonment even when no longer able to pay the debts.²⁹ The Committee notes that, in this case, the author is facing criminal prosecution for fraud and that the charges against him do not relate to breach of contract but fall under the scope of criminal law. Consequently, the Committee finds this claim incompatible *ratione materiae* with article 11 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.³⁰ So far as the claim under article 12 is linked to the claim under article 11, the Committee finds it inadmissible on the same grounds.

8.8 Regarding the allegations of violations of articles 1, 2, 4, paragraph 2, 5, paragraph 2, 6, 14, paragraphs 1 and 2, and 15, paragraph 1, the Committee considers that, in this case, the information provided by the author does not sufficiently substantiate his claims for the purposes of admissibility. Consequently, this part of the communication is declared inadmissible under article 2 of the Optional Protocol.

8.9 The Committee considers that the author's claim regarding the protection of his right to intellectual property is incompatible *ratione materiae* with the rights provided for by the Covenant and thus inadmissible under article 3 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under articles 2, 3 and 5, paragraph 2 (b), of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author.

²⁹ See communication No. 1342/2005, *Gavrilin v. Belarus*, Views adopted on 28 March 2007, para. 7.3.

³⁰ See communication No. 1312/2004, *Latifulin v. Kyrgyzstan*, Views adopted on 10 March 2010, para. 7.2.