HUMAN RIGHTS COMMITTEE

Mukong v. Cameroon

Communication No. 458/1991

21 July 1994

CCPR/C/51/D/458/1991

VIEWS

Submitted by: Albert Womah Mukong [represented by counsel]

Victim: The author

State party: Cameroon

Date of communication: 26 February 1991 (initial submission)

Date of decision on admissibility: 8 July 1992

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

Meeting on 21 July 1994,

Having concluded its consideration of communication No. 458/1991 submitted to the Human Rights Committee by and on behalf of Mr. Albert Womah Mukong 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, his counsel and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is A.W. Mukong, a citizen of Cameroon born in 1933. He claims to be a victim of violations by Cameroon of articles 7, 9, paragraphs 1 to 5, 12, paragraph 4, 14, paragraphs 1 and 3, and 19 of the International Covenant on Civil and

Political Rights. He is represented by counsel. The Optional Protocol entered into force for Cameroon on 27 September 1984.

The facts as submitted by the author:

2.1 The author is a journalist, writer and longtime opponent of the oneparty system in Cameroon. He has frequently and publicly advocated the introduction of multiparty democracy and has worked toward the establishment of a new political party in his country. He contends that some of the books that he has written were either banned or prohibited from circulation. In the summer of 1990, he left Cameroon, and in October 1990 applied for asylum in the United Kingdom. In December 1990, his wife left Cameroon for Nigeria with her two youngest children.

2.2 On 16 June 1988, the author was arrested, after an interview given to a correspondent of the B.B.C., and in which he had criticized both the President of Cameroon and the Government. He claims that in detention, he was not only interrogated about this interview but also subjected to cruel and inhuman treatment. He indicates that from 18 June to 12 July, he was continuously held in a cell, at the First Police District of Yaoundé, measuring approximately 25 square metres, together with 25 to 30 other detainees. The cell did not have sanitary facilities. As the authorities refused to feed him initially, the author was without food for several days, until his friends and family managed to locate him.

2.3 From 13 July to 10 August 1988, Mr. Mukong was detained in a cell at the Headquarters of the Police Judiciaire in Yaoundé, together with common criminals. He claims that he was not allowed to keep his clothes, and that he was forced to sleep on concrete floor. Within two weeks of detention under these conditions, he fell ill with a chest infection (bronchitis). Thereafter, he was allowed to wear his clothes and to use old cartons as a sleeping mat.

2.4 On 5 May 1989, the author was released, but on 26 February 1990, he was rearrested, following a meeting on 23 January 1990 during which several people, including the author, had (publicly) discussed ways and means of introducing multiparty democracy in Cameroon.

2.5 Between 26 February and 23 March 1990, Mr. Mukong was detained at the Mbope Camp of the Brigade Mobile Mixte in Douala, where he allegedly was not allowed to see either his lawyer, his wife or his friends. He claims that he was subjected to intimidation and mental torture, in that he was threatened that he would be taken to the torture chamber or shot, should any unrest among the population develop. He took these threats seriously, as two of his opposition colleagues, who were detained with him, had in fact been tortured. On one day, he allegedly was locked in his cell for twentyfour hours, suffering from the heat (temperatures above 40˚C). On another day, he allegedly was beaten by a prison warder when he refused to eat.

2.6 The author contends that there is no effective remedy for him to exhaust, and that he should be deemed to have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol. In respect of his arrests in 1988 and 1990, he claims that although Ordinance 62/OF/18 of 12 March 1962, under which he was charged with "intoxication of

national and international public opinion", was abrogated by Law 090/046 of 19 December 1990, the fact remains that at the time of his arrest, the peaceful public expression of his opinions was considered a crime. The author adds that there is no procedure under domestic law by which one could challenge a law as being incompatible with international human rights standards; fundamental human rights are only guaranteed in the preamble to the country's Constitution, and the preambular paragraphs are not enforceable. The fact that the Ordinance of 1962 was abrogated in 1990 did not provide the author with relief, since it did not mean that he could challenge his detention **during** his imprisonment and, as it was not made retroactive, it did not mean that he could seek compensation for unlawful detention.

2.7 The author further submits that the examining judge of the tribunal of Bafoussam found him guilty as charged and, by order of 25 January 1989, placed him under military jurisdiction. He explains that under domestic law, this examining magistrate does not decide on either guilt or innocence of an accused but merely on whether sufficient evidence exists to justify an extension of the detention, and to place him under military jurisdiction; the placement under military jurisdiction allegedly could not be challenged.

2.8 It is noted that the author's lawyer twice applied to the High Court of Cameroon for writs of **habeas corpus**. Both were rejected on the ground that the case was before a military tribunal and that no writ of **habeas corpus** lies against charges to be determined by a military tribunal. The author submits that if it was not possible to challenge his detention by writ of habeas corpus, then other, theoretically existing, remedies were not in fact available to him.

2.9 As to remedies against cruel, inhuman and degrading treatment and torture, the author notes that the Prosecutor (Ministère Public) may only prosecute a civil claim for cruel, inhuman and degrading treatment on behalf of a person who is the accused in a pending criminal matter. Under Sec. 5 of Ordinance 72/5 of 26 August 1972, a Military Tribunal cannot entertain a civil action separately from a criminal action for which it has been declared competent. Only the Minister of Defense or the examining magistrate can seize the military tribunal with a civil action; civilians cannot do so. Finally, the author cites from, and endorses the conclusions of, a recent Amnesty International report, according to which the organization "knows of **no** cases in recent years where torture allegations have been the subject of official inquiry in Cameroon. The authorities also appear to have blocked civil actions for damages lodged before the courts by former detainees...". He concludes that the pursuit of domestic remedies would be ineffective and that, if he were to initiate such proceedings, he would be subjected to further harassment.

The complaint:

3.1 The author alleges a violation of article 7 of the Covenant on account of the treatment he was subjected to between 18 June and 10 August 1988, and during his detention at the Mbope Camp.

3.2 The author further alleges a violation of article 9, as he was not served a warrant for his arrest on 16 June 1988. Charges were not brought until almost two months later. Moreover,

the military tribunal designated to handle his case postponed the hearing of the case on several occasions until, on 5 May 1989, it announced that it had been ordered by the Head of State to withdraw the charges and release the author. Again, the arrest on 26 February 1990 occurred without a warrant being served. On this occasion, charges were not filed until one month later.

3.3 It is further submitted that the State party authorities violated article 14, paragraphs 1 and 3, in that the author was not given any details of the charges against him; neither was he given time to adequately prepare his defence. The author claims that the court a military tribunal was neither independent nor impartial, as it was clearly subject to the influence of highlevel government officials. In particular, as the judges were military officers, they were subject to the authority of the President of Cameroon, himself the Commander-in-Chief of the armed forces.

3.4 The author notes that his arrests on 16 June 1988 and 26 February 1990 were linked to his activities as an advocate of multiparty democracy, and claims that these were Government attempts designed to suppress any opposition activities, in violation of article 19 of the Covenant. This also applies to the Government's ban, in 1985, of a book written by the author ("Prisoner without a Crime"), in which he described his detention in local jails from 1970 to 1976.

3.5 Finally, it is submitted that article 12, paragraph 4, was violated, as the author is now prevented from returning to his country. He has been warned that if he were to return to Cameroon, the authorities would immediately rearrest him. This reportedly is attributable to the fact that in October 1990, the author delivered a petition to the SecretaryGeneral of the United Nations, seeking his good offices to persuade the State party's authorities to observe and respect General Assembly Document A/C.4/L.685 of 18 April 1961 on the Report of the Trusteeship Council ("The Question of the Future of the Trust Territory of the Cameroons under the United Kingdom Administration").

The State party's information and observations:

4.1 The State party recapitulates the facts leading to the author's apprehension. According to it, the interview given by the author to the B.B.C. on 23 April 1988 was full of half and untruths, such as the allegation that the country's economic crisis was largely attributable to the Cameroonians themselves, as well as allusions to widespread corruption and embezzlement of funds at the highest levels of Government which had remained unpunished. The author was arrested after the airing of this interview because, in the State party's opinion, he could not substantiate his declarations. They were qualified by the State party as "intoxication of national and international public opinion" and thus as subversive within the meaning of Ordinance No. 62/OF/18 of 12 March 1962. Upon order of the Assistant Minister of Defence of 5 January 1989, the author was charged with subversion by the examining magistrate of the military tribunal of Bafoussam. On 4 May 1989, the Assistant Minister decreed the closure of the investigations against the author; this decision was notified to him on 5 May 1989.

4.2 The State party contends that in respect of his allegations under article 7, the author failed to initiate judicial proceedings against those held responsible for his treatment. In this connection, it observes that he could have:

- denounced the treatment of which he was a victim to the competent Ministry, which should then have investigated the allegations;

- filed a civil action with the Magistrate responsible for judicial investigation and information;

- directly filed a complaint with the competent tribunal against those held to be responsible for these acts;

- charged the responsible officers of having abused their official function, pursuant to Article 140 of the Criminal Code;

- invoked articles 275 and 290 of the Criminal Code, which provide protection against attacks on the physical integrity of the person;

- invoked articles 291 and 308 of the same Code, which provide protection against attacks on the liberty and security of persons;

- petitioned the Administrative Chamber of the Supreme Court under Article 9 of Ordinance 72/6 of 26 August 1972, as amended by Law 75/16 of 8 December 1975 and Law 76/28 of 14 December 1976, if he considered himself to be a victim of an administrative wrong.

4.3 In respect of the legal basis for the arrest of Mr. Mukong in 1988 and 1990, the State party notes that Ordinance 62/OF/18 was abrogated by Law No. 090/046 of 19 December 1990.

The Committee's admissibility decision:

5.1 During its 45th session, the Committee considered the admissibility of the communication. It took note of the State party's contention that the author had not availed himself of judicial remedies in respect of claims of ill-treatment and of inhuman and degrading treatment in detention. The Committee observed, however, that the State party had merely listed **in abstracto** the existence of several remedies without relating them to the circumstances of the case, and without showing how they might provide effective redress in the circumstances of the case. This applied in particular to the period of detention from 26 February to 23 March 1990, when the author was allegedly held **incommunicado** and subjected to threats. The Committee concluded that in the circumstances, it could not be held against the author if he did not petition the courts after his release and that, in the absence of further information from the State party, there was no further effective domestic remedy to exhaust.

5.2 As to the author's claims under articles 9, 14 and 19, the Committee notes that the simple

abrogation of a law considered incompatible with the provisions of the Covenant - i.e. Ordinance 62/OF/18 of 12 March 1962 - did not constitute an effective remedy for any violations of an individual's rights which had previously occurred under the abrogated law. As the State party had not shown the existence of other remedies in respect of these claims, the Committee considered them to be admissible.

5.3 On 8 July 1992, therefore the Committee declared the communication admissible, reserving however the right to review its decision pursuant to rule 93, paragraph 4, of the rules of procedure, in respect of the author's claim under article 7.

The State party's request for review of admissibility and observations on the merits, and the author's comments thereon:

6.1 In its submission under article 4, paragraph 2, of the Optional Protocol, the State party argues that the reasons for declaring the communication admissible are no longer valid and accordingly requests the Committee to review its decision on admissibility.

6.2 After once again questioning the correctness of the author's version of the facts, it addresses the author's claims. As to the alleged violation of article 7, on account of the conditions of the author's detention, it notes that article 1 of the Convention Against Torture stipulates that the term "torture" does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions. It adds that the situation and comfort in the country's prisons must be linked to the state of economic and social development of Cameroon.

6.3 The State party categorically denies that Mr. Mukong was, at any time during his detention in June 1988 or in February/March 1990, subjected to torture or cruel, inhuman and degrading treatment. It submits that the burden of proof for his allegations lies with the author, and that his reference to Amnesty International reports about instances of torture in Cameroonian prisons cannot constitute acceptable proof. The State party includes a report of an investigation into the author's allegations carried out by the National Centre for Studies and Research (CENER), which concludes that the prison authorities in Douala actually sought to improve the prison conditions after the arrest of the author and a number of co-defendants, and that the "excessive heat" in the author's cell (above 40˚C) is simply due to the climatic conditions in Douala during the month of February.

6.4 The State party reiterates that the author has failed to exhaust available remedies, as required under article 5, paragraph 2(b), of the Optional Protocol and article 41(c) of the Covenant. It takes issue with the Committee's jurisprudence that domestic remedies must not only be available but also **effective**. It further dismisses the author's contention in paragraph 2.9 above and refers in this context to Section 8(2) of Ordinance 72/5 of 26 August 1972, as modified by Law No. 74/4 of 16 July 1974. This provision stipulates that the military tribunal is seized directly either upon request of the Ministry of Defence, upon request of the examining magistrate (**ordonnance de renvoi du juge d'instruction**), or by decision of the Court of Appeal. The State party argues that the modalities of appealing to this jurisdiction ofexceptional nature demonstrate that its function is purely repressive. This does not rule

out, however, the possibility for an individual to appear before the tribunal as an intervenor ("n'exclut point la constitution de partie civile...") (article 17 of Ordinance 72/5). In any event, it remains possible to file civil actions for damages before the ordinary tribunals.

6.5 The State party further rejects as incorrect the author's endorsement of the conclusions of a report published by Amnesty International (referred to in paragraph 2.9) and submits that this document reveals total ignorance of the judicial system of Cameroon and in particular of domestic criminal procedure, which allows the victim [of ill-treatment] to have the person responsible for his treatment prosecuted and indicted before the competent courts, even against the advice of the office of the public prosecutor. The State party further refers to several court decisions which in its opinion demonstrate that, far from being suppressed by the authorities, claims for damages **are** entertained by the local courts, and that the claimants in or the parties to such proceedings do not have to fear harassment as a result, as claimed by Mr. Mukong.

6.6 The State party argues that the author's arrest(s) in June 1988 and February 1990 cannot be qualified as arbitrary, because they were linked to his activities, considered illegal, as an opposition activist. It denies that the author was not given a fair trial, or that his freedom of expression or of opinion have been violated.

6.7 In this context, the State party argues that the arrest of the author was for activities and forms of expression which are covered by the limitation clause of article 19, paragraph 3, of the Covenant. It contends that the exercise of the right to freedom of expression must take into account the political context and situation prevailing in a country at any point in time: since the independence and reunification of Cameroon, the country's history has been a constant battle to strengthen national unity, first at the level of the francophone and anglophone communities and thereafter at the level of the more than 200 ethnic groups and tribes that comprise the Cameroonian nation.

6.8 The State party rejects the author's contention (paragraph 2.6 above) that there is no way of challenging laws considered incompatible with international human rights conventions. It first asserts that there **are no laws** which are incompatible with human rights principles; if there were, there would, under domestic laws, be several remedies against such laws. In this context, the State party refers to articles 20 and 27 of the Constitution of Cameroon, which lay down the principle that draft legislation incompatible with fundamental human rights principles would be repudiated with by Parliament or by the Supreme Court. Furthermore, article 9 of Law 72/6 of 26 August 1972 governing the organization and functions of the Supreme Court, which stipulates that the Supreme Court is competent to adjudicate all disputes of a public law character brought against the state. The State party refers to a judgment handed down by the Supreme Court **against** the Government in April 1991 and which concerned violations of the rights of the defence; this judgment confirms, in the State party's opinion, that remedies against legislative texts deemed incompatible with internationally accepted human rights standards are available and effective.

6.9 As to the allegations under articles 9 and 14, the State party submits that the examining magistrate who referred the author's case to a military tribunal in January 1989 did not

exceed his competence and merely examined whether the evidence against the author justified his indictment. Concerning the author's allegation that he was not notified of the reasons for his arrest and that no warrant was served on him, the State party affirms that article 8(2) of Law 72/5 of 26 August 1972, which governs this issue, was applied correctly.

6.10 In this context, it affirms that pursuant to the decision of the examining magistrate to refer the case to the military tribunal, **[**"l'auteur n'a pas fait l'objet d'un mandat d'arrêt mais plutôt d'un mandat de dépôt"**]**. The decision of 25 January 1989 was duly notified to him. This decision, according to the State party, duly records all the charges against the author and the reasons for his arrest. Therefore, the notification of this decision to the author was compatible with the provisions of article 9 of the Covenant. Concerning the repeated postponements of the hearing of the case until 5 May 1989, the State party contends that they must be attributed to the author's requests for a competent legal representative, charged with his defence. The delays must therefore be attributed to Mr. Mukong. In respect of the second arrest (February 1990), the author **[**"n'avait pas fait l'objet d'un mandat d'arrêt mais plutôt d'une citation directe à la requête du Ministre chargé de la Défense. Il n'y avait donc pas mandat d'arrêt à lui notifier à cet effet"**]**.

6.11 The State party reiterates its arguments detailed in paragraphs 6.9 and 6.10 above in the context of alleged violations of article 14, paragraphs 1 and 3. It further draws attention to the fact that the author himself argued that his acquittal by the military tribunal on 5 April 1990 proved that the judges considered him to be innocent. The State party wonders how, in the circumstances, a tribunal which acquitted the author can be qualified as partial and its judges subject to the influence of high government officials.

6.12 Finally, the State party contends that there is no basis for the author's allegation that he has been denied the right to return to his country (article 12, paragraph 4). No law, regulation or decree contains a prohibition in this respect. It is submitted that Mr. Mukong left Cameroon at his own free will and is free to return whenever he wishes to do so.

7.1 In his comments, the author affirms that in respect of claims for compensation for ill-treatment or torture, there are still no appropriate or effective ways for seeking redress in the domestic courts. Under the applicable laws, any such action necessitates the authorization of a Government authority, e.g. the Ministry of Justice or the Ministry of Defence. The author argues that the so-called "liberty laws" entrench arbitrary detention by administrative officers and continue to be used for human rights violations and the courts cannot actions arising from the application of these laws.

7.2 The author further contends that such treatment as he was subjected to in detention cannot be justified by the legitimacy of the sanction imposed against him, as in the first case (1988), the charges against him were withdrawn at the request of the Assistant Minister of Defence, and in the second case (1990), he was acquitted. He dismisses the State party's contention that conditions of detention are a factor of the underdevelopment of the country and notes that if this argument were to be accepted, a country could always hide behind the excuse of being poor to justify perpetual human rights violations.

7.3 According to the author, the report of the CENER (see paragraph 6.3 above) is unreliable and "fabricated" and points out that in fact the CENER "report" consists of no more than a written reply to some questions provided by the very individual who had threatened him at the camp in Douala.

7.4 The author indirectly confirms that domestic courts may entertain claims for damages for ill-treatment but points out that the case referred to by the State party is still pending before the Supreme Court although the appeal was filed in 1981. He thus questions the effectiveness of this type of remedy and the relevance of the judgments referred to by the State party.

7.5 The author appeals to the Committee to examine closely the so-called "liberty laws" of December 1990, and in particular

- Decree 90-1459 of 8 November 1990 to set up a national commission on human rights and freedoms;

- Law 90-47 of 19 December 1990 relating to States of Emergency;

- Law 90-52 of 19 December 1990 relating to the freedom of mass communication;

- Law 90-56 of 19 December 1990 relating to political parties; and

- Law 90-54 of 19 December 1990 relating to the maintenance of law and order.

The author submits that all these laws fall far short of the requirements of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.

7.6 The author challenges the State party's contention that he was himself responsible for the delay in the adjudication of his case in 1989. He affirms that he asked only once for a postponement of the hearing and was ready with his defence as of 9 February 1989. From that day onward, his lawyers attended the court sessions, as did observers from the British and American Embassies in Yaoundé. The author emphasizes that he did not request another adjournment.

7.7 Finally, the author observes that he was able to return to his country only as a result of "diplomatic action taken by some big powers interested in human rights". He notes that although he has not been molested openly for past activities, he was again arrested, together with other individuals fighting for multiparty democracy and human rights, on 15 October 1993, in the city of Kom. He claims that he and the others were transported under inhuman conditions to Bamenda, where they were released in the afternoon of 16 October 1993. Finally, the author notes that the ban on his book "Prisoner without a crime" was lifted, apparently, after his complaint was filed with the Human Rights Committee. The book now circulates freely, but to argue, as is implied in the State party's observations on the merits of his complaint, that it was never banned does not confirm to the truth.

Revision of admissibility and examination of the merits:

8.1 The Committee has taken note of the State party's request that the admissibility decision of 8 July 1992 be reviewed pursuant to rule 93, paragraph 4, of the rules of procedure, as well as of the author's comments thereon. It takes the opportunity to expand on its admissibility findings.

8.2 To the extent that the State party argues that for the purposes of article 5, paragraph 2(b), of the Optional Protocol, domestic remedies must only be available and not also be effective, the Committee refers to its established jurisprudence, under which remedies which do not provide a reasonable prospect of success need not be exhausted for purposes of the Optional Protocol. It sees no reason to depart from this jurisprudence. Furthermore, it transpires from the State party's submission that the Government's arguments relate primarily to the merits of the author's allegations - if the State party were to contend that **because** there are no merits in Mr. Mukong's claims, they must also be deemed inadmissible, the Committee would observe that the State party's argument reveals a misconception of the procedure under the Optional Protocol, which distinguishes clearly between formal admissibility requirements and the substance of a complainant's allegations.

8.3 The State party has reiterated that the author has still not sought to avail himself of available remedies in respect of his allegations of ill-treatment. The Committee cannot share the State party's assessment. Firstly, the cases referred to by the State party concern offences different (such as the use of firearms, or abuse of office) from those of which the author complains. Secondly, the effectiveness of remedies against ill-treatment cannot be dissociated from the author's portrayal (uncontested and indeed confirmed by the State party) as a political opposition activist. Thirdly, the Committee notes that after his return, the author has continued to suffer specified forms of harassment on account of his political activities. Finally, it is uncontested that the case which the State party itself considers relevant to the author's situation has been pending before the Supreme Court of Cameroon for over twelve years. In the circumstances, the Committee questions the relevance of the jurisprudence and court decisions invoked by the State party for the author's particular case and concludes that there is no reason to revise the decision on admissibility in as much as the author's claim under article 7 is concerned.

8.4 **Mutatis mutandis**, the considerations in paragraph 8.3 above also apply to remedies in respect of the author's claims under articles 9, 14 and 19. The Committee refers in this context to its Concluding Comments on the second periodic report of Cameroon, adopted on 7 April 1994 [1] .

8.5 On balance, while appreciating the State party's further clarifications about the availability of judicial remedies for the author's claims, the Committee sees no reason to revise its decision on admissibility of 8 July 1992.

9.1 The author has contended that the conditions of his detention in 1988 and 1990 amount to a violation of article 7, in particular because of insalubrious conditions of detention facilities, overcrowding of a cell at the First Police District of Yaoundé, deprivation of food

and of clothing, and death threats and **incommunicado detention** at the Camp of the Brigade Mobile Mixte in Douala. The State party has replied that the burden of proof for these allegations lies with the author, and that as far as conditions of detention are concerned, they are a factor of the underdevelopment of Cameroon.

9.2 The Committee does not accept the State party's views. As it has held on previous occasions, the burden of proof cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information [2]. Mr. Mukong has provided detailed information about the treatment he was subjected to; in the circumstances, it was incumbent upon the State party to refute the allegations in detail, rather than shifting the burden of proof to the author.

9.3 As to the conditions of detention in general, the Committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of a State party's level of development. These include, in accordance with Rules 10, 12, 17, 19 and 20 of the **U.N. Standard Minimum Rules for the Treatment of Prisoners** [3], minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed, and provision of food of nutritional value adequate for health and strength. It should be noted that these are **minimum** requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult. It transpires from the file that these requirements were not met during the author's detention in the summer of 1988 and in February/March 1990.

9.4 The Committee further notes that quite apart from the general conditions of detention, the author has been singled out for exceptionally harsh and degrading treatment. Thus, he was kept detained **incommunicado**, was threatened with torture and death and intimidated, deprived of food, and kept locked in his cell for several days on end without the possibility of recreation. In this context, the Committee recalls its General Comment 20[44] which recommends that States parties should make provision against **incommunicado** detention and notes that total isolation of a detained or imprisoned person may amount to acts prohibited by article 7 [4]. In view of the above, the Committee finds that Mr. Mukong has been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant.

9.5 The author has claimed a violation of article 14 although in the first case (1988-1989), the charges against him were withdrawn, and in the second case (1990), he was acquitted. It is implicit in the State party's submission that in the light of these events, it considers the complaint under article 14 moot. The Committee notes that in the first case, it was the Assistant Minister of Defence and thus a government official who ordered the closure of the proceedings against the author on 4 May 1989. In the second case, the author was formally acquitted. However, although there is evidence, in the first case, that government officials intervened in the proceedings, it cannot be said that the author's rights under article 14 were disrespected. Similar considerations apply to the second case. The author has also claimed, and the State party refuted, a violation of article 14, paragraph 3(a) and (b). The Committee

has carefully examined the material provided by the parties, and concludes that in the instant case, the author's right to a fair trial has not been violated.

9.6 The author has claimed a violation of his right to freedom of expression and opinion, as he was persecuted for his advocacy of multi-party democracy and the expression of opinions inimical to the State party's government. The State party has replied that restrictions on the author's freedom of expression were justified under the terms of article 19, paragraph 3.

9.7 Under article 19, everyone shall have the right to freedom of expression. Any restriction of the freedom of expression pursuant to paragraph 3 of article 19 must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. The State party has indirectly justified its actions on grounds of national security and/or public order, by arguing that the author's right to freedom of expression was exercised without regard to the country's political context and continued struggle for unity. While the State party has indicated that the restrictions on the author's freedom of expression were provided for by law, it must still be determined whether the measures taken against the author were necessary for the safeguard of national security and/or public order. The Committee considers that it was not necessary to safeguard an alleged vulnerable state of national unity by subjecting the author to arrest, continued detention and treatment in violation of article 7. It further considers that the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights; in this regard, the question of deciding which measures might meet the "necessity" test in such situations does not arise. In the circumstances of the author's case, the Committee concludes that there has been a violation of article 19 of the Covenant.

9.8 The Committee notes that the State party has dismissed the author's claim under article 9 by indicating that he was arrested and detained in application of the rules of criminal procedure, and that the police detention and preliminary enquiries by the examining magistrate were compatible with article 9. It remains however to be determined whether other factors may render an otherwise lawful arrest and lawful detention "arbitrary" within the meaning of article 9. The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawfularrest must not only be lawful but reasonable in all the circumstances [5]. Remand in custody must further be necessary in all the circumstances, for example to prevent flight, interference with evidence or the recurrence of crime. In the present case, the State party has not shown that any of these factors was present. It has merely contended that the author's arrest and detention were clearly justified by reference to article 19, paragraph 3, i.e. permissible restrictions on the author's freedom of expression. In line with the arguments developed in paragraph 9.6 above, the Committee finds that the author's detention in 1988-1989 and 1990 was neither reasonable not necessary in the circumstances of the case, and thus in violation of article 9, paragraph 1, of the Covenant.

9.9 The author has formulated claims under article 9, paragraphs 2 to 4, to the effect that he was not promptly informed of the reasons for his arrest(s) and the charges against him, that he was not brought promptly before a judge or other officer authorized by law to exercise judicial power, and that he was denied the right to challenge the lawfulness of his detention. The State party has denied these charges, by submitting that the author was properly notified of the charges against him and brought to trial as expeditiously as possible (paragraph 6.10 above). The Committee notes that the material and evidence before it does not suffice to make a finding in respect of these claims.

9.10 Finally, as to the claim under article 12, paragraph 4, the Committee notes that the author was not forced into exile by the State party's authorities in the summer of 1990 but left the country voluntarily, and that no laws or regulations or State practice prevented him from returning to Cameroon. As the author himself concedes, he was able to return to his country in April 1992; even if it may be that his return was made possible, or facilitated, by diplomatic intervention, this does not change the Committee's conclusion that there has been no violation of article 12, paragraph 4, in the case.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the opinion that the facts before it reveal violations by Cameroon of articles 7, 9, paragraph 1, and 19 of the Covenant.

11. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Albert W. Mukong with an effective remedy. The Committee urges the State party to grant Mr. Mukong appropriate compensation for the treatment he has been subjected to, to investigate his allegations of ill-treatment in detention, to respect his rights under article 19 of the Covenant, and to ensure that similar violations do not occur in the future.

12. The Committee would wish to receive from the State party, within ninety days, information on any relevant measures taken by the State party in respect of the Committee's Views.

[Adopted in English, French and Spanish, the English 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.]

Footnotes

*/ Made public by decision of the Human Rights Committee.

1/ See CCPR/C/79/Add.33 (18 April 1994), paragraphs 21 and 22.

2/ See Views on communication No. 30/1978 (Bleier v. Uruguay), adopted on 29 March 1982, paragraph 13.3.

3/ Adopted by the First U.N. Congress on the Prevention of Crime and the Treatment of

Offenders, held in Geneva in 1955, and approved by ECOSOC in its Resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

4/ See General Comment 20[44], Document CCPR/C/21/Rev.1/Add.3 (7 April 1992).

5/ See communication No. 305/1988 (Hugo van Alphen v. The Netherlands), Views adopted on 23 July 1990, paragraph 5.8.