



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-ninth session
12 – 30 March 2007

VIEWS

Communication No. 1353/2005

<u>Submitted by:</u>	Mr. Philip Afuson Njaru (represented by counsel, Mr. Boris Wijström)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Cameroon
<u>Date of communication:</u>	24 January 2005 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 February 2005 (not issued in document form)
<u>Date of adoption of Views:</u>	19 March 2007

* Made public by decision of the Human Rights Committee.

Subject matter: unlawful arrest; ill-treatment and torture; threats from public authorities; failure to investigate

Procedural issues: None

Substantive issues: unlawful and arbitrary detention; torture, or cruel, inhuman or degrading treatment and punishment; liberty and security of the person; freedom of expression

Articles of the Covenant: 7; 9, paragraphs 1 and 2; 10; 19, paragraph 2; 2, paragraph 3

Articles of the Optional Protocol: 5, paragraph 2 (b)

On 19 March 2007, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1353/2005.

[ANNEX]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-ninth session

concerning

Communication No. 1353/2005**

<u>Submitted by:</u>	Mr. Philip Afuson Njaru (represented by counsel, Mr. Boris Wijström)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Cameroon
<u>Date of communication:</u>	24 January 2005 (initial submission)

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

Meeting on 19 March 2007,

Having concluded its consideration of communication No. 1353/2005, submitted to the
Human Rights Committee on behalf of Mr. Philip Afuson Njaru 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:

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

1. The author of the communication is Mr. Philip Afuson Njaru, a national of Cameroon. He
claims to be a victim of violations by Cameroon of articles 7; 9 paragraphs 1 and 2; 10;
paragraph 1; and 19, paragraph 2, all read in conjunction with article 2, paragraph 3, of the
International Covenant on Civil and Political Rights. He is represented by counsel, Mr. Boris

** The following members of the Committee participated in the examination of the present
communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo,
Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Ms. Zonke
Zanele Majodina, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-
Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Ms. Ruth Wedgwood.

Wijkström of the World Organization Against Torture (OMCT). The Covenant and the Optional Protocol to the Covenant both entered into force for the State party on 27 September 1984.

The facts as presented by the author

2.1 The author is a journalist and well-known human rights advocate in Cameroon. Since 1997, the author has been a victim of systematic acts of persecution by various agents of the State. He recounts these incidents as follows. On 1 May 1997, Mr. H.N., Chief of Post for the Immigration Police in Ekondo-Titi (Ndia Division), in the presence of police constable P.N.E., warned the author that he would “deal with him”, should he continue to publish “unpatriotic” articles, accusing police officers of corruption and alleging that constable P.N.E. had raped a pregnant Nigerian woman.

2.2 On 18 May 1997, Mr. H.N. met the author at the local government office at Ekondo-Titi Sub-Division, where he asked him why he had not reacted to summons by the police. When the author replied that he had never received any official summons, Mr. H.N. asked him to come to his office on 28 May 1997, warning him that this was the very last time that he was inviting him and that the author would be arrested and subjected to torture, should he fail to report to his office.

2.3 On 2 June 1997, the author was again approached by Mr. H.N. and constable P.N.E., who asked him whether he had received the summons. When the author answered in the negative, Mr. H.N. stated that he “would deal with him seriously.”

2.4 On 12 October 1997, Mr. H.N. and Mr. B.N., Chief of Post for the Brigade Mixte Mobile, stopped their police car next to the author, who was standing on the street in Ekondo-Titi. Mr. H.N. asked the author why he had never come to the police station, despite several summons, and again criticized him for having written press articles denouncing police corruption in the district. When the author answered that he had only received oral summons, which were of no legal relevance, Mr. H.N. again threatened to arrest and torture him. He then assaulted the author, beating and kicking him to unconsciousness, removed the author’s press ID, and left.

2.5 A medical report dated 15 October 1997, issued by the District Hospital of Ekondo-Titi (Ndia), states: “Patient in agony with tenderness around the mandobulo-auxillary joint, thoraco-abdominal tenderness, swollen tender leg muscles. Conclusion: Polytrauma.” As a result of his continuous head and mouth pain and hearing loss in his left ear, the author consulted a oral surgeon at the Pamol Lobe Estate Hospital on 17 December 1998, who, in a letter dated 4 April 1999, confirmed that the author’s jaw bone was broken and partially dislocated and that his left ear drum was perforated, recommending surgery and antibiotics as well as anti-inflammatory treatment. Another medical report, issued by the District Hospital, dated 29 August 2000, states that the author suffers from memory lapses, stress, depression and distorted facial configuration and that his symptoms have not clinically improved since his torture on 12 October 1997.

2.6 The author complained about the events of 12 October 1997¹ to the prosecutor of the Ndian Division, South West Province (letters sent in October 1997 and on 5 January 1998), to the Delegate-General for National Security (letter dated 2 February 1998), to the Attorney General of Buea, South West Province (letter dated 9 September 1998), and to the Ministry of Justice in Yaoundé (letters dated 19 and 28 November 2001). No investigation has to date been initiated by any of these authorities. The Attorney General of Buea informed the author that his complaint had disappeared from the Registry.

2.7 On 20 February 1998, constable P.N.E. and two other plain-clothed armed officers of the immigration service located the author at the District Hospital of Ekondo-Titi and told him that Mr. H.N. urgently wanted to see him in his office, without producing a summons addressed to him. Shortly thereafter, Mr. H.N. came to the hospital, arrested and handcuffed the author and brought him to the police station, where he asked the author to disclose his sources for several articles about bribery of the police by Nigerian foreigners and torture during resident permit controls. When the author refused to do so, Mr. H.N. slapped his face several times, threatened to detain him for an indefinite time, to parade him naked in front of women and female children, and to kill him. Following this incident, the author was regularly summoned to the police station, but never showed up because he feared for his life. On 20 April 1998, he sent a complaint about the incident to the Delegate-General for National Security and, on 19 November 2001, to the Minister of Justice. No investigation was initiated.

2.8 On 22 May 1998, constable P.N.E. came to Bekora Barombi, where the author was in hiding. The author refused to accompany him to receive a summons by the immigration police, arguing that it was the police's duty to serve summons. On 28 May 1998, the author returned to Ekondo Titi. The same day, Mr. H.N. stopped his car in front of the author and drove off. Two minutes later, two plain-clothed armed policemen approached the author and gave him the summons carrying an "urgent" stamp and re-dated three times (22 May, 28 May and 8 June 1998), each of the extensions signed by Mr. H.N. The author subsequently went into hiding again. On 8 May 1999, an Immigrations Police commissioner, J.A., arrested the author after the latter had published an article accusing him of corruption.

2.9 In or around May 1999, the author was threatened and harassed by soldiers of the 11th Navy Battalion in Ekondo-Titi after he had published a newspaper article, alleging ill-treatment of women and girls by members of that battalion during tax recovery raids in Ekondo-Titi. On 22 May 1999, Captain L.D., commander of the battalion, asked the author to stop writing such articles and to disclose his sources. When the author refused, soldiers told him that they would shoot him for his accusations. On 27 May 1999, armed soldiers took up position around the author's house. The author managed to escape to Kumba. He complained about the events of 22 May 1999 in a letter dated 27 November 2000 to the National Human Rights Commission. More recently, the author was threatened by Mr. L.D. in relation to other articles, including an article on abuses of the civilian population in Ekondo-Titi by soldiers of a Buea-based military battalion.

¹ The author submits that these events are referred to in the report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, 11 November 1999, Annex II, at para. 37.

2.10 On 8 June 2001, armed policemen ordered the author and his friend, Mr. I.M., to leave a bar in Kumba where they were having a drink. Police constable J.T. seized the author, pushed him to the ground, and inflicted him with blows and kicks. When Mr. I.M. tried to intervene, the policemen assaulted him as well. The author was brought to the Kumba police station without any explanation. During the trip, a trainee police officer beat and kicked him on his head and leg, hit him with the butt of his gun and threatened to "deal with him." Upon arrival at the police station, the police commissioner of Kumba, Mr. J.M.M., told him to go home. When the author asked for a written explanation as to why he had been arrested and ill-treated, he was pushed out of, and not readmitted to, the police station.

2.11 A medico-legal certificate issued by the Ministry of Public Health on 9 June 2001 states that the author "presents [...] left ear pains, chest pains, waist and back pains, bilateral hips and leg pains all due to severe beating by police." On 9 June 2001, the author complained about these events to the State Counsel, Legal Department (Kumba), which forwarded the letter to the judicial police in Buea, and, on 19 November 2001, to the Minister of Justice. On 6 November 2001, the judicial police informed the author that his complaint had not been received and that, consequently, no judicial proceedings had been initiated.

2.12 On 7 October 2003, six armed policemen and a police inspector confronted the author in a carpentry shop. The inspector refused to disclose his name or the reason for searching the author, and threatening him with a baton. Outside the store, the author was threatened and pushed to the floor by two policemen. He reported the incident to the commander of the judicial police in Kumba, the provincial chief of the judicial police, and to the anti-riot police ("GMI") in Buea; he also sent a complaint to the State Counsel, Legal Department in Kumba.

2.13 On 18 November 2003, the judicial police commissioner Mr. A.Y. called the author, asking him to come to his office in Buea. On 19 December 2003, the author reported to Mr. A.Y., who expressed anger at the author's late arrival, subjected him to tiring and intimidating questioning and asked him to stop writing articles denouncing the police.

The complaint

3.1 The author submits that his beating on 12 October 1997, resulting in a fractured jaw and hearing damage, was so severe that it amounts to torture within the meaning of article 7. The repeated threats against his life by the police, often accompanied by acts of brutality, caused him grave psychological suffering, which itself is said to violate article 7. He claims that, in light of the systematic practice of torture and unlawful killings in Cameroon,² he was fully justified in fearing that those threats would be acted upon. In accordance with the findings of various international bodies, these threats, as well as the State party's failure to put an end to them, were incompatible with the prohibition of torture and other forms of ill-treatment.³

² Reference is made to the Concluding Observations of the Human Rights Committee on the third periodic report of Cameroon, 67th Session, 4 November 1999.

³ The author refers, *inter alia*, to the conclusions and recommendations of the Committee against Torture: Cameroon, 21st Session, 5 February 2004, to the report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, 11 November 1999, and to the interim

3.2 The author submits that the blows and kicks that he received during the trip to the Kumba police station on 8 June 2001, resulting in severe pain to his head, chest, ears and legs, were inflicted while in detention, thereby violating article 10, in addition to article 7, of the Covenant.

3.3 The author contents that his arrests on 20 February 1998, 8 May 1999 and 8 June 2001, without a warrant or explanation as to the reasons for his arrest, were unlawful and arbitrary, in breach of article 9.

3.4 The author argues that the above acts were intended to punish him for the publication of articles denouncing corruption and violence of the security forces, as well as to prevent him from freely exercising his profession as a journalist. These measures were not provided by law, but rather violated constitutional guarantees such as the prohibition of torture and cruel, inhuman or degrading treatment or punishment,⁴ and pursued none of the legitimate aims under article 19, paragraph 3.

3.5 On admissibility, the author submits that the same matter is not being examined by another procedure of international investigation or settlement, and that domestic remedies are unavailable to him, given that no investigation of his allegations of police abuse was initiated, despite his repeated complaints to different judicial authorities. Moreover, he claims that judicial remedies are ineffective in Cameroon, as confirmed by several United Nations bodies.⁵

3.6 For the author, the lack of effective remedies constitutes in itself a violation of the Covenant. By way of remedy, he claims compensation commensurate with the gravity of the breaches of his Covenant rights, full rehabilitation, an inquiry into the circumstances of his torture, and criminal sanctions against those responsible.

State party's failure to cooperate

4. By Notes Verbales of 1 February 2005, 19 May and 20 December 2006, the State party was requested to submit information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or substance of the author's claims. It recalls that under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have taken. In the absence of a reply from the State party, due weight

report by the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment, 3 July 2001, at para. 8.

⁴ The author refers to the Constitution of 2 June 1972, as amended by Law No. 96-06 of 18 January 1996, Preamble.

⁵ The author refers to the report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38, Addendum, Visit by the Special Rapporteur to Cameroon, 11 November 1999, at paras. 60 and 68, and to the Concluding Observations of the Human Rights Committee on the third periodic report of Cameroon, 67th Session, 4 November 1999, at para. 27.

must be given to the author's allegations, to the extent that these have been properly substantiated.⁶

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

5.2 With respect to the requirement of exhaustion of domestic remedies, the Committee notes that the State party has not contested the admissibility of any of the claims raised. In addition, it notes the information and evidence provided by the author on the complaints made to several different bodies, none of which, it would appear, have been investigated. Accordingly, the Committee considers that it is not precluded from considering the communication by the requirements of article 5, paragraph 2 (b), of the Optional Protocol. As the Committee finds no other reason to consider the claims raised by the authors inadmissible, it proceeds with its consideration of the claims on the merits, under article 7; article 9, paragraphs 1 and 2; article 10, paragraph 1; article 19, paragraph 2; and article 2, paragraph 3, as presented by the author. It also notes that an issue arises under article 9, paragraph 1, with respect to the death threats to which the author was subjected by the security forces.

Consideration of merits

6.1 As to the claim of a violation of articles 7 and 10 of the Covenant with regard to his alleged physical and mental torture by the security forces, the Committee notes that the author has provided detailed information and evidence, including several medical reports, to corroborate his claims. He has identified by name most of the individuals alleged to have participated in all of the incidents in which he claims to have been harassed, assaulted, tortured and arrested since 1997. He has also provided numerous copies of complaints made to several different bodies, none of which, it would appear, have been investigated. In the circumstances, and in the absence of any explanations from the State party in this respect, due weight must be given to his allegations. The Committee finds that the abovementioned treatment of the author by the security forces amounted to violations of article 7 alone and in conjunction with article 2, paragraph 3, of the Covenant.

6.2 As to the claim of violations of article 9, as they relate to the circumstances of his arrest, the Committee notes that the State party has not contested that the author was arrested on three occasions (20 February 1998, 8 May 1999, and 8 June 2001) without a warrant and without informing him of the reasons for his arrest or of any charges against him. It also notes that the

⁶ The author refers to the Committee's jurisprudence: Communication No. 1208/2003, Kurbonov v. Tajikistan, Views adopted on 16 March 2006, and Communication No. 760/1997, J.G.A. Diergaardt et al. v Namibia, Views adopted on 25 July 2000, paragraph 10.2.

author made complaints to several bodies which, it would appear, were not investigated. For these reasons, the Committee finds that the State party has violated article 9, paragraphs 1, and 2 alone and in conjunction with article 2, paragraph 3 of the Covenant.

6.3 The Committee notes the author's claim that he was subjected to threats on his life from police officers on numerous occasions and that the State party has failed to take any action to ensure that he was and continues to be protected from such threats. The Committee recalls its jurisprudence that article 9, paragraph 1 of the Covenant protects the right to security of the person also outside the context of formal deprivation of liberty.⁷ In the current case, it would appear that the author has been repeatedly requested to testify alone at a police station and has been harassed and threatened with his life before and during his arrests. In the circumstances, and in the absence of any explanations from the State party in this respect, the Committee concludes that the author's right to security of person, under article 9, paragraph 1, in conjunction with article 2, paragraph 3 of the Covenant has been violated.

6.4 As to the claim of a violation of the author's right to freedom of expression and opinion, with respect to his persecution for the publication of articles denouncing corruption and violence of the security forces, the Committee notes that 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 paragraphs 3 (a) and (b) of article 19 and it must be necessary to achieve the legitimate purpose. The Committee considers that there can be no legitimate restriction under article 19, paragraph 3, which would justify the arbitrary arrest, torture, and threats to life of the author and thus, the question of deciding which measures might meet the "necessity" test in such situations does not arise.⁸ In the circumstances of the author's case, the Committee concludes that the author has demonstrated the relationship between the treatment against him and his activities as journalist and therefore that there has been a violation of article 19, paragraph 2, in conjunction with article 2, paragraph 3 of the Covenant.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations of articles 7; 9, paragraphs 1, and 2, and 19, paragraph 2, in conjunction with article 2, paragraph 3 of the Covenant.

8. The Committee is of the view that the author is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. The State party is under an obligation to take effective measures to ensure that: (a) criminal proceedings are initiated seeking the prompt prosecution and conviction of the persons responsible for the author's arrest and ill-treatment; (b) the author is protected from threats and/or intimidation from members of the security forces; and (c) he is granted effective reparation including full compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

⁷ Communication No. 821/1998, Chongwe v. Zambia, Views adopted on 25 October 2000, Communication No. 195/1985, Delgado Paez v. Colombia, Views adopted on 12 July 1990, Communication No. 711/1996, Dias v. Angola, Views adopted on 18 April 2000. Communication no. 916/2000, Jayawardena v. Sri Lanka, Views adopted on 22 July 2002.

⁸ Communication No. 458/1991, Mukong v. Cameroon, Views adopted on 21 July 1994.

9. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to 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.
