COMMUNICATION 1813/2008: Ebenezer Derek Mbongo AKWANGA v CAMEROON

AUTHOR'S RESPONSE TO STATE PARTY'S OBSERVATIONS DATED 8 JULY 2008 ON ADMISSIBILTY & MERITS

The Author responds *seriatim* to the paragraphs of the State Party's Observations. Where any aspect of the Observations is not dealt with this does not necessarily mean that the Author accepts the way it has been phrased by the State Party.

1. Paragraphs 1 and 2 of the State's response

1.1 Not disputed.

I. SUMMARY OF THE PROCEDURES RELATING TO EBENEZER DEREK MBONGO AKWANGA

2. Paragraph 3

2.1 The Author described the trial before the Military Tribunal in paragraph 9 of his Communication, and stands by what was said.

2.2 It is misleading for the State Party to imply that the case opened in 1997, as that was rather when the Author was arrested and detained, on 24 March 1997. The mass trial in which he was one of the accused in fact only started in April 1999, and he was therefore held for more than two years without trial before the Military Tribunal trial began, which ended in October 1999. Neither he nor defence lawyers properly understood the initial charges, which were subsequently changed and still not fully understood; the new charges included statutory offences passed after the alleged offences were said to have taken place. On 6 October 1999 the Author was sentenced to 20 years' imprisonment for crimes which were never coherently explained. He never saw the judgment. These proceedings will also be dealt with further under the **MERITS** hereunder.

2.3 An appeal was lodged.

3. Paragraph 4

3.1 The Author did escape on 9 July 2003 to Nigeria.

3.2 At the time of his escape, the motion filed on 10 December 1997 (i.e. some five-and-a-half years previously) before the Supreme Court challenging the jurisdiction of the Military Tribunal, and referred to in paragraph 16 of his Communication, had still not been heard. As far as the Author is aware it has never been heard. The appeal following the Military Tribunal trial had also not been heard at the time of his escape, although the trial had ended nearly four years previously in October 1999.

4. Paragraph 5

4.1 The Author was recognised as a refugee by the UNHCR in Nigeria.

4.2 The Author has no knowledge that Maitre Titanji Duga Ernst (hereafter 'Titanji') or anyone else ever submitted any complaint or anything else on his behalf to the African Commission on Human and People's Rights (ACHPR); further, if Titanji did purportedly do so then neither Titanji nor anyone else was ever authorised by the Author or by anyone acting on the Author's behalf to do so. The Author therefore denies that there is any authorised complaint, pending or otherwise, before the ACHPR.

4.3 The State Party has not said when the alleged complaint was allegedly submitted to the ACHPR. Given the chronology of the State Party's **SUMMARY OF THE PROCEDURES** it would appear to be alleging that a complaint was submitted *after* the Author's escape on 9 July 2003. It is noted that the State Party alleges that the alleged complaint was a joint one on behalf of 17 others who were in detention, as well as the Author. If Titanji did submit a complaint after 9 July 2003 on behalf of 18 persons *in toto*, including purportedly on behalf of the Author, and in addition to the Author stating that at no time was Titanji ever authorised to do so on his behalf, then the submission must have been a complaint dealing with 17 person in detention plus one (the Author) who was no longer in detention, by virtue of his escape. It is noted that the State Party has not said how or if the Author (out of detention) was differentiated in the alleged complaint from those in detention. Similarly, if the unauthorised complaint concerning the Author was lodged *before* the Author's escape, the State Party has not said how the matter of the Author no longer being in detention was dealt with subsequently in any alleged ACHPR proceedings.

4.4 This alleged complaint allegedly pending before the ACHPR is dealt with more fully hereunder under **ADMISSIBILITY OF THE COMMUNICATION.**

5. Paragraph 6

5.1 The Author has no knowledge of any alleged notification by the ACHPR on 17 June 2004 (or at any time), nor that the State Party responded, nor anything else relating to the alleged pending complaint, other than what has been said in the Observations, and notes that the State Party has not provided any documentation relating to the alleged pending complaint.

6. Paragraph7

6.1 The Author notes that the appeal took more than six years to be finalised, and repeats that as far as he is aware the Supreme Court has still never ruled on the motion filed with it nearly 12 years ago.

7. Paragraph 8

7.1 Not disputed.

II. ADMISSIBILITY OF THE COMMUNICATION

8. Paragraphs 9 and 10

8.1 The Author submits that neither exception to admissibility is merited for the reasons set out hereunder.

Pendente liti

9. Paragraphs 11-14

9.1 As stated above in paragraphs 4 and 5 the Author knows nothing about the alleged pending complaint before the ACHPR and repeats that if any such complaint was purportedly brought on his behalf then it was never authorised by him, and puts the State Party to the proof of the contrary.

9.2 The Author has no knowledge of the alleged complaint submitted nor of Titanji's speech during the closed session of 25 November 2006, during the 40th session of the Commission. Neither the alleged complaint nor the alleged speech nor anything else relating to the alleged complaint pending before the ACHPR is in the public domain, and the Author has no knowledge of them. The State Party has not placed any documents before the Human Rights Committee (the Committee), such as the complaint itself which it avers it was notified of on 17 June 2004, nor its response thereto which it avers it made, nor the alleged speech nor anything else relating to the closed session, nor anything thereafter, nor any documents whatsoever in support of its exception. In the complete absence of all and any such documentation relating to the alleged pending matter, which is solely within the power of the State Party to produce, the State Party's exception should be dismissed.

9.3 If the Author had authorised being a party to any complaint before the ACPHR, which he denies, then such authorisation would have been contained in the papers Titanji allegedly submitted to the ACHPR, a copy of which the State Party must have received when allegedly notified of the complaint on 17 June 2004. In the absence of the State Party producing a copy of the Author's power of attorney or equivalent document in this regard, granting Titanji authority to act on the Author's behalf, the exception is unsustainable.

9.4 The Author does not know, has never met nor ever seen Titanji, nor communicated with him in any way about any matter relating to the ACHPR or anything else; he has never instructed him in any matter, nor has Titanji ever been authorised to act for him; Titanji was not involved at all in the Yaoundé Military Tribunal trial which culminated in the Author's sentence of imprisonment. The Author has no knowledge of any involvement by Titanji in the appeal, about which appeal the Author heard nothing during the years while he was still in prison, and which appeal was eventually finalised several more years after his escape.

9.5 In *Fanali v Italy*[1] the Committee held that the words "the same matter" in Article 5 (2) (a) of the Optional Protocol have "to be understood as including the same claim concerning the same individual, submitted by him or someone else who has the standing to act on his behalf before the other international body." On the undocumented information contained in the Observations, the allegedly pending complaint cannot be said to constitute "the same matter" because:

9.5.1 It manifestly does not consist of the same individuals: according to the State Party the ACPHR complaint concerns eighteen complainants, only one of which is (or was) allegedly the Author, while in the instant Communication the Author is the sole complainant;

[1] CCPR/C/18/D/75/1980 [1983] UNHCR 6 (31 March 1983), paragraph 7.2 (Annex 23)

9.5.2 The instant Communication consists of the Author's claims arising from specific and detailed facts concerning him between 24 March 1997 when he was arrested and detained, and 9 July 2003 when he escaped: it is inappropriate to allege, as the State Party has effectively done, that these specific and detailed facts concerning the Author could be and are the same as those concerning seventeen other persons;

9.5.3 Irrespective of when the alleged pending complaint was allegedly submitted to the ACHPR (i.e. before or after the Author's escape) it cannot conceivably concern all 18 persons in the same way, that is, including the Author, because at the time of the alleged notification (17 June 2004), as well as of course at the time of the alleged closed session (25 November 2006) the Author was no longer in detention, as the others apparently were;

9.5.4 If the alleged pending complaint refers to some broadly similar issues concerning a large number of persons, given that torture and other cruel, inhuman or degrading treatment, and violations of the right to a fair trial were suffered by many in Cameroon at that time, it does not follow, as the State party has averred, that the identity of the parties and the facts lead to the conclusion that the instant case is currently being considered by another procedure of international investigation or settlement;

9.5.5 There is also nothing to show that the relief sought in the alleged pending complaint is the same as the Declaration and Recommendations sought by the Author in the instant Communication, and/or that the Articles of the Covenant which the Author avers were breached in the instant Communication are the same as those apparently involved in the alleged pending complaint before the African body;

9.5.6 Titanji had no standing to bring any complaint before the ACPHR on the Author's behalf.

9.6 In *Unn et al v Norway*[2] a complaint ostensibly about the same matter (compulsory religious education in Norwegian Schools) was submitted to both the Committee and the European Court of Human Rights. However, the complaints were submitted by different sets of parents and students, so the complaints did not concern "the same matter." [3]

9.7 In *Millan Sequeria v Uruguay*[4] a case had been put before the Inter-American Commission on Human Rights relating to hundreds of persons detained in Uruguay; two sentences of that complaint related to the victim in the complaint before the Committee; the Committee held that the complaint before it was not comparable as it described the victim's personal complaint in detail[5] and therefore the two cases did not relate to the same matter.

10. Paragraphs 15 and 16

10.1 Not disputed

[2] CCPR/C/82/D/1155/2003 [2004] UNHCR 63 (23 November 2004) (Annex 24)

[3] Ibid, paragraph 13.3

[4] CCPR/C/10/D/6/1977 [1980] UNHCR 6 (29 July 1980) (Annex 25)

[5] Ibid, paragraph 9

11. Paragraphs 17 and 18

11.1 It is not disputed that there have been cases where the Committee has declared Communications inadmissible under Article 5 (2) (a) of the Optional Protocol, including the three cases cited. However, none of these three cases support the State Party's exception and/or apply to the instant case:

11.1.1 *Rivera v Spain* [6]: the inadmissibility decision under Article 5(2) (a) was based squarely on reservations to the Optional Protocol which Spain entered to preclude the Committee considering cases if they have previously been considered under the European Convention of Human Rights (ECHR); such reservations essentially aim to prevent the Committee and other UN treaty bodies being used as bodies to which an 'appeal' from European human rights decisions can be made. This is manifestly different to the instant Communication and alleged pending matter where no such reservation, European human rights decision, European State, or any matter which has previously been considered, exist;

11.1.2 *Crippa, Manson and Zimmerman v France* [7]: the same applies *mutatis mutandis* to this inadmissibility decision;

11.1.3 *Kollar v Austria* [8]: the same applies *mutatis mutandis* to this inadmissibility decision.

11.2 For all these reasons and on the basis of the facts and jurisprudence the exception should be dismissed.

Non-exhaustion of all available local domestic remedies

12. Paragraph 19

12.1 The State Party's assertion that the Author did not engage any domestic procedures is incorrect. The steps the Author took and the reality of his position are set out in paragraphs14-16 and 20-24 of his Communication, which he reiterates. The State Party has also contradicted itself, for example, it has averred that there was an appeal in which the decision was finally handed down on 15 December 2005.[9]

13. Paragraphs 20-22

13.1 The infeasibility of the Author bringing any criminal complaint under law number 97/009 of 10 January 1997 of the Criminal Code arising from him having been tortured is dealt with in detail in his Communication, particularly in paragraph 15 thereof and Mr Nkafu's averments as to the legal and political realities applicable to the Author's case.[10] The Author reiterates that it was effectively impossible for him to initiate a complaint procedure and/or for any such procedure to be properly processed in the Cameroon, for all the reasons elaborated upon in his Communication and the jurisprudence referred to therein.

[6] CCPR/C/85/D/1396/2005 [2005] UNHCR 73 (22 November 2005), paragraph 6.2 (Annex 26)

[7] CCPR/C/85/D/993-995/2001[2005] UNHCR 59 (18 November 2005), paragraphs 6.7 and 6.8 (Annex 27)

[8] CCPR/C/78/D/989/2001 [2003] UNHCR 31 (1 September 2003), paragraph 8.6 (Annex 28)

[9] Paragraph 7 of the Observations

[10] Annex H to the Communication

13.2 The State Party's assertion that several people are regularly punished with sentences severe enough to serve as a deterrent glosses over the particular position of the Author, a political prisoner who was facing his own criminal trial, who for the reasons explained by Mr Nkafu was unable to obtain any protection and/or institute any proceedings against his abusers. However, the State Party's assertion is a clear admission that torture takes place regularly in the Cameroon. Further, in the absence of any details as to who has been punished and for what offences it is impossible to know whether any of those cases are at all analogous to the Author's experience.

13.3 In *Vicente et al v Columbia*[11] the Committee held that it is necessary to look at the nature of the alleged violation in order to ascertain whether a remedy is effective – if the violation is serious (such as the breach of a person's right to life) administrative and disciplinary measures alone are unlikely to be considered either adequate or effective. This principle was affirmed in *Coronel et al v Columbia.*[12] The Author submits that a similar requirement exists with torture and/or cruel, inhuman or degrading treatment or punishment, given the grave nature of such abuses. Therefore, even if under Cameroonian law the persons who abused the Author were liable to be held accountable in some way (and there is no evidence before the Committee that any of them were ever dealt with accordingly), and even if the Author had been able to initiate such proceedings (which is denied, for the reasons already set out above in paragraphs 13.1 and 13.2 as read with his Communication), the remedy would not have been effective.

14. Paragraphs 23-28

14.1 The purported protection of the right to a fair trial under the State Party's Criminal Procedure Code sections 332, 407,408 and 413, as reproduced in the Observations, does not take the State Party's case any further, as none of these laws were applied in the Author's case, either in the trial before the Military Tribunal or on appeal. On the contrary, the direct challenge to the proceedings as averred in paragraph 16 of the Communication - the motion filed before the Supreme Court on 10 December 1997 - has still never been heard, nearly twelve years later.

14.2 That motion clearly challenged in detail the fairness of any forthcoming trial before the Military Tribunal, but was ignored at the time of the Military Tribunal trial although it was pending before the Supreme Court. The State Party too has ignored this motion in its Observations, as well as ignoring the specific flaws in the proceedings of the Military Tribunal trial itemised in paragraph 55 of the Author's Communication. Significantly, the State Party has not disputed that the motion was filed well before the Military Tribunal trial was held, or that the motion was pending at the time of the Military Tribunal trial, or that the motion has never been dealt with by the Supreme Court to date.

15. Paragraphs 29-33

15.1 The State Party has distorted and/or ignored the averments clearly set out in the Author's Communication as to what steps he took to exhaust domestic remedies (paragraphs 14-16) and the jurisprudence on which he relies (paragraphs 21-24). The Author re-iterates

[11] CCPR/C/60/D/612/1995 [1997] UNHCR 26 (19 August 1997), paragraph 5.2, page 7 (Annex 29)

[12] CCPR/C/76/D/778/1997 [2002] UNHCR 46 (29 November 2002), paragraph 6.2, page 8 (Annex 30)

what he said before in the context of the jurisprudential principles involved. Further, the State Party has only dealt with isolated aspects of the Author's case, such as his inability to receive visits from anyone including his lawyers; significantly, the State Party has not disputed that the Author was not allowed to receive such visits or the reasons therefore (including fear and intimidation). Instead, it has merely said that no instructions in this regard were issued to the prison guards by the authorities, within the understanding that all visits to places of detention must be approved by the Public Prosecutor or the *Juge d'Instruction.* Consequently it is clear that the Author was in fact unable to access his lawyer.

15.2 Further, it is unreasonable to suggest, as the State Party has done, that during "moments of supervised freedom" when he had some very limited access to medical treatment he could and should have used this time to "engage the applicable procedures." As a result of some of those injuries, for example, as set out in paragraph 8 of his Communication, he was diagnosed as "suffering from excessive torture and trauma with partial paralysis. He also suffered from lack of vision." At all times he was at the mercy of the authorities. As set out further in paragraph 10 of his Communication, while serving his sentence the continued neglect and ill-treatment made him ill with a pulmonary infection. It is significant the State party has not denied any of this, but instead has sought to rely on his ill-health, for which the State Party was directly responsible, as the basis on which he should have been able to seek domestic remedies. He ultimately escaped to avoid further ill-treatment and worse.

16. Paragraph 34

16.1 It is not disputed that there have been cases where the Committee has declared Communications inadmissible for non-exhaustion of domestic remedies, including the cases cited. However, none of the cases support the State Party's exception and/or apply to the instant case:

16.1.1 *Aouf v Belgium*[13]: the domestic remedies aspect of the case (which did not concern torture but did raise Article 14 violations) concerned the failure of the author to raise some specific points during domestic proceedings, which points he then wished to have dealt by the Committee. There were legitimate and effective domestic proceedings in Belgium which had heard the matter, and the state party argued that the author had failed to raise the issues when he could have done so. This is clearly distinguishable from the instant case where, as set out fully in his Communication, the Author has shown that there were no other domestic proceedings in Cameroon which objectively had prospect of success;

16.1.2 *Castro Ortiz v Columbia*[14]: this was a labour case where the author had neither availed himself of remedies in the ordinary labour courts of Columbia, nor explained why such remedies would have been ineffective. This is clearly distinguishable in all relevant respects from the instant case;

16.1.3 *Platonov v Russian Federation*[15]: this case *inter alia* involved torture and fair trial issues, and the Committee found that the author had not availed himself of appeal

[13] CCPR/C/86/D/1010/2001[2006] UNHCR 14 (26 April 2006), paragraph 8.3 (Annex 31)

[14] CCPR/C/85/D/1103/2002 [2005] UNHCR 65 (21 November 2005), paragraph 6.3 (Annex 32)

[15] CCPR/C/85/D/1218/2003 [2005] UNHCR (16 November 2005), paragraphs 6.3-6.7 (Annex 33)

procedures to the Russian Federation court after the office of the procurator general had refused to open a criminal case and to investigate allegations of torture against a policeman involved in the arrest. In the instant case the unchallenged facts of what the Author endured, the reality of the Cameroon legal and political system at all relevant times, the established jurisprudence relating to the State, human rights reports, the unacceptability of Military Tribunals to try civilians, the effective impossibility of the Author making any complaints to the authorities, and all the other details as set out in the Communication, clearly distinguish it from the Russian Federation case;

16.1.4 *Khan v Canada*[16]: this case involved an asylum claim and the author's averment that he was at risk of *refoulement* to Pakistan where he faced torture. The Committee upheld the Canadian government's argument that a psychogical report concerning post-traumatic stress disorder should have been presented to the national authorities and that other requests to remain based on the new report could still be made, and thus domestic remedies had not been exhausted. It is clearly distinguishable from the instant case for the same reasons as set out in 16.1.3 above, and in addition it is submitted that in the Canadian case the Committee recognised that there was an effective domestic remedy, which is not the position in the instant case;

16.1.5 *Kurbogaj v Spain*[17]: this case concerned alleged violations of the Covenant committed by Spanish officers belonging to UN forces in Kosovo, where the authors tried to obtain relief through the relevant UN procedures in Kosovo but did not address themselves at any point to any penal or administrative authorities in Spain. This is clearly distinguishable from the instant case where the Author did seek domestic remedies in Cameroon to the extent that this was possible, such as the early motion filed in the Supreme Court challenging the jurisdiction of the Military Tribunal, which motion to his knowledge has never been heard. It is also distinguishable for the political and factual reasons set out in his Communication regarding the effective impossibility of his obtaining any domestic relief within the Cameroonian legal system.

16.2 The Author submits further that the above five cases, cited by the State Party in support of its exception, instead underpin the principles in the cases, decisions and observations which the Author referred to in his Communication. The said cases, decisions and observations support his contention that it would have been futile and/or dangerous for him to have attempted to do anything more than was attempted while he was custody, that he cannot return, and that for political reasons the case is to be regarded in the light of the Committee's jurisprudence on Cameroon itself. Significantly, the State Party has ignored all the cases, decisions and observations which the Author referred to in his Communication. The Author reiterates that in averring, as he hereby does, that the State Party's exception is without merit, he relies in particular on the authorities listed as Annexes 1-5 and 18-20 in his Communication.

16.3 The Author also refers the Committee to a number of cases within the European human rights system relevant to the principles governing the exhaustion of domestic remedies:

[16] CCPR/C/1302/2004[2006] UNHCR 45 (10 August 2006), paragraph5.5 (Annex 34)

[17] CCPR/C/87/D/1374/2005 [2006] UNHCR 48 (11 August 2006), paragraph 6.3 (Annex 35)

16.3.1 *H v Belgium*[18] where the Commission ruled that for a remedy to be effective it must be accessible, i.e. the person concerned must be able to institute the relevant proceedings himself;

16.3.2 *Karrer et al v Austria*[19] where the Commission ruled that a hierarchical appeal against a judge cannot be considered an effective remedy where it is alleged that the excessive length of civil proceedings was due to an unjustified decision to suspend the proceedings;

16.3.3 *Greece v United Kingdom*[20] where the Commission ruled that in accordance with the generally recognised principles of international law the exhaustion of a domestic remedy is not required if in the particular circumstances such remedy will probably prove ineffectual or inadequate;

16.3.4 *Kuijk v Greece*[21] where the Commission ruled that the obligation to exhaust domestic remedies requires normal use of remedies which are effective, sufficient and available, and that to be effective a remedy must be capable of remedying directly the situation complained of;

16.3.5 *W.S.W. v United Kingdom*[22] where the Commission ruled that where there was uncertainty and disquiet as to the precise scope and extent of the remedy then an application cannot be rejected for non-exhaustion of local remedies;

16.3.6 *Englert v Germany*[23] where the European Court of Human Rights (ECtHR) ruled that though the applicant could have brought his complaint before the constitutional court such a remedy would not have been effective in the circumstances of the case, and that the only remedies required to be exhausted are those that are available and sufficient;

16.3.7 *Pine Valley Developments Limited et al v Ireland*[24] where the ECtHR ruled that a domestic remedy which will not bear fruit in sufficient time does not fall into the category of an effective remedy which an applicant is obliged to exhaust;

16.3.8 *Open Door and Dublin Well Women v Ireland*[25] where the ECtHR ruled that any action brought by the complainants would have had no prospects of success and accordingly it rejected the objection based on non-exhaustion of domestic remedies.

---

[18] Application 8950/80, Decision of 16 May 1984, paragraph 2, pages 12-13 (Annex 36)

[19] Application 7464/76, Decision of 5 December 1978, page 54 (Annex 37)

[20] Application 299/57, 8 July 1959, page 5 (Annex 38)

[21] Application 14986/89, Decision of 3 July 1991, pages 250-251 (Annex 39)

[22] Application 10871/84, Decision of 10 July 1986, Part 4 (Annex 40)

[23] Application 10282/83, Judgment of 25 August 1987, paragraph 32, page 9, also published as ECHR Series A, Vol 123B, page 52 (Annex 41)

[24] Application 12742/87, Judgment of 29 November 1991, paragraph 47, also published as ECHR Series A. Vol 222, page22 (Annex 42)

[25] Application 14234/88;14235/88, Judgment of 29 October 1992, paragraphs 48-51, also published as ECHR Series A Vol 246, page 23 (Annex 43)

16.4 The Author also relies on the Committee case of *Pratt and Morgan v Jamaica*[26] where it was said that the Committee necessarily has to determine whether there are effective local remedies left for an author to exhaust, and that the local remedies rule not requiring resort to appeals that objectively have no prospect of success is a well-established principle of international law and the Committee's jurisprudence.

16.5 The Author relies too on *Arzuaga Gilboa v Uruguay*[27] where the Committee stated that effective remedies include procedural guarantees for a fair and public hearing by a competent, independent and impartial tribunal.

16.6 In sum, the exception based on non-exhaustion of local domestic remedies should be dismissed because: i) the alleged local remedies were unavailable, and even if available, were ineffective and incapable of addressing the Author's complaints as the events described in and supported by the documents in the Communication establish; ii) the Committee's jurisprudence as well as that of other relevant international and regional human rights bodies is clear that a remedy is considered available only if a complainant can make use of it in the circumstances of his case; ii) the local remedies were unavailable to the Author due to the combined effect of the circumstances of the case; iv) remedies which in the circumstances of the case appear to be ineffective need not be exhausted; v) according to the principles of international law the local remedy rule does not require resort to appeals that have no object prospect of success; vi) the local remedy the Author sought was not effective; vii) the Author made use of those remedies he believed could have prevented some of the violations or limited their egregious effect by filing the motion in the highest court of the land – the Supreme Court - but politics prevailed over legality and the rule of law , and the remedy was unavailable due to the non-responsiveness of the said Court, and the Military Tribunal simply ignored the authority of the said court with impunity; viii) local remedies were unavailable because the case was a political one against the Southern Cameroons National Council (SCNC); and ix) the independence of the judiciary does not exist in Cameroon.

III. MERITS

17. Paragraph 35

17.1 The Author submits that his claims are substantiated, and that the State Party's presentation of the facts is in some respects seriously distorted while in others it confirms the Author's account of events. The Author was convicted but he disputes that the verdict was just and that the authorities were competent. On the contrary, the Military Tribunal lacked jurisdiction and the Author was subjected to all the violations on which his claims are based as set out in his Communication, during the period from his arrest on 24 March 1997 to his escape on 9 July 2003. The fact that some of his co-accused were found not guilty does not render legitimate the illegitimate, nor detract from the Author's claims.

[26] CCPR/C/35/D/210/1986 and 225/1987 [1989] UNHCR 11 (7 April 1989), paragraph 12.3 (Annex 44)

[27] CCPR/C/26/D/147/1983 [1985] UNHCR 15 (1 November 1985), paragraph 7.2, page 5 (Annex 45). See also the Committee's Views in the case of *Phillip v Trinidad and Tobago,* CCPR/C/64/D/594/1992 at paragraph 6.4 where it was held that due to fear of the prison authorities the complainant was not required to alert those authorities to the poor conditions of detention (Annex 45A)

18. Paragraph 36

18.1 The Communication was submitted on behalf of the Author only, and because of the multiple violations he suffered during the period concerned. It is somewhat disingenuous of the State Party to characterise the Communication as having been submitted following the arrest and detention of 67 people, including the plaintiff, during the months of March and April 2007(sic) in the North-West Province of Cameroon. Nevertheless, it is significant that it is common cause that the Author was arrested in Jakiri in the North-West Province and subsequently brought under the jurisdiction of the military in Yaoundé more than three hundred kilometres from where he allegedly committed crimes, and under civil law criminal procedures inapplicable in the common law jurisdiction where the alleged crimes were committed.

18.2 Because the Author (and others) were unlawfully detained, tortured and carried out of the Province and held incommunicado without the knowledge of the Province's judiciary, Barrister Charles Taku wrote to the Procureur-General of the Province on the 20 October 1997 "seeking for information about several persons apprehended and incarcerated from several parts of the North-West Province since March 1997"; the Procureur-General replied on 31 October 1997 stating in effect that he did not know their whereabouts, particularly persons alleged to have stolen explosives in Jakiri, and that they were not detained by the judicial authorities of his Province.[28] The subsequent motion to the Supreme Court[29] fully and comprehensively challenging the procedures to which the Author (and others) were being subjected has been ignored by the State Party in its Observations – just as it was ignored at the time and subsequently, never having been heard to date.

19. Paragraphs 37-38

19.1 The Author denies any involvement in any theft of explosives or other illegal activity as alleged, nor does he accept that the events at the time have been objectively categorised by the State Party. Whatever evidence was brought against the Author was tainted by torture and/or vitiated by the unlawfully procedures to which he was subjected for more than two years leading up to the unfair Military Tribunal trial, all of which have been detailed in his Communication and reiterated above.

20. Paragraph 39-41

20.1 It is significant that the State Party admits that the Author was already detained when the alleged attacks took place some three days after his arrest, and therefore he did not perpetrate them. The reference to these alleged attacks reflects the State Party's motivation in targeting the Author because of his peaceful political activities, seeking to implicate him and justify its unlawful procedures.

[28] The letter is attached to the motion to the Supreme Court of 10 December 1997, Annex I of the Author's Communication, and states "returns in my Chambers on remand awaiting trials do not indicate that those involved in theft of explosives at Jakiri were remanded by the Judicial authorities of Bui Division or the Judicial authorities of the Province."

[29] Annex I to the Communication

21. Paragraph 42

21.1 Similarly, the Author's leadership of the Southern Cameroons Youth League (SCYL) which worked together with the SCNC confirms that it was his political involvement which the State Party found intolerable. The Author did not make any confession of theft of explosives as alleged; he can recall no hearing on 5 April 1997, which day was in the period when he was being tortured at the National Headquarters of the Gendarmerie at Yaoundé as set out in paragraphs 6 and 37-38 of his Communication.

21.2 However, he was forced to sign papers in French on 8 April 1999, being Annex B to his Communication, which papers he did not understand and which were signed under the circumstances set out in paragraph 9 of his Communication. It is presumably on the basis of papers such as these that the State Party has alleged the Author made a declaration of having been chosen to lead an expedition to steal explosives, and consequently the allegation is unfounded and unsustainable.

22. Paragraphs 43-44

22.1 It is unnecessary for the Author to again detail the gross shortcomings, illegalities and violations attached to the proceedings leading to the trial, the trial itself, his conviction and sentence. He stands by his Communication in all of these regards.

23. Paragraph 45-47

23.1 For the purposes of the matters before the Committee, the significance of the appeal is that it took over six years to be finalised, as the ruling of 15 September 2005 was followed by the eventual decision of 15 December 2005 - see paragraph 7 of the State Party's Observations. This inordinate delay in itself illustrates the serious defects of the domestic legal system. The Author again draws the Committee's attention to the fact that the 1997 motion to the Supreme Court has never been heard. Article 38 of the Constitution of Cameroon (Law no.96/06 of 18 January 1996) states that the Supreme Court is the highest judicial organ of the State. Despite this the Military Tribunal in 1999 and then (very belatedly) the Court of Appeal in 2005 proceeded, regardless of the fact that there was a matter filed in the Supreme Court.

24. Paragraph 48

24.1 The State Party has averred that a challenge was filed against the 15 September 2005 decision of the Court of Appeal on the jurisdiction of the Military Tribunal, which is pending before the Supreme Court. The Author makes two points: firstly, a further four years have passed; secondly, this was precisely the key issue challenged in the motion of 1997. It is clear that the highest court in Cameroon always has been and still is beyond effective reach in this case.

25. Paragraph 49

25.1 The Author confirms that the complaint in the Communication is that the State party has breached Articles 7, 9, 10 and 14 of the Covenant.

Torture and other ill-treatment

26. Paragraphs 50

26.1 The Author was tortured and/or subjected to other cruel, inhuman or degrading treatment or punishment at the hands of the gendarmerie and/or prison officers and/or other inmates at the places and during the times set out in paragraphs 2-10 of his Communication. It was therefore not only in the police offices but in the various prisons that he was held that these violations occurred.

27. Paragraph 51

27.1 The State Party appears to be referring solely to the investigation into crimes allegedly committed by the Author (and others with whom he was allegedly operating), rather than any investigation(s) into the crimes of torture of which he is the victim. There is nothing to show that the State Party ever investigated the brutality inflicted on the Author, although it is clear from the documentation and averments in the Communication that the authorities were aware of what had happened and was happening. Thus the papers supporting the 1997 motion filed with the Supreme Court referred to torture, as did Amnesty International reports in 1998 and subsequently,[30] and the document circulated by Barrister Ndam in April 1999.[31] The attitude of the State Party appears to be that the investigation against the Author and the treatment he was subjected to was all fully justified and lawful. However, irrespective of any legislative procedures which were allegedly in place to protect the Author against torture, he stands by his detailed description of what happened to him.

28. Paragraph 52

28.1 The case of *Kouidis v Greece*[32] cited by the State Party is no authority justifying a criminal investigation against an accused person such as the Author being conducted in the way the State Party acted from the moment of the Author's arrest. On the contrary, as the Author is the victim and there has been no investigation of the crimes committed against him, the case is clear authority for the fact that there is an obligation on the State Party to investigate the torture and other violations he suffered. As the Committee said in the case cited, Greece "is under an obligation to provide the author with an effective and appropriate remedy, including the investigation of his claims of ill-treatment, and compensation."[33]

[30] Annexes M and N to the Communication, as well as J,K and L

[31] Annex C to the Communication

[32] CCPR/C/86/D/1070/2002 [2006] UNHCR 15 (26 April 2006) (Annex 46)

[33] Ibid, paragraph 9, page 10

28.2 While the Committee did state in *Kouidis v. Greece* that "the manner in which a case should be investigated is for the national investigating authorities to decide, in as far as it is not arbitrary",[34] it is also clear from the jurisprudence of the Committee and other human rights bodies that any such investigation must meet certain requirements. For example, such an investigation must be conducted "promptly and impartially by competent authorities so as to make the remedy effective";[35] must be "full"[36] and "thorough";[37] and, crucially, must be "independent".[38] The duty to investigate also includes the effective participation of the victim's family. See, for example, the ECtHR's judgment *Hugh Jordan v. United Kingdom:*[39]

> "[f]or the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see Güleç v. Turkey, cited above, p. 1733, § 82, where the father of the victim was not informed of the decisions not to prosecute; Öğur v. Turkey, cited above, § 92, where the family of the victim had no access to the investigation and court documents; Gül v. Turkey judgment, cited above, § 93)"

28.3 The investigation must also be capable of leading to the identification of those responsible. See, for example, *Çakici v. Turkey*, where the ECtHR held:

> "[g]iven the fundamental importance of the rights in issue, the right to protection of life and freedom from torture and ill-treatment, Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation apt to lead to those responsible being identified and punished and in which the complainant has effective access to the investigation proceedings".[40]

28.4 This is also the position adopted in the United Nations Principles to Combat Impunity, which clearly state in Principle 19 that:

> "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by

[34] At paragraph 7.4, page 9

[35] Human Rights Committee, *General Comment 20*, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994) at paragraph 14 (Annex 47)

[36] *Maria del Carmen Almeida de Quinteros et al v. Uruguay*, Communication No. 107/1981, (21 Jul. 1983) at paragraph 15 (Annex 48)

[37] Human Rights Committee, *General Comment 31[80]*, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) at paragraph 15 (Annex 49)

[38] Ibid

[39] *Hugh Jordan v. UK*, ECtHR, App. No. 24746/94 (2001) at paragraph 109 (Annex 50)

[40] *Çakici v. Turkey*, ECtHR, App. no. 23657/94 (1999) at paragraph 113 (Annex 51)

ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished".[41]

28.5 Finally, the Inter-American Court of Human Rights has clarified the features of an investigation in *Sánchez v Honduras*[42] where the Court noted:

> "[t]he obligation to investigate must be fulfilled: in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government."

29. Paragraph 53-56

29.1 It is not clear whether the State Party is actually denying that the Author was tortured by the police and prison officers. In any event, it has not dealt with the specific and detailed descriptions of torture set out in the Communication, but has only commented in a cursory fashion on the medical evidence. This failure to respond to specific allegations with specific responses and relevant evidence is inappropriate, and amounts to a denial of a general character. In the case of *Bousroual v Algeria*[43] the Committee said:

> "[t]he Committee has consistently maintained that the burden of proof cannot rest alone on the author of the 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. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the allegations are corroborated by evidence submitted by the author and where further clarification of the cases depends on information exclusively in the hands of the State party, the Committee may consider the author's allegations as substantiated in the absence of satisfactory evidence and explanation to the contrary submitted by the State party."[44]

29.2 The ECtHR has found that there is a presumption of a violation of Article 3 of the European Convention on Human Rights (ECHR) (prohibition of torture) where a detained person displays injuries on being released, having been in good health when his deprivation of liberty began. In this respect, the Court has repeatedly held that "where a person is injured while in detention or otherwise under the control of the police, any such injury will give

---

[41] Principle 19 of the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, contained in Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005) (Annex 52)

[42] *Juan Humberto Sánchez v Honduras*, Judgment of June 7, 2003, Inter-Am. Ct. H.R., (Ser. C) No. 99 (2003) at paragraph 144 (Annex 53)

[43] CCPR/C/86/992/2001 [2006] UNHCR 10 (24 April 2006) (Annex 54)

[44] Ibid, paragraph 9.4, page 7. The Committee also referred to Communication No. 146/1983, *Baboeram-Adhin and others v. Suriname,* Views adopted on 4 April 1985, para. 14.2; Communication No. 139/1983, *Conteris v. Uruguay,* Views adopted on 17 July 1985, para. 7.2; Communication No. 202/1986, *Graciela Ato del Avellanal v. Peru,* Views adopted on 31 October 1988, para. 9.2; Communication No. 30/1978, *Bleier v. Uruguay,* Views adopted on 29 March 1982, para. 13.3.

rise to a strong presumption that the person was subjected to ill-treatment".[45] The burden of proof is then "on the State under Article 3 of the Convention to show that the injuries suffered by that individual whilst under police control were not caused by the police officers".[46] For example, in *Salman v. Turkey*,[47] the Court held:

> "[w]here the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation."

29.3 Furthermore, the Court has repeatedly emphasised that, "in respect of a person deprived of his liberty", as in the instant case, "any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3".[48] This line of authority is of assistance in the instant case where the sequence of events would give rise to a strong presumption that the Author was subjected to ill-treatment at the hands of the authorities and the State Party therefore has an obligation to provide a plausible explanation for how those injuries were caused.[49]

29.4 It is incorrect to suggest, as the State Party does, that the Nigerian doctor's 2003 medical certificate[50] only refers to a stomach ulcer and diabetes, as it also details the torture he suffered. Further, the State Party has ignored the 2007 psychotherapist's evaluation[51] in the Communication which records *inter alia* the psychological impact of the torture. The Author also annexes a further expert medical report from Dr James Cobey dated 23 April 2009 as additional evidence of torture.[52] These three reports along with the Author's narrative, the legal and other documents from inside Cameroon, and the international human rights reports, call for answers which the State Party has failed to provide. It is submitted that the Author has clearly discharged the burden of proof on him, and that the cumulative evidence he has produced establishes more than a credible *prima facie* case and establishes torture well beyond a balance of probabilities.

---

[45] *Corsacov v. Moldova*, ECtHR, App. No. 18944/02 (2006) at paragraph 55 (Annex 55)

[46] Ibid

[47] *Salman v. Turkey*, ECtHR, App. No. 21986/93 (2000) at paragraph 100 (Annex 56)

[48] *Ribitsch v. Austria*, ECtHR, App. No. 18896/91 (1995) at paragraph 38 (Annex 57). See also, to similar effect, *Selmouni v. France*, ECtHR, App. No. 25803/94 (1999) at paragraph 99 (Annex 58); *Elci and others v. Turkey*, ECtHR, App. Nos. (Applications nos. 23145/93 and 25091/94) (2003) at paragraph 633 (Annex 59); *Tekin v. Turkey*, ECtHR, App. No. 22496/93 (1998) at paragraph 53 (Annex 60)

[49] See the case of *Sunal v. Turkey*, ECtHR, App. No. 43918/98 (2005), Press Release issued by the Registrar, published on 25 January 2005 (judgment only available in French) (Annex 61). Although Cameroon is not a party to the European Convention, the same principle applies to it under the Covenant.

[50] Annex D to the Communication

[51] Annex G to the Communication

[52] Marked Annex O

Violation of the right to liberty and security

30. Paragraphs 57-60

30.1 The Author has never disputed his political commitment to the people of Southern Cameroon. Instead of dealing with the details of the violations the State Party has avoided answering them, referring instead to allegations of secession and allegations that the Author collaborated in identifying others. The attitude of the State Party is further illustrated when it says that it was for the Author to "explain himself" as if he is the one complained of in the instant case. Even if the Author was a criminal, which is denied, the way he was mistreated and mis-tried cannot simply be justified in terms of the State Party's political agenda. His human rights were grossly violated as he has averred in his Communication, including the rights protected by Article 9. The State Party's allegations are at best irrelevant to the issues before the Committee, and it has failed to answer the substantive matters raised.

30.2 The State Party's Observations purport to deal with the Author's right to know the reason for his arrest. The key issue here is that the Author was denied his right to know the reason for his arrest *at time of arrest* - it is not relevant for this purpose whether the reason for his arrest later became clear to him. For example, Article 9(2) of the Covenant provides "[a]nyone who is arrested shall be informed, *at the time of arrest*, of the reasons for his arrest and shall be promptly informed of any charges against him" [emphasis added]. Furthermore, in its *General Comment No. 8*, the Committee has made clear that:

> "... if so-called preventive detention is used, for reasons of public security, it must be controlled by these same provisions, i.e. ... information of the reasons must be given (para. 2) and court control of the detention must be available (para. 4) ... And if, in addition, criminal charges are brought in such cases, the full protection of article 9 (2) and (3), as well as article 14, must also be granted".[53]

30.3 Moreover, the State Party's response that the SCNC is a secessionist movement for whom all demonstrations are illegal reveals a violation of Article 21 of the Covenant which provides:

> "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

Violation of the right of a person in custody to be treated with respect and dignity

31. Paragraphs 61- 69

31.1 The State Party has only dealt with some aspects of the conditions under which the Author was incarcerated at Kondengui and Mfou, and only some aspects of what happened to him at those prisons. Nevertheless, it has admitted that the conditions were "bad", and has further admitted that the Author was physically and mentally abused by other inmates, which

[53] Human Rights Committee, *General Comment 8, Article 9* (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 8 (1994) at paragraph 4 (Annex 62)

torture it describes as “atrocious”. Its comment that the bad conditions pre-dated the Author’s detention and were not designed to inflict suffering on him, does not constitute an adequate response. Again, its refusal to accept liability for admitted acts committed by other inmates is inadequate. The State Party was obliged to keep the Author under conditions which comply with minimum standards as set out in the Communication; similarly, the State Party was obliged to prevent him being attacked by others. That it admittedly failed in both respects adds credibility to the Author’s overall account in his Communication of how he was dealt with during all the time he was in the hands of the authorities.

31.2 In its General Comment No. 21 on Article 10, the Committee stated *inter alia* that:

> “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and *complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant*. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but *neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty*; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment” [emphasis added].[54]

31.3 In regard to the separation of convicted from non-convicted prisoners is concerned, the Committee has stated:

> “Article 10, paragraph 2 (a), provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent as stated in article 14, paragraph 2. The reports of States parties should indicate how the separation of accused persons from convicted persons is effected and explain how the treatment of accused persons differs from that of convicted persons”.[55]

31.4 The State Party has referred to subsequent steps it has taken to improve prison conditions, from June 2002 to December 2006. Laudable though these steps may be they cannot be relevant to the matters before the Committee, except in as much as they add weight to the admitted previous bad state of affairs at all relevant times.

31.5 Further on the attacks perpetrated by other inmates, the Author avers that they occurred in the context of his torture and mis-treatment as a political prisoner, as already detailed both in his Communication and in this Response. He was deliberately exposed to and suffered many forms of violence, including at the hands of prison guards and prisoners, and the physical and mental abuse to which he was subjected was clearly acquiesced in by the authorities who did nothing to prevent it. It is disingenuous to suggest that he could have

[54] Human Rights Committee, *General Comment 21*, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994).at paragraph 3 (Annex 63)

[55] Ibid, at paragraph 9.

reported this prisoner-on-prisoner abuse: the fact that the State Party has not sought to deny it suggests such abuse was notorious. Further, exposing him to inmates who would have resented his political views was intended to make him suffer at their hands, which indeed he did.[56]

31.6 Case law of the ECtHR in particular makes clear that states are obliged to protect the physical integrity of prison detainees. For example, in *Pantea v. Romania*, [57] the Court held:

> "[a]s to whether this treatment was imputable to the Romanian authorities, the Court considered, in view of the circumstances of the case, that the authorities could reasonably have been expected to foresee that the applicant's psychological condition made him vulnerable and that his detention was capable of exacerbating his feelings of distress and his irascibility towards his fellow-prisoners, making it necessary to keep him under closer surveillance. The Court accepted the applicant's argument that it was illegal to place a person detained pending trial in the same cell as repeat-offenders or persons convicted in a decision which had become final. In addition, the cell in question was generally known in the prison as "a cell for dangerous prisoners". Moreover, the Court noted that several witnesses had given evidence that the prison warder had not come promptly to the applicant's aid and furthermore that he had been required to continue to occupy the same cell.
>
> In those circumstances, the Court held that there had been a violation of Article 3, as the authorities had failed to discharge their positive obligation to protect the applicant's physical integrity".

31.7 The Author was not given proper food or medical treatment, and on the contrary was both starved and neglected when ill. The State Party's assertion that it paid the medical costs of the care provided to the plaintiff is a diversion. Both before and after his sentence he was extremely ill as a direct result of continued mistreatment, and the State Party has not seriously refuted the substantive details in the Communication. It has full custody of all the records and could have produced them if the Author's illnesses were not as a result of what he has averred, but it has not produced anything in these regards.

Violation of the right to a fair trial

32. Paragraphs 70-73

32.1 Once more the State Party's Observations are selective and deal only with the language aspect of proceedings. In his Communication (at paragraph 9) the Author raised the matter of the French document he was given a few days before the Military Tribunal trial, but this is only one of numerous aspects that show he did not get a fair trial. The State Party has not sought to deal with any of the inherent flaws in the proceedings as documented, for example, by Amnesty International at paragraph 55 of the Communication. It is thus no answer for the State Party to respond to all these detailed flaws by making references to interpreters being provided.

[56] See *Wilson v. Philippines*, CCPR/C/79/D/868/1999 [2003] at paragraph 7.3, where prisoner-on-prisoner abuse, acquiesced in by the authorities, was held to be a clear violation of Article 10. (Annex 8 to the Author's Communication)

[57] *Pantea v. Romania*, ECtHR, (Application no. 33343/96) (2003) press release (Annex 64)

32.2 Further, the first interpreter which the State Party provided at the Author's first appearance in the Military Tribunal trial was a fellow inmate with a recidivist record, of French-speaking origin, from the same state as the presiding military judge, Colonel Angoula Manga. The Author avers that his interpretation from French to English was so poor that Barrister Charles Taku objected and demanded that he be removed, and this objection was strongly supported by the sole English-speaking assessor, Colonel Fonmundam. As a result Colonel Fonmundam was immediately removed and replaced by another French-speaking assessor of Bamileke origin.

33. Paragraphs 74- 75

33.1 The State Party's allegation that the Author's Communication is politically motivated and that he is trying to de-stabilise Cameroon, is incorrect. The Author has shown in his Communication and the supporting documentation thereto that he was detained and prosecuted because of his political activities which were regarded as inimical to the authorities. In the process he was held for more than two years without trial, had no access to a lawyer, was tortured and subject to other human rights violations, and tried before a Military Tribunal (contrary to internationally recognised norms) despite legal attempts to have this prevented. He is the victim, and the State Party cannot avoid its responsibilities by blaming him for what happened to him. On the contrary, the State Party is obliged to make good the harm it has caused to the Author, who persists in seeking the relief sought in the Declaration and Recommendations in his Communication.

Dated the 22nd day of September 2009

…….

Mr. Kevin Laue

Counsel for the Victim

ANNEXURES

i)

O. Medical report dated 23 April 2009

ii)

23. Fanali v Italy, CCPR/C/18/D/75/1980 [1983] UNHCR 6 (31 March 1983)

24. Unn et al v Norway, CCPR/C/82/D/1155/2003 [2004] UNHCR 63 (23 November 2004)

25. Millan Sequeria v Uruguay, CCPR/C/10/D/6/1977 [1980] UNHCR 6 (29 July 1980)

26. Rivera v Spain, CCPR/C/85/D/1396/2005 [2005] UNHCR 73 (22 November 2005)

27. Crippa et al v France, CCPR/C/85/D/993-995/2001[2005] UNHCR 59 (18 November 2005)

28. Kollar v Austria, CCPR/C/78/D/989/2001 [2003] UNHCR 31 (1 September 2003)

29. Vicente et al v Columbia, CCPR/C/60/D/612/1995 [1997] UNHCR 26 (19 August 1997)

30. Coronel et al v Columbia, CCPR/C/76/D/778/1997 [2002] UNHCR 46 (29 November 2002)

31. Aouf v Belgium, CCPR/C/86/D/1010/2001[2006] UNHCR 14 (26 April 2006)

32. Castro Ortiz v Columbia, CCPR/C/85/D/1103/2002 [2005] UNHCR 65 (21 November 2005)

33. Platonov v Russia, CCPR/C/85/D/1218/2003 [2005] UNHCR (16 November 2005)

34. Khan v Canada, CCPR/C/1302/2004[2006] UNHCR 45 (10 August 2006)

35. Kurbogaj v Spain, CCPR/C/87/D/1374/2005 [2006] UNHCR 48 (11 August 2006)

36. H v Belgium, Application 8950/80, Decision of 16 May 1984

37. Karrer et al v Austria, Application 7464/76, Decision of 5 December 1978

38. Greece v United Kingdom, Application 299/57, 8 July 1959

39. Kuijk v Greece, Application 14986/89, Decision of 3 July 1991

40. W.S.W. v United Kingdom, Application 10871/84, Decision of 10 July 1986, Part 4

41. Englert v Germany, Application 10282/83, Judgment of 25 August 1987

42. Pine Valley Developments Ltd et al v Ireland, Application 12742/87, Judgment of 29 November 1991

43. Open Door and Dublin Well Woman v Ireland, Application 14234/88; 14235/88, Judgment of 29 October 1992

44. Pratt and Morgan v Jamaica, CCPR/C/35/D/210/1986; 225/1987 [1989] UNHCR 11 (7 April 1989)

45. Gilboa v Uruguay, CCPR/C/26/D/147/1983 [1985] UNHCR 15 (1 November 1985)

45A. Phillip v Trinidad and Tobago, CCPR/C/64/D/594/1992

46. Kouidis v Greece, CCPR/C/86/D/1070/2002 [2006] UNHCR 15 (26 April 2006)

47. General Comment No. 20, Replaces general comment 7 (Art.7): 10/03/92

48. Maria del Carmen Almeida de Quinteros et al v. Uruguay, Communication No. 107/1981, (21 Jul. 1983)

49. General Comment 31[80], Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004)

50. Hugh Jordan v. UK, ECtHR, App. No. 24746/94 (2001)

51. Çakici v. Turkey, ECtHR, App. no. 23657/94 (1999) at paragraph 113 (Annex 51)

52. Principle 19 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1 (8 February 2005)

53. Juan Humberto Sánchez v Honduras, Judgment of June 7, 2003

54. Bousroual v Algeria, CCPR/C/86/992/2001 [2006] UNHCR 10 (24 April 2006)

55. Corsacov v. Moldova, ECtHR, App. No. 18944/02 (2006)

56. Salman v. Turkey, ECtHR, App. No. 21986/93 (2000)

57. Ribitsch v. Austria, ECtHR, App. No. 18896/91 (1995)

58. Selmouni v. France, ECtHR, App. No. 25803/94 (1999)

59. Elci and others v. Turkey, ECtHR, App. Nos. (Applications nos. 23145/93 and 25091/94) (2003)

60. Tekin v. Turkey, ECtHR, App. No. 22496/93 (1998)

61. Sunal v. Turkey, ECtHR, App. No. 43918/98 (2005), Press Release issued by the Registrar, published on 25 January 2005

62. General Comment 8, Article 9 (Sixteenth session, 1982)

63. General Comment 21, Article 10 (Forty-fourth session, 1992)

64. Pantea v. Romania, ECtHR, (Application no. 33343/96) (2003) press release