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HUMAN RIGHTS COMMITTEE
Eighty-third session
14 March to 1 April 2005

VIEWS

Communication No. 1134/2002

Submitted by:	Fongum Gorji-Dinka (represented by counsel, Ms. Irene Schäfer)
Alleged victim:	The author
State Party:	Cameroon
Date of communication:	14 March 2002 (initial submission)
Document references:	Special Rapporteur's rule 97 (old rule 91) decision, transmitted to the Sate party on 12 November 2002 (not issued in document form).
Date of adoption of Views:	17 March 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Right to self-determination of former British Southern Cameroon - Arbitrary detention of separatist leader - Conditions of detention - Denial of right to vote in elections

Procedural issues: Admissibility *ratione temporis* and *ratione materiae* - Substantiation of claims by author - Exhaustion of domestic remedies

Substantive issues: Right to self-determination - Liberty and security of person - Right of persons deprived of their liberty to be treated with humanity - Segregation of accused from convicted persons - Liberty of movement - Compensation for miscarriage of justice - Right to vote

Articles of the Covenant: 1 (1), 7, 9 (1), 10 (1) and (2), 12, 14 (6), 19 and 25 (b)

Articles of the Optional Protocol: 1, 2, 3 and 5 (2) (b)

On 17 March 2005, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1134/2002. The text of the Views is appended to the present document.

[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-third session

Concerning

Communication No. 1134/2002[**]

Submitted by:	Fongum Gorji-Dinka (represented by counsel, Ms. Irene Schäfer)
Alleged victim:	The author
State Party:	Cameroon
Date of communication:	14 March 2002 (initial submission)

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

Meeting on 17 March 2005,

Having concluded its consideration of communication No. 1134/2002, submitted to the Human Rights Committee on behalf of Fongum Gorji-Dinka, 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:

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

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

1. The author of the communication is Mr. Fongum Gorji-Dinka, a national of Cameroon, born on 22 June 1930, currently residing in the United Kingdom. He claims to be victim of violations by Cameroon[1] of articles 1, paragraph 1; 7; 9 paragraphs 1 and 5; 10, paragraphs 1 and 2 (a); 12; 19; 24, paragraph 3; and 25 (b) of the Covenant. He is represented by counsel.[2]

Facts as submitted by the author

2.1 The author is a former President of the Bar Association of Cameroon (1976-1981), the Fon, or traditional ruler, of Widikum in Cameroon's North-West province, and claims to be the head of the exile government of "Ambazonia". His complaint is closely linked to events which occurred in British Southern Cameroon in the context of decolonization.

2.2 After World War I, the League of Nations placed all former German colonies under international administration. Under a League of Nations mandate, Cameroon was partitioned between Great Britain and France. After World War II, the British and French Cameroons became United Nations trust territories, the British part being divided into the United Nations trust territory of British Southern Cameroon ("Ambazonia") and the United Nations trust territory of British Northern Cameroon. The "Ambas" were a federation of sovereign but interdependent ethnocracies, each under a traditional ruler called "Fon". In 1954, they were unified in a modern parliamentary democracy, consisting of a House of Chiefs appointed from among the traditional leaders, a House of Assembly elected by universal suffrage, and a government led by a Prime Minister appointed and dismissed by the Queen of England.

2.3 French Cameroon achieved independence in 1960 as the Republic of Cameroon. While the largely Muslim British Northern Cameroon voted to join Nigeria, the largely Christian British Southern Cameroon, in a United Nations plebiscite held on 11 February 1961, voted in favour of joining a union with the Republic of Cameroon, within which Ambazonia would preserve its nationhood and a considerable degree of sovereignty. The United Kingdom allegedly refused to implement the plebiscite, fearing that the Ambazonian Prime Minister would come under communist influence and would nationalize the Cameroon Development Cooperation (CDC), in which Britain had invested £ 2 million. In exchange for a license to continue exploiting CDC, the United Kingdom allegedly "sold" Ambazonia to the Republic of Cameroon which then became the Federal Republic of Cameroon.

2.4 On 8 October 1981, the author was asked to secure bail for five Nigerian missionaries accused of disseminating the teachings of a sect without a government permit. At the police station, he was arrested and detained together with the missionaries. A few months later, he was charged with the offense of fabricating a fake permit for the sect to operate in Cameroon.

[1] The Covenant and the Optional Protocol entered into force for the State party on 27 September 1984.

[2] The communication was submitted by the author personally. However, by letter dated 4 August 2004, Ms. Irene Schäfer presented an instrument executed by the author making her counsel of record.

Although the trial judge found, on the facts, that the author had not been in Cameroon when the offense was committed, he sentenced him to 12 months' imprisonment. The author's appeal was delayed until after he had served his prison term. Just before the hearing of his appeal, Parliament enacted Amnesty Law 82/21, thereby expunging his conviction. The author subsequently abandoned his appeal and filed for compensation for unlawful detention, but he never received a reply from the authorities.

2.5 As a result of the "subjugation" of Ambazonians, whose human rights were allegedly severely violated by members of the Franco-Cameroonian armed forces as well as militia groups, riots broke out in 1983, prompting Parliament to enact Restoration Law 84/01, which dissolved the union of the two countries. The author then became head of the "Ambazonian Restoration Council" and published several articles, which called on President Paul Biya of the Republic of Cameroon to comply with the Restoration Law and to withdraw from Ambazonia.

2.6 On 31 May 1985, the author was arrested and taken from Bamenda (Ambazonia) to Yaoundé, where he was detained in a wet and dirty cell without a bed, table or any sanitary facilities. He fell ill and was hospitalized. After having received information on plans to transfer him to a mental hospital, he escaped to the residence of the British Ambassador, who rejected his asylum request and handed him over to the police. On 9 June 1985, the author was re-detained at the headquarters of the Brigade mixte mobile (BMM), a paramilitary police force, where he initially shared a cell with 20 murder convicts.

2.7 Allegedly as a result of the physical and mental torture he was subjected to during detention, the author suffered a stroke which paralyzed his left side.

2.8 The author's detention reportedly provoked the so-called "Dinka riots", whereupon schools closed for several weeks. On 11 November 1985, Parliament adopted a resolution calling for a National Conference to address the Ambazonian question. In response, President Biya accused the President of Parliament of leading a "pro-Dinka" parliamentary revolt against him; he had the author charged with high treason before a Military Tribunal, allegedly asking for the death penalty. The prosecution's case collapsed in the absence of any legal provision which would have criminalized the author's call on President Biya to comply with the Restoration Law by withdrawing from Ambazonia. On 3 February 1986, the author was acquitted of all charges and released from detention.

2.9 President Biya's intention to appeal the judgment, after having ordered the author's re-arrest, was frustrated because the law establishing the Military Tribunal did not provide for the possibility of appeal in cases involving high treason. The author was then placed under house arrest between 7 February 1986 and 28 March 1988. In a letter dated 15 May 1987, the Department of Political Affairs of the Ministry of Territorial Administration advised the author that his behaviour during house arrest was incompatible with his "probationary release" by the Military Tribunal, since he continued to hold meetings at his palace, to attend customary court sessions, to invoke his prerogatives as Fon, to contempt and disregard the law enforcement and other authorities, and to continue the practice of the illegal Olumba Olumba religion. On 25 March 1988, the Sub-Divisional Office of the Batibo Momo Division informed the author that

because of his "judicial antecedent", his name had been removed from the register of electors until such time he could produce a "certificate of rehabilitation".

2.10 On 28 March 1988, the author went into exile in Nigeria. In 1995, he went to Great Britain, where he was recognized as a refugee and became a barrister.

The complaint

3.1 The author claims that the "illegal annexation" of Ambazonia by the Republic of Cameroon denies the will of Ambazonians to preserve their nationhood and sovereign powers, as expressed in the 1961 plebiscite and confirmed by a 1992 judgment of the High Court of Bamenda, thereby violating his people's right to self-determination under article 1, paragraph 1, of the Covenant. By reference to article 24, paragraph 3, he also alleges a breach of the right to his own nationality.

3.2 The author claims that his detention from 8 October 1981 to 7 October 1982 and from 31 May 1985 to 3 February 1986, as well as his subsequent house arrest from 7 February 1986 to 28 March 1988, were arbitrary and in breach of article 9, paragraph 1, of the Covenant. The conditions of detention and the ill-treatment suffered during the second detention period amounted to violations of articles 7 and 10, paragraph 1, while the fact that he was initially kept with a group of murder convicts at the BMM headquarters, upon his re-arrest on 9 June 1985, violated article 10, paragraph 2 (a). He further claims that the restriction on his movement during house arrest and his current *de facto* prohibition from leaving and entering his country amount to a breach of article 12 of the Covenant.

3.3 The author alleges that his deprivation of the right to vote and to be elected at elections violated article 25 (b) of the Covenant.

3.4 Under article 19 of the Covenant, the author claims that his arrest on 31 May 1985 and his subsequent detention were punitive measures, designed to punish him for his regime-critical publications.

3.5 The author further alleges that his right, under article 9, paragraph 5, to compensation for unlawful detention from 8 October 1981 to 7 October 1982 was violated, because the authorities never replied to his compensation claim.

3.6 The author claims that all his attempts to seek domestic judicial redress were futile, as the authorities did not respond to his compensation claim and did not comply with national laws or with the judgments of the Cameroon Military Tribunal and the High Court of Bamenda. Following his escape from house arrest in 1988, domestic remedies were no longer available to him as a fugitive. He contents that the only way to make his rights prevail would be through a Committee decision, since Cameroon's authorities never respect their own tribunals' decisions in human rights-related matters.

3.7 The author submits that the same matter is not being examined under another procedure of international investigation or settlement.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 On 12 November 2002, 26 May 2003 and 30 July 2003, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has still not been received. The Committee regrets the State party's failure to provide any information with regard to the admissibility or the substance of the author's claims. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that States parties examine in good faith all the allegations brought against them, and that they make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.[3]

4.2 The Committee has noted that several years passed between the occurrence of the events at the basis of the author's communication, his attempts to avail himself of domestic remedies, and the time of submission of his case to the Committee. While such substantial delays might, in different circumstances, be characterized as an abuse of the right of submission within the meaning of article 3 of the Optional Protocol, unless a convincing explanation on justification of this delay has been adduced[4], the Committee also is mindful of the State party's failure to cooperate with it and to present to it its observations on the admissibility and merits of the case. In the circumstances, the Committee does not consider it necessary further to address this issue.

4.3 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 the communication is admissible under the Optional Protocol to the Covenant.

4.4 Insofar as the author claims that his and his people's right to self-determination has been violated by the State party's failure to implement the 1961 plebiscite, Restoration Law 84/01, the 1992 judgment of the High Court of Bamenda, or by its "subjugation" of the Ambazonians, the Committee recalls that it does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self determination protected in article 1 of the Covenant.[5] The Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated. These rights are set out in part III (articles 6 to 27) of the Covenant.[6] It follows that this part of the communication is inadmissible under article 1 of the Optional Protocol.

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[3] See Communication No. 912/2000, *Deolall v. Guyana,*, Views adopted on 1 November 2004, para. 4.1.

[4] See Communication No. 788/ 1997, *Gobin v. Mauritius*, decision of inadmissibility adopted on 16 July 2001, para. 6.3.

[5] See Communication No. 932/2000, *Gillot v. France*, Views adopted on 15 July 2002, at para. 13.4.

[6] See Communication No. 167/1984, *Bernard Ominayak et al. v. Canada*, Views adopted on 26 March 1990, at para. 32.1.

4. 5 Regarding the author's claim that his incarceration from 8 October 1981 to 7 October 1982 was arbitrary, in violation of article 9, paragraph 1, of the Covenant, given that his conviction was expunged by Amnesty Law 82/21, the Committee recalls that it cannot consider alleged violations of the Covenant which occurred before the entry into force of the Optional Protocol for the State party, unless these violations continue after that date or continue to have effects which in themselves constitute a violation of the Covenant.[7] It notes that the author's incarceration in 1981-82 predates the entry into force of the Optional Protocol for the State party on 27 September 1984. The Committee observes that, while punishment suffered as a result of a criminal conviction that was subsequently reversed may continue to produce effects for as long as the victim of such punishment has not been compensated according to law, this is an issue which arises under article 14, paragraph 6, rather than under article 9, paragraph 1, of the Covenant. It does not therefore consider that the alleged arbitrary detention of the author continued to have effects beyond 27 September 1984, which would *in themselves* have constituted a violation of article 9, paragraph 1, of the Covenant. The Committee concludes that this part of the communication is inadmissible *ratione temporis* under article 1 of the Optional Protocol.

4.6 As to the author's allegation that he was not compensated for his unlawful detention in 1981-82, the Committee considers that the author has not provided sufficient information to substantiate his claim, for purposes of admissibility. In particular, he did not provide copies, nor indicate the date or addressee of any letters to the competent authorities, claiming compensation. It follows that this claim is inadmissible under article 2 of the Optional Protocol.

4.7 Insofar as the author claims a violation of articles 7 of the Covenant in that he was physically and mentally tortured in detention after his re-arrest on 9 June 1985 (and which allegedly resulted in a stroke which paralyzed his left side), the Committee notes that he has not provided any details about the ill-treatment allegedly suffered, nor copies of any medical reports which would corroborate his allegation. Therefore, the Committee concludes that the author has not substantiated this claim, for purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

4.8 With regard to the author's claim that his arrest on 31 May 1985 and his subsequent detention were measures designed to punish him for the publication of his regime-critical pamphlets, in violation of article 19 of the Covenant, the Committee finds that the author has not substantiated, for purposes of admissibility, that said detention was a direct consequence of such publications. It follows that this part of the communication is also inadmissible under article 2 of the Optional Protocol.

4.9 As regards the author's claim under article 25 (b) of the Covenant, the Committee is of the view that exercise of the right to vote and to stand for election is dependent on the name of the person concerned being included in the register of voters. If the author's name is not on the register of voters or is removed from the register, he cannot exercise his right to vote or stand for

[7] See Communication No. 520/1992, *Könye and Könye v. Hungary*, Decision on admissibility adopted on 7 April 1994, at para. 6.4; Communication No. 24/1977, *Sandra Lovelace v. Canada*, Views adopted on 30 July 1981, at para. 7.3.

election. In the absence of any explanations from the State party, the Committee notes that the author's name was arbitrarily removed from the voters' list, without any motivation or court decision. The very fact of removal of the author's name from the register of voters may therefore constitute denial of his right to vote and to stand for election in accordance with article 25 (b) of the Covenant. The Committee is accordingly of the view that the author has sufficiently substantiated this claim, for purposes of admissibility.

4.10 Insofar as the author claims that he is being denied his right to Ambazonian nationality, in violation of article 24, paragraph 3, of the Covenant, the Committee recalls that this provision protects the right of every *child* to acquire a nationality. Its purpose is to prevent a child from being afforded less protection by society and the State because he or she is stateless[8], rather than to afford an entitlement to a nationality of one's own choice. It follows that this part of the communication is inadmissible *ratione materiae* under article 3 of the Optional Protocol.

4.11 With regard to exhaustion of domestic remedies, the Committee takes note of the author's argument that, following his escape from house arrest in 1988, he was not in a position to seek redress at the domestic level, as a person who was wanted in Cameroon. In the light of its jurisprudence[9] that article 5, paragraph 2 (b), of the Optional Protocol does not require resort to remedies which objectively have no prospect of success, and in the absence of any indication by the State party that the author could have availed himself of effective remedies, the Committee is satisfied that the author has sufficiently demonstrated the ineffectiveness and unavailability of domestic remedies in his particular case.

4.12 The Committee concludes that the communication is admissible, insofar as it raises issues under articles 7, 9, paragraph 1, 10, paragraphs 1 and 2 (a), 12 and 25 (b) of the Covenant, and to the extent that it relates to the lawfulness and the conditions of detention following his arrest on 31 May 1985, his incarceration initially with a group of murder convicts at the BMM headquarters, the lawfulness of, as well as the restrictions on his liberty of movement during his house arrest from 7 February 1986 to 28 March 1988, and the removal of his name from the voters' register.

Consideration of the merits

5.1 The first issue before the Committee is whether the author's detention from 31 May 1985 to 3 February 1986 was arbitrary. In accordance with the Committee's constant jurisprudence,[10] "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. This means that remand in custody must not only be lawful but reasonable and necessary in all the circumstances, for example to prevent flight, interference with evidence or the recurrence of

[8] See General Comment No. 17 [35] on *article 24*, para. 8.

[9] See, e.g., Communications Nos. 210/1986 and 225/1987, *Earl Pratt and Ivan Morgan v. Jamaica*, Views adopted on 6 April 1989, para. 12.3.

[10] See Communication No. 305/1988, *Van Alphen v. The Netherlands*, Views adopted on 23 July 1990, para. 5.8; Communication No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994, para. 9.8.

crime.[11] The State party has not invoked any such elements in the instant case. The Committee further recalls the author's uncontested claim that it was only after his arrest on 31 May 1985 and his re-arrest on 9 June 1985 that President Biya filed criminal charges against him, allegedly without any legal basis and with the intention to influence the outcome of the trial before the Military Tribunal. Against this background, the Committee finds that the author's detention between 31 May 1985 and 3 February 1986 was neither reasonable nor necessary in the circumstances of the case, and thus in violation of article 9, paragraph 1, of the Covenant.

5.2 With regard to the conditions of detention, the Committee takes note of the author's uncontested allegation that he was kept in a wet and dirty cell without a bed, table or any sanitary facilities. It reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the Treatment of Prisoners (1957).[12] In the absence of State party information on the conditions of the author's detention, the Committee concludes that the author's rights under article 10, paragraph 1, were violated during his detention between 31 May 1985 and the day of his hospitalization.

5.3 The Committee notes that the author's claim that he was initially kept in a cell with 20 murder convicts at the headquarters of the Brigade mixte mobile has not been challenged by the State party, which has not adduced any exceptional circumstances which would have justified its failure to segregate the author from such convicts in order to emphasize his status as an unconvicted person. The Committee therefore finds that the author's rights under article 10, paragraph 2 (a), of the Covenant were breached during his detention at the BMM headquarters.

5.4 As to the author's claim that his house arrest between 7 February 1986 and 28 March 1988 was arbitrary, in violation of article 9, paragraph 1, of the Covenant, the Committee takes note of the letter dated 15 May 1987 from the Department of Political Affairs of the Ministry of Territorial Administration, which criticized the author's behaviour during his house arrest. This confirms that the author was indeed under house arrest. The Committee further notes that this house arrest was imposed on him after his acquittal and release by virtue of a final judgment of the Military Tribunal. The Committee recalls that article 9, paragraph 1, is applicable to all forms of deprivation of liberty[13] and observes that the author's house arrest was unlawful and therefore arbitrary in the circumstances of the case, and thus in violation of article 9, paragraph 1.

5.5 In the absence of any exceptional circumstances adduced by the State party, which would have justified any restrictions on the author's right to liberty of movement, the Committee finds that the author's rights under article 12, paragraph 1, of the Covenant were violated during his house arrest, which was itself unlawful and arbitrary.

5.6 As regards the author's claim that the removal of his name from the voters' register violates his rights under article 25 (b) of the Covenant, the Committee observes that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds

[11] See *ibid.*
[12] General Comment No. 21 [44] on *article 10*, paras. 3 and 5.
[13] General Comment No. 8 [16] *on article 9*, para. 1.

established by law which are objective and reasonable.[14] Although the letter dated 25 March 1998, which informed the author of the removal of his name from the register of voters, refers to the "current electoral law", it justifies that measure with his "judicial antecedent". In this regard, the Committee reiterates that persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote,[15] and recalls that the author was acquitted by the Military Tribunal in 1986 and that his conviction by another tribunal in 1981 was expunged by virtue of Amnesty Law 82/21. It also recalls that persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation.[16] In the absence of any objective and reasonable grounds to justify the author's deprivation of his right to vote and to be elected, the Committee concludes, on the basis of the material before it, that the removal of the author's name from the voters' register amounts to a violation of his rights under article 25 (b) of the Covenant.

6. 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 view that the facts before it reveal violations of articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant.

7. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation and assurance of the enjoyment of his civil and political rights. The State party is also under an obligation to take measures to prevent similar violations in the future.

8. Bearing in mind that, by becoming a 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, that State party has undertaken to ensure all individuals within its territory or 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. The State party is also requested to publish 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.]

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[14] General Comment No. 25 [57] *on article 25*, para. 4.
[15] *Ibid.*, at para. 14.
[16] *Ibid.*, at para. 15.