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# Akwanga v. Cameroon

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## Facts

From his days as a student, the author was involved with the Southern Cameroons Youth League as a peaceful activist for the rights of Southern Cameroonians. While traveling in North-West Province on 24 March 1997, the car in which he was a passenger was stopped by security forces. They shot the tyres of the vehicle and many people surrounded the car. Although the author escaped in the confusion, he was apprehended and arrested without reasons later that night.

The author was initially detained without charge in various gendarmerie stations, where he suffered numerous ill-treatment and humiliations. He was accused of involvement in a violent secessionist movement, and housed with hardened criminals. He spent over a year at two maximum security prisons, then became very ill due to the inhumane and filthy prison conditions. Initially denied access to medicine, he eventually received one month of treatment for the trauma caused by the ill-treatment.

After 18 months of further detention, he was charged with a number of offences stemming from the allegation of violent opposition to the government of Cameroon. He was charged in French, a language he does not understand, and the charges repeatedly changed. The trial before a military court was in French, with the one Southern Cameroonian officer removed from the bench. After conviction before the court where he was unable to adequately present a defense, he was sentenced in October 1999 to 20 years imprisonment. In 2003, while admitted to a hospital outside of the prison, he escaped to Nigeria where he was treated for physical and psychological impacts of torture. He was eventually designated a refugee by the United Nations and resettled in the United States, though he continues to suffer from the treatment he received.

The author complains that these events violate numerous articles of the Covenant including article 7 (torture or cruel, inhuman or degrading treatment), article 10 (inhumane detention conditions), article 9 (arrest without charge, delay in judicial process), and article 14 (trial before military tribunal, no pre-trial access to lawyer, proceedings in another language).

The State Party submits that the author confessed to and was properly convicted for his role in violent attacks on administrative buildings in North-West Province. As to allegations of torture, the burden of proof should be on the author. Importantly, the State Party submits that this Communication is inadmissible because the author is currently pursuing this issue at the African Court of Human and People's Rights. The State Party submits that local remedies were available to the author to challenge his conviction, which he did not exhaust.

The author responds that he has carried his burden to prove the torture. Further, the matter before the African Court was not instituted by him or on his behalf, is

## Key words

- Torture and ill-treatment
- Rights of detainees
- Condition of detention
- Fair hearing

## Relevant Provisions

- Article 7
- Article 9 §2,3,4
- Article 10 §1,2
- Article 14
- Article 5 § 2(a) § 2(b) of OP

## Violated Provisions

- Article 7
- Article 9 §2 §3 §4
- Article 10 §1 §2
- Article 14

unknown to the author, and in any case is not the “same matter” under article 5 § 2(a) of the Optional Protocol because it concerns 18 individuals rather than just him. He claims full exhaustion of domestic remedies because of the activities of local and international organizations and the inability to access justice through remedies the State Party suggests. In any event, he is unable to return to his country to pursue domestic remedies due to his escape, fleeing, and resettlement.

## Consideration of admissibility

**Article 5 § 2(a) of the Optional Protocol:** With regard to the claim of inadmissibility based on pending proceedings in the African Court, the Committee notes that the State Party provides no documentation of this parallel proceeding and finds that a complaint is not inadmissible because of other process that was not instituted by the author or with his knowledge.

**Article 5 § 2(b) of the Optional Protocol:** With regard to exhaustion of domestic remedies, the Committee notes that the State Party gave no concrete remedies for the author to pursue. Additionally, the denial of communications by the author in detention and the nature of his trial before a military court render ineffective remedies that may be available in other criminal cases. In light of the fact that local remedies must be effective to be required, the Committee allows admissibility on this ground as well.

## Consideration of merits

**Article 7:** The Committee finds the detail and specificity of his description of the events sufficient to prove the torture, even in light of the State Party’s contention that the burden of proof is on the author. The three medical certificates and the impact on the author’s health show that there has been a violation of this article.

**Article 14:** The State Party has not shown why the seriousness of the allegations required that the author be brought before a military tribunal or why the civilian or alternative courts were insufficient as required by [General Comment 32](#). Whether or not the tribunal was in fact fair under the terms of article 14 need not be considered because the State Party’s failure to show that a military tribunal was necessary in the

## Conclusions

The Committee finds violations of articles 7, 10 §1 §2, 9 §2 §3 §4, and 14. The State party is obligated to provide an effective remedy including a review of his conviction, an investigation of the alleged events, and reparation including compensation. Further, the State Party is obligated to ensure similar violations are avoided in the future. The Committee seeks information about the implementation of these views within 180 days and requests the State Party to publish the views.

## Concurrence:

*Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Ms. Zonke Zanele Majodina, Ms. Iulia*

These Members reaffirmed that in principle military courts should not try civilians since ‘Military functions fall within the framework of a hierarchical structure and are subject to rules of discipline that are difficult to reconcile with the independence of judges called for under article 14’. (This means that the specific nature and rules of military courts which deviate from general civil/criminal legal proceedings may not be able to guarantee the rights of respondents envisaged by Art.14). When a State allows military courts to try non-military members, it must explain in its reports or a communication the reasons for derogation of this principle. Further, all military courts trying a person for a criminal offense are subject to article 14.

## Concurrence:

*Mr. Fabián Omar Salvioli*

On the point of whether military tribunals can ever be compatible with justice for civilians, this Member differs with the majority of the Committee. He argues that the Covenant’s silence on military courts discloses their exceptional nature and that military courts could only be allowed for civilians if the Covenant were explicit on the matter. Military courts, as an exception to normal judicial process, should be employed restrictively—for military personnel and never civilians, and for disciplinary issues and never ordinary offenses or human rights violations.