



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session (19-28 April 2017)

#### Opinion No. 40/2017 concerning Yves Michel Fotso (Cameroon)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period by Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 3 March 2016 the Working Group transmitted to the Government of Cameroon a communication concerning Yves Michel Fotso. The Government replied to the communication on 3 May 2016. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Yves Michel Fotso, born on 10 November 1960, is of Cameroonian nationality. Mr. Fotso is an entrepreneur, a businessman and an industrialist. He is also a director of several private companies (real estate and financial companies), both in Cameroon and abroad, from which he derives profits either directly or indirectly. The companies constitute the Fotso group. In addition, from June 2000 to November 2003, Mr. Fotso was the Director and Chief Executive Officer (CEO) of a public company, Cameroon Airlines (CamAir).
5. The source reports that Mr. Fotso was involved in the so-called BBJ-2 case. In 2000, the Government of Cameroon decided to purchase an aircraft for the President of the Republic. To that end, the Government reportedly asked CamAir to contact GIA International, an American banking company headquartered in Medford, Oregon, in the United States. GIA reportedly agreed to act as an intermediary between the Government of Cameroon and the Boeing company, headquartered in Seattle in the United States.
6. In 2001, the Government of Cameroon apparently received an offer from Boeing through GIA. The offer concerned the purchase of a BBJ-2 aircraft for US\$ 31 million, subject to the preliminary payment of a \$2 million deposit for the manufacture of the aircraft. To that end, the Minister of Economy and Finance successfully requested Commercial Bank Cameroon to lend the requested sum to CamAir, that is to say the equivalent of 1,550 million CFA francs (CFAF), with a view to having it transferred to the GIA account.
7. According to the source, the sum of \$29 million was transferred directly on 22 August 2001 from the account of the Cameroon National Hydrocarbons Corporation (opened in a bank located in Paris) to that of the GIA company, which then contacted Boeing to have the aircraft manufactured, paying the company \$2 million.
8. According to the source, the Boeing company subsequently reported that the aircraft would not be delivered, claiming that it had never received full payment therefor. The source also indicates that the funds paid to GIA have not been recovered in full by the Cameroonian State.
9. The source reports that, since the attacks of 11 September 2001 occurred immediately after GIA received the \$29 million, it proved impossible to raise new funds in the field of aeronautics.
10. In 2004 GIA filed for bankruptcy and in 2006 the State of Cameroon concluded a settlement and mutual release agreement with the company's United States liquidator. The agreement was signed between the GIA company liquidator and the Cameroonian State on 11 August 2006 and endorsed by the Oregon Bankruptcy Court. All signatories to the settlement agreement pledged to refrain from instituting proceedings among them, a pledge that would include, according to the source, both CamAir and its directors, and hence Mr. Fotso.
11. According to the source, although the signed settlement agreement prohibits the launching of any type of prosecution, the criminal justice system of Cameroon opened a judicial inquiry into the BBJ-2 case in breach of the agreement.
12. According to the reported facts, Mr. Fotso was arrested at his home in the Bali district of Douala on 1 December 2010 by police officers subject to the authority of the Public Prosecutor at Mfoundi High Court in Yaoundé.
13. The source reports that, on the very day of his arrest, Mr. Fotso was brought before the investigating judge of Mfoundi High Court, who charged him and ordered his placement in pretrial detention. The detention was linked to allegations that, during the years 2001 to 2004 in Yaoundé, Mr. Fotso, in his capacity as Director and CEO of CamAir, had allegedly misappropriated, in collusion with others and to the detriment of the State of Cameroon, a sum of \$29 million which was intended for the purchase of the presidential aircraft from the Boeing company.

14. The source draws attention to the promulgation, on 14 December 2011, of Act No. 2011/028 establishing the Special Criminal Court, which is now the sole judicial body with jurisdiction to try offences of misappropriation of public funds. Moreover, the Act abolishes the second level of jurisdiction for such offences.

15. The source also reports that Act No. 2012/011, which entered into force on 16 July 2012, supplements certain provisions of the Act establishing the Special Criminal Court. Article 15 of the Act provides, *inter alia*, that, following the promulgation of the Act, judgments rendered by the High Court in proceedings relating to the misappropriation of public funds may only be appealed to the Court of Cassation.

16. On 5 September and 12 October 2011, Mr. Fotso filed two petitions with the investigating judge requesting his release on grounds of lack of jurisdiction and termination of the criminal proceedings. The two petitions were rejected by an order of 5 April 2012.

17. According to the source, on 26 September 2011 Mr. Fotso filed an application for habeas corpus with the President of the Mfoundi High Court with a view to securing his immediate release on the ground that his arrest was unlawful. The application was rejected.

18. By an order of 26 June 2012, the judicial investigation was closed and Mr. Fotso was referred to the Mfoundi High Court for criminal proceedings on the charge of misappropriation of public funds in collusion with five other persons.

19. According to the source, the Mfoundi High Court, in a judgment of 21 and 22 September 2012, found Mr. Fotso guilty of misappropriating the sum of \$29 million and sentenced him to a prison term of 25 years. The source reports that Mr. Fotso was also sentenced to pay, jointly with the co-accused, the sum of CFAF 21,375 million in damages to the State of Cameroon. Furthermore, Mr. Fotso was ordered to pay, jointly and severally, a settlement of costs amounting to CFAF 1,103,718,775 and was sentenced to a five-year prison term in default. According to the information received, this measure would require the convicted person to execute penalties involving payment of costs. In other words, the prison term in default will be imposed once the main prison sentence has been served (25 years in the present case), if the convicted person has failed to pay the financial penalties.

20. The source alleges that Mr. Fotso was unable to lodge an appeal against the decision to sentence him to 25 years' imprisonment and had no choice but to lodge an appeal in cassation on 24 September 2012. The source notes that, 36 months after that step was taken, the appeal had not yet been entered in the court register.

21. Concurrently with the case concerning the presidential aircraft, the source reports that in 2012 the CamAir liquidator sued for damages for misappropriation of public funds. Nine charges were filed against Mr. Fotso. An investigating judge of the new Special Criminal Court was appointed to look into the matter. A judicial investigation was opened and Mr. Fotso was charged with misappropriation of public funds and placed in pretrial detention by an order of 22 April 2013.

22. In May 2013 the public prosecutor's office applied for a separation of the facts contained in the liquidator's complaint because it considered that they were too complex to be ruled upon in the same file. However, the investigating judge dismissed the application by an order of 13 June 2013, ruling that the facts were indivisible.

23. According to the source, the parties signed a settlement and mutual release agreement on 14 August 2013, in response to a suggestion made by the investigating judge, in order to reduce the damage suffered by CamAir to CFAF 1,750 million, of which CFAF 650 million was to be settled right away. In autumn 2013 the investigating judge decided to block all bank accounts in respect of which Mr. Fotso had signing authority, and to prepare a new application for the separation of proceedings based on the argument that only part of the file required further investigation. Nevertheless, according to the source, no further investigation was conducted prior to the closure of the investigation proceedings.

24. The application for the separation of proceedings was granted by an order of 1 October 2013. The source also reports that, by an order of 16 October 2013, the pretrial detention order issued in the CamAir case was extended for a period of six months with effect from 22 October 2013.

25. The source notes that in March 2014 the investigating judge decided to close the two cases by two orders of committal for trial to the Special Criminal Court within a 15-day interval, designated “Order 1” and “Order 2”. The source adds that neither of the orders specified that Mr. Fotso should remain in pretrial detention and that no judicial decision extended his pretrial detention, which should normally have come to an end on 22 April 2014.

26. With regard to the first order of committal for trial, the source reports that a hearing before the Special Criminal Court was held in November 2014, that is to say nine months after the closure of the investigation, although Cameroonian law set a deadline of 30 days after receipt of the order for the President of the Court to fix the date of the hearing. With regard to the second order, the source reports that it was registered 12 months after the closure of the investigation, instead of within the one-month time limit. Moreover, it was referred to a second differently composed bench of the Court.

27. The source reports that on 4 March 2015 Mr. Fotso filed two motions before the Special Criminal Court, requesting ascertainment of the lack of a detention order in the CamAir casefile, since the detention had not been duly extended at the investigation stage, and requesting a joinder of the proceedings. Following the dismissal of these motions, Mr. Fotso filed an appeal in cassation.

28. On 4 November 2015, Mr. Fotso sent a letter to the Procurator-General of the Special Criminal Court applying for a stay of proceedings, with evidence of restitution in cash of the corpus delicti. The source underscores that Mr. Fotso had offered, on 24 April 2015, to reimburse the corpus delicti in kind but his bank accounts were blocked, which is why Mr. Fotso also requested that his accounts should be unfrozen. According to the source, these requests were rejected without any statement of grounds, or without the communication of such grounds to Mr. Fotso, who never received a reply, apart from a letter dated 9 November 2015 requesting payment of CFAF 50,839,860,497 so that the request “could be properly investigated”.

29. With regard to this request for funds, the source reports that Mr. Fotso’s lawyers sent several letters to the Minister of Justice, but received no reply. The source adds that the restitution of the corpus delicti is applicable only to the sum of CFAF 1,757,661,315, as agreed in the settlement and mutual release agreement.

30. On 23 November 2015, Mr. Fotso was hospitalized at Yaoundé General Hospital. A medical certificate was issued to him by the National Gendarmerie doctor at the detention facility. The source reports that, despite the existence of the medical certificate, the hearing of the Special Criminal Court bench tasked with ruling on the first component was held on 27 January 2016 in the absence of the accused and his lawyers. The Court heard witnesses for the prosecution.

31. In light of the foregoing, the source considers that Mr. Fotso’s deprivation of liberty is arbitrary under category III, inasmuch as it violates article 10 of the Universal Declaration of Human Rights and articles 14 (1) and (5) and article 9 (1) and (3) of the International Covenant on Civil and Political Rights.

32. According to the source, there have been several violations of Mr. Fotso’s right to a fair trial. With regard to the BBJ-2 case, the source considers that there has been a violation of the internal rules of procedure, since the Mfoundi Public Prosecutor, who instituted the proceedings against Mr. Fotso and ordered his arrest, which eventually led to the placement of Mr. Fotso in pretrial detention, lacked jurisdiction *ratione loci*. The source therefore alleges that the pretrial detention order of 1 December 2010 is invalid pursuant to article 3 of the Code of Criminal Procedure of Cameroon and therefore also constitutes a violation of article 9 (1) of the Covenant.

33. The source also alleges that Mr. Fotso’s right to be tried by an independent tribunal, in accordance with article 14 (1) of the Covenant, was violated in the BBJ-2 case. Mr. Fotso was held in pretrial detention for almost two years without being heard by the investigating judge. Moreover, the length of the sentence handed down, namely a prison term of 25 years, and the amount of damages, interest and costs he was ordered to pay, were allegedly disproportionate in terms of the nature of the offence with which he is charged and the lack

of evidence against him to justify the substantive element of the misappropriation of which he is accused. The source also underscores that the Mfoundi High Court failed to take into account the settlement and mutual release agreement whereby the parties had undertaken to refrain from prosecuting the signatories. According to the source, this agreement is binding under article 2052 of the Cameroonian Civil Code.

34. With regard to his right to two-tier proceedings, the source contends that Mr. Fotso was unable to lodge an appeal against the ruling of the Mfoundi High Court and was thus deprived of his right to have a higher court review the records and facts of the case and determine his innocence. This argument is also applicable to the CamAir case. Accordingly, the source alleges that article 14 (5) of the Covenant was violated.

35. Moreover, according to the source, the time limit for registration with the Supreme Court, which is six months pursuant to article 13 of Act No. 2012/011 of 16 July 2012, was not respected. According to the information provided, the deadline has already passed and a ruling on the appeal filed by Mr. Fotso with the Supreme Court has been pending for three years. The source indicates that this lack of registration constitutes a violation of article 9 (1) and (3) of the Covenant.

36. Furthermore, the source considers that Mr. Fotso suffered a breach of the principle of equality of arms in the BBJ-2 case. The Cameroonian Act of 16 July 2012 stipulates that, in cases involving the misappropriation of public property, the office of the public prosecutor is entitled to file an appeal in cassation both on points of law and on the facts. Yet the appeal filed by Mr. Fotso was reportedly limited to points of law, so that Mr. Fotso was denied his right to a review of the facts. Accordingly, article 14 (1) of the Covenant was allegedly violated.

37. With regard to the CamAir case, the source notes that the pretrial detention order of 22 April 2013 failed to specify the length of detention, in violation of articles 219 and 221 of the Cameroonian Code of Criminal Procedure, and that it was not renewed in accordance with the Cameroonian rules of procedure. The source considers that these irregularities contravene the provisions of article 9 (1) of the Covenant.

38. Lastly, according to the source, article 14 (1) of the Covenant was also violated by the fact that the investigating judge of the Special Criminal Court blocked all Mr. Fotso's accounts. As a result, he was unable to settle the outstanding balance and thereby secure the closure of the proceedings and hence the termination of his detention. Moreover, the source considers that the separation of the cases, despite the fact that the charges were indivisible, could have entailed Mr. Fotso's criminal conviction under two separate judgments regarding the same case.

#### *Response from the Government*

39. On 3 March 2016, the Working Group transmitted the allegations from the source to the Government of Cameroon under its regular communications procedure. The Working Group requested the Government to provide further information, by 2 May 2016, on Mr. Fotso's situation since his arrest, including any comments it wished to make on the allegations contained in that communication. The Working Group also requested the Government to clarify the facts and legal provisions on which Mr. Fotso's deprivation of liberty is based, and their compatibility with the obligations of Cameroon under international human rights law and particularly the treaties that the State has ratified. The Government of Cameroon submitted its reply to the Working Group by a note verbale that was dated 2 May 2016 but was not received until 3 May 2016, i.e. after the expiry of the time limit.

#### *Fresh allegations from the source*

40. On 4 July 2016, the response from the Government was sent to the source for comments. The source replied on 25 August 2016, raising fresh allegations.

41. The fresh allegations relate to the particularly lengthy delay in registering the appeal in cassation and to new facts in support of previous legal arguments, in particular concerning the right to a fair trial. The source also contends that the trial was wrongly

pursued (with a hearing of evidence for the prosecution), notwithstanding the absence due to illness of Mr. Fotso and of his lawyers, who withdrew in light of what they regarded as the judges' unjustified determination to proceed with the trial in the absence of the accused. Lastly, the source adds that the double conviction of Mr. Fotso accentuates the injustice of the case, in which it considers that the judges displayed partiality.

*Response from the Government to the fresh allegations*

42. The Working Group considered that the fresh allegations should be communicated to the Government in order to respect the adversarial principle. On 12 December 2016, the Working Group transmitted the fresh allegations from the source to the Government, requesting a response by 12 February 2017. At the request of the Government, the time limit was extended to 14 March 2017. The Government submitted its response to the fresh allegations on 21 February 2017. The response was transmitted to the source on 10 March 2017.

**Discussion**

43. The Working Group appreciates the parties' cooperation in the present case and notes that each party submitted documents in support of its position, including a set of documents reflecting the complex judicial proceedings concerning Mr. Fotso before the domestic courts.

44. In deciding this case, the Working Group needs to consider two preliminary issues before turning to the merits.

45. It should first be noted that the Government's initial response arrived after the expiry of the time limit. However, the source subsequently submitted fresh allegations that were transmitted to the Government, which then replied within the time limit. With a view to ensuring that the Government's position and arguments could be considered in a coherent manner, the Working Group agreed, exceptionally, to take the two complementary replies into account.

46. The Working Group notes, in addition, that on 20 January 2017 it received a communication from a third party supporting the allegations raised by the source. This spontaneous communication was duly taken into account but proved irrelevant to the Working Group's mandate inasmuch as it focused on the allegations against Mr. Fotso at the domestic level. It is established jurisprudence that the Working Group's mandate is not of a criminal nature. Accordingly, the Working Group's discussion cannot focus on the guilt or innocence of the accused before the domestic courts.

47. These two preliminary issues having been settled, it should be recalled that the Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case of breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest with the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

48. The present case comprises two dimensions, one relating to financial misappropriation within the framework of the CamAir company and the other relating to the purchase of a presidential aircraft.

49. The Working Group notes that the factual context of the case concerning the presidential aircraft had already been referred to it (see opinion No. 22/2016). The Group then concluded that the detention of Marafa Hamidou Yaya was arbitrary under category III. However, as the circumstances involved in the proceedings against Mr. Fotso are specific, the conclusion of opinion No. 22/2016 are not automatically applicable to the present case. The arguments put forward by the source should therefore be assessed below.

50. In the case of the presidential aircraft, the Mfoundi High Court ruled that Mr. Fotso was guilty and sentenced him to 25 years' imprisonment (judgment of September 2012). According to the source, the Government signed a settlement agreement that included a mutual non-prosecution clause, so that the prosecution of Mr. Fotso breached the agreement. However, the source fails to provide evidence that Mr. Fotso was a party to the agreement and fails to explain why he should benefit therefrom and how the institution of

legal proceedings, notwithstanding the settlement agreement, violates international human rights norms. Moreover, the Government indicates that a settlement agreement could not terminate a public prosecution, that is to say criminal proceedings. It follows that the source's allegation cannot be taken into account.

51. Moreover, the source considers that the Act of 16 July 2012, which excludes the possibility of filing an appeal in cases of corruption, violates article 14 (5) of the Covenant. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to fair trial, the Human Rights Committee interpreted this provision of the Covenant, indicating that an appeal in cassation could constitute two-tier proceedings, provided that it addressed both the formal and legal aspects of the case and the facts. According to the Committee, "article 14, paragraph 5, does not require a full retrial or a 'hearing', as long as the tribunal carrying out the review can look at the factual dimensions of the case" (para. 48).<sup>1</sup> Thus, the Human Rights Committee ruled, on considering an individual complaint, that the existence of an appeal in cassation could compensate for the lack of appeal court proceedings.<sup>2</sup> Accordingly, the Working Group considers that the analysis of cassation proceedings should be undertaken on a case-by-case basis and in the light of the arguments of the cassation court itself. Consequently, the detailed argument of the source to the effect that the abolition of the appeal procedure constitutes in itself a violation of article 14 (5) of the Covenant cannot be taken into account, inasmuch as it is an abstract plea.

52. The source also contends that the appeal to the Supreme Court was not formally registered and addressed within a reasonable time frame. The Government admitted that the registration process required about 20 months because of the delay in payment of the required fees by Mr. Fotso and his co-accused. Even if the period seems excessive in objective terms, it should be noted that the trial at first instance had already resulted in a conviction, which served as the basis for the detention. As the period formed part of the sentence resulting from the judgment at first instance, the Working Group does not consider that it constitutes a violation that could render Mr. Fotso's detention arbitrary.

53. The source further contends that various deadlines set by the domestic rules of procedure have not been respected. For example, the source states that it took nine months from the date of closure of the investigation in the CamAir case for the proceedings before the Special Criminal Court to be instituted. Furthermore, the source states that there was a corresponding 12-month delay in the second part of the CamAir case (see the description of the two parts of the case in paragraph 26 above). The source considers that the delay between the closure of the investigation and the opening of the trial violates domestic law, which sets a time limit of 30 days. However, the Working Group is not authorized to assess the compliance of the proceedings with domestic law, but only with international law, in particular article 14 (3) (c) of the Covenant, pursuant to which the accused person must be "tried without undue delay". Hence the argument based on domestic law is not sufficient to enable the Working Group to conclude that the delay was excessive. The Working Group further recalls that Mr. Fotso's detention could already be attributable to his sentence to 25 years' imprisonment by the Mfoundi High Court. Accordingly, even if the Working Group concluded that the delay in bringing Mr. Fotso before the Special Criminal Court was excessive, that conclusion would be inconsequential since Mr. Fotso was also detained pursuant to another conviction.

<sup>1</sup> According to the Human Rights Committee (general comment No. 32, para. 48): "The right to have one's conviction and sentence reviewed by a higher tribunal established under article 14, paragraph 5, imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. A review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant. However, article 14, paragraph 5 does not require a full retrial or a 'hearing', as long as the tribunal carrying out the review can look at the factual dimensions of the case. Thus, for instance, where a higher instance court looks at the allegations against a convicted person in great detail, considers the evidence submitted at the trial and referred to in the appeal, and finds that there was sufficient incriminating evidence to justify a finding of guilt in the specific case, the Covenant is not violated."

<sup>2</sup> Communication No. 1892/2009, *J.J.U.B. v. Spain*, decision adopted on 29 October 2012, paras. 7.4 and 7.5.

54. The source also claims that the Special Criminal Court wrongly decided to continue receiving evidence against Mr. Fotso, despite his absence for medical reasons from the proceedings. The source contends that this violates the right of the accused to be tried in his presence, in accordance with article 14 (3) (d) of the Covenant. However, this provision is not subject to such strict interpretation.<sup>3</sup> As the source failed to provide sufficient relevant details concerning the circumstances and the impact of the hearing of witnesses for the prosecution on the outcome of the trial, the Working Group is not in a position to endorse its allegation.

55. The source also challenged the proportionality of the sentence in alleging the unfairness of the proceedings. However, the source failed to produce a number of objective comparative elements in support of this argument. Accordingly, the Working Group is also unable to respond favourably to this allegation.

56. The source claims in several other arguments that some of Mr. Fotso's petitions were rejected by the domestic courts, but it fails to specify clearly how such a rejection constitutes a violation of international human rights norms. The Working Group recalls that its mandate is specific and does not include any type of criminal assessment (see also paragraph 46 above). The mandate of the Working Group is limited to determining whether the circumstances presented to it correspond to any of the five categories of arbitrary detention, as defined in the Working Group's methods of work (see paragraph 3 above). Under category III, the Working Group is required to assess proceedings before the domestic court and, if necessary, domestic judicial decisions in order to determine whether the right to a fair trial, which is a complex right, has been respected. The arguments presented by the source in this case are not specific enough to enable the Working Group to conclude that the failure to comply, in whole or in part, with international norms governing the right to a fair trial is of such gravity as to render the deprivation of liberty arbitrary.

### **Disposition**

57. In light of the foregoing, the Working Group considers, pursuant to paragraph 17 (b) of its methods of work, that the case is not one of arbitrary detention.

[Adopted on 28 April 2017]

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<sup>3</sup> See, for example, the decision on the appeal in the case of *Karempera et al.* before the International Criminal Tribunal for Rwanda dated 5 October 2007, which may be consulted at <http://cld.unmict.org/assets/filings/ICTR-98-44-3134-KAREMERA-ET-AL-DECISION-ON-NZIRORERA-S-INTERLOCUTORY-APPEAL-CONCERNING-HIS-RIGHT-TO-BE-PRESENT-AT-TRIAL.pdf>. In that decision, the Appeals Chamber of the Tribunal rejected a similar defence argument by affirming the possibility that, depending on the circumstances, the right of the accused to be present at his trial might not be violated even if he was not physically present during a part of the trial. The practice of the two ad hoc tribunals offers many examples, for instance in the cases of *Milošević*, *Seselj*, *Rwamakuba*, *Nahimana et al.*, to mention but a few.