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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 36/2024 concerning Paul Maillot (Madagascar)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 29 February 2024 the Working Group transmitted to the Government of Madagascar a communication concerning Paul Maillot. On 26 April 2024, the Government requested an extension of the deadline for its response, which was granted. The Government submitted a late response on 18 June 2024. 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).

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Paul Maillot, also known as Paul Maillot Rafanoharana, is a Malagasy and French citizen born on 2 May 1963. He is a business executive, political adviser and former officer of the French Gendarmerie. He is said to have held political positions in Madagascar for 10 years and to be habitually resident in Antananarivo.

(i) Arrest and detention

5. Mr. Maillot was allegedly arrested at his home in Antananarivo on 20 July 2021 following a police raid. According to the source, the raid was carried out without the authorization of a judge, and the arrest was conducted in a language Mr. Maillot did not speak. He was not informed of the reasons for his detention at the time of his arrest. The arrest was made under articles 206 et seq. of the Code of Criminal Procedure, which concern *flagrante delicto*. The source submits that the conditions for the application of article 206 were not met.

6. Following his arrest, Mr. Maillot was held in police custody in Ivato for 15 days. It took 10 days for him to be informed of the extension of the custody period. The source notes that, under national law, the custody period must not exceed 48 hours.

7. Following his 15 days in police custody, on 4 August 2021, Mr. Maillot appeared before the investigating judge of the Anosa court of first instance and was placed in pretrial detention. He was held in solitary confinement in Tsiafahy prison in Antananarivo.

8. The source explains that the investigation of Mr. Maillot was riddled with violations of the right to a fair trial. Nevertheless, on 11 October 2021, the indictment division referred Mr. Maillot and 19 other persons to the ordinary criminal court of Antananarivo. On the basis of articles 265 and 266 of the Criminal Code, Mr. Maillot was accused of being a member of an association formed, and participating in an agreement reached, for the purpose of preparing or committing crimes against persons, in particular an attempt on the life of the Head of State. Under articles 87 and 89 of the Criminal Code, he was accused of conspiracy to make an attempt on the life of the Head of State, with the fact that no act was committed or initiated in preparation for the execution of such an attack being taken into account. Lastly, on the basis of article 87 of the Criminal Code, Mr. Maillot was accused of having committed an attack with the aim of bringing down or changing the Government. The offences that Mr. Maillot was charged with are also governed by articles 41, 58 and 96 of Act No. 69011 of 22 July 1969, which regulates weapons other than knives.

9. On 2 September 2021, in accordance with article 53 of the Code of Criminal Procedure, Mr. Maillot's lawyers requested that the investigation be declared null and void owing to the alleged violations of the right to a fair trial. This request was denied. On 26 October 2021, the lawyers made the same request again in an application to the indictment division for the proceedings to be set aside, in line with articles 239, 309, 330 and 392 of the Code of Criminal Procedure.

10. Mr. Maillot's trial began on 6 December 2021. On 17 December, he was found guilty of the charges against him and was sentenced to 20 years of hard labour. Three of his co-defendants were also found guilty, while the 16 others were acquitted. In addition to the aforementioned articles, the decision of the criminal court cited articles 22, 95, 113 et seq., 441 et seq. and 569 et seq. of the Code of Criminal Procedure and article 463 of the Criminal Code.

11. The source notes that the decision handing down Mr. Maillot's conviction is extremely brief, with less than one page being dedicated to the analysis of the charges and the evidence. According to the source, the only inculpatory items of evidence mentioned in the decision are: a budget document that Mr. Maillot admitted to having drafted for a political project and not as part of the preparations for a coup d'état; a letter sent to the managing director of an oil company in order to obtain financing of €10 million; a recording of a conversation between Mr. Maillot, his wife and an unidentified third party; a rifle and cartridges found during the search of his home; and a sum equivalent to €250,000, which had

also been found during that search and, according to the prosecutor, was to be used to partially finance the operation. According to the source, Mr. Maillot explained that this sum was intended to be used to finance the purchase, by his investment fund, of gold for resale to the Central Bank of Madagascar. During the investigation, he indicated on several occasions that records of all the exchanges between the banker and the person wishing to buy the gold in question were stored on his telephone, which had been seized when he was arrested. However, during both the investigation and the trial, Mr. Maillot was not allowed to have access to this evidence or to produce it in support of his defence.

12. On 6 December 2021, at the opening of the trial before the criminal court, Mr. Maillot's lawyers once again raised the issue of the alleged violations of their client's right to a defence and requested that the proceedings be nullified *in limine litis*. The court dismissed these objections without examining them, stating that the request for nullification had not been submitted to the indictment division by means of an application to set aside the proceedings. The source notes, in this respect, that Mr. Maillot's lawyers had filed such an application on 26 October 2021.

13. The source points out that, pursuant to articles 443 and 444 of the Code of Criminal Procedure, criminal court decisions are not subject to appeal. Accordingly, the only channel open to parties is to bring an appeal on points of law before the Court of Cassation. The source recalls that an appeal on points of law does not constitute a genuine review by a higher tribunal within the meaning of article 14 (5) of the Covenant, since the Court of Cassation is competent only to examine the application of the law by the lower court and cannot review that court's evaluation of the facts or the finding of guilt.

14. In this connection, the source states that, on 20 December 2021, Mr. Maillot lodged an appeal on points of law against the ordinary criminal court's decision handing down his conviction. The Court of Cassation rejected that appeal on 26 August 2022. Mr. Maillot's lawyers, however, are yet to receive a copy of the Court's decision despite their numerous requests.

15. According to the source, Mr. Maillot is still being held in solitary confinement in Tsiafahy prison. On 31 August 2022, Mr. Maillot submitted a transfer request to the Directorate for Criminal Matters and Pardons of the French Ministry of Justice, in accordance with the provisions of the cooperation agreement of 4 June 1973 between France and Madagascar. On 23 January 2023, the French authorities approved Mr. Maillot's transfer to France. The Malagasy authorities, however, continue to oppose that transfer. The source notes that an agreement was reached for another French citizen who had been detained and convicted in Madagascar as part of the same case to be transferred to France. According to the source, the refusal of the Malagasy authorities to transfer Mr. Maillot was part of a political plan to instrumentalize his situation in the context of the presidential elections of November 2023. The source submits that, during the presidential campaign, Mr. Maillot's situation was invoked on numerous occasions by President Rajoelina, who was seeking re-election, in order to denounce the attempted coups d'état that he had allegedly faced. Furthermore, the negotiations on Mr. Maillot's transfer were suspended during the election period.

(ii) *Detention conditions*

16. The source reports that Mr. Maillot's situation continues to deteriorate and that his health is worsening as a result of the conditions in which he is being held. He is in solitary confinement in a windowless cell that measures approximately 2 by 4 metres. His cell is mostly kept in complete darkness and is under constant video surveillance. Mr. Maillot has no access to a toilet or shower and is forced to relieve himself directly in his cell.

17. The source explains that Mr. Maillot is reliant on assistance from his family in order to receive food and medicine. Providing him with food, medicine and basic necessities is especially challenging because the family member who is primarily responsible for doing so lives abroad.

18. Mr. Maillot has lost a significant amount of weight since being imprisoned and regularly has worrying symptoms such as nosebleeds, abnormally high blood pressure, burst blood vessels in his eyes and persistent migraines.

19. In December 2023, Mr. Maillot suffered a particularly worrying lateral paralysis of the face, leaving him unable to speak or eat and causing him breathing difficulties. The French Embassy contacted the Malagasy authorities, following which Mr. Maillot was hospitalized for half a day before being returned to detention. The source notes that, as a stroke was ruled out, the paralysis could have been caused by Mr. Maillot having been beaten while in detention, since an injury to his nasal septum might have affected the functioning of certain nerves.

20. The source reports that Mr. Maillot receives regular consular visits, but that the French authorities are frustrated by the Malagasy authorities' lack of cooperation and silence in response to the requests to improve his conditions of detention and authorize his transfer.

(iii) *Legal analysis*

21. The source submits that Mr. Maillot's detention is arbitrary under categories I, II and III.

a. *Category I*

22. According to the source, Mr. Maillot's detention is arbitrary under category I because the reason for his detention is contrary to national law.

23. The source submits that the police failed to produce a warrant when arresting Mr. Maillot, in violation of articles 135 and 206 et seq. of the Code of Criminal Procedure. According to the source, the conditions for the application of the procedure to be followed in cases of flagrante delicto, as provided for in article 206 of the Code of Criminal Procedure, were not met in this case. It is reported that it was not until November 2021, four months after Mr. Maillot's detention, that his lawyers were given a copy of an arrest warrant. The source states that the document was falsified and contains numerous contradictions and inaccuracies, in addition to a forgery of Mr. Maillot's signature.

24. Furthermore, the source submits that Mr. Maillot was not informed of the reasons for his detention at the time of his arrest, and that the arrest was conducted in a language he did not understand.

25. Mr. Maillot was placed in police custody without his lawyers knowing whether the measure had been authorized by a judicial authority. Mr. Maillot was held in police custody for 15 days. It took 10 days for him to be informed of the extension of the custody period. In this connection, the source explains that article 136 of the Code of Criminal Procedure limits police custody to a period of 48 hours, which may be extended once.

26. The source also notes that the Code of Criminal Procedure provides for the extension of the custody period to 12 days on grounds of the distance between the place of arrest and the location of the investigating authority. The source asserts, however, that that provision is not applicable in this case, as Mr. Maillot was arrested at his home in Antananarivo, which is the country's capital and home to the prosecuting authority. The source submits that, in any case, the 12-day period was exceeded because Mr. Maillot was held in police custody for 15 days.

27. The source also points out that there is no evidence to suggest that Mr. Maillot's detention was authorized by a judicial authority. Given that there is no legal basis for Mr. Maillot's detention and that it was not ordered by a judicial authority, the source asserts that it is arbitrary under category I.

b. *Category II*

28. The source submits that Mr. Maillot's detention is also arbitrary under category II because it occurred as a result of the exercise of his rights to freedom of thought, expression and assembly and his right of access to public service, as protected by articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights.

29. The source explains that Mr. Maillot was the diplomatic adviser to the Archbishop of Antananarivo, who is a prominent figure in Madagascar owing to the Church's important role and its efforts to mediate between the country's various political parties. The source

notes that the Archbishop has been critical of the current political leadership and has called on the Government to do more to combat poverty and famine.

30. In 2010, Mr. Maillot was asked to become an adviser to President Rajoelina, which gave him a relatively high profile in Madagascar and left him open to pressure. He was openly critical of mafia groups, in particular those in the gold sector, and their attempts to seize political power. In 2011, Mr. Maillot resigned from his position, using a public interview to denounce the pressure, attacks and physical threats to which he had been subjected after taking up the post. He also stated that the President was “a prisoner of the power struggles playing out within his inner circle” and called for the country to move away from “sclerotic personal mindsets”.

31. In 2019, Mr. Maillot was again asked by President Rajoelina’s office to advise on the composition of a new government. In 2020, Mr. Maillot set up an investment fund aimed at restructuring the gold sector and ridding it of the practices he had publicly denounced as being mafia-like. In July 2021, the President’s office once again sought Mr. Maillot’s advice on the structure of the government and the individuals who could join it as ministers. According to the source, it was around that time that Mr. Maillot’s name began to be mentioned in the press and on social media as one of the persons who might replace the then Prime Minister, whose relationship with the President had deteriorated.

32. The source submits that, while exercising his duties, Mr. Maillot again criticized the country’s governance and government policies and called on the President to “end nepotism and favouritism”, which he said were present across the Malagasy administration.

33. The source notes that most of the individuals proposed by Mr. Maillot to form part of the President’s office were also arrested. According to the source, Mr. Maillot is being held despite the absence of material evidence of his involvement in an offence, and his detention is a pretext for removing him from the political sphere and punishing him for his public criticism of the current Government. The source notes that these arguments were invoked by the defence during Mr. Maillot’s trial before the criminal court.

34. In view of the above, the source submits that Mr. Maillot’s detention occurred as a result of the exercise of his rights to freedom of thought, expression and assembly and his right of access to public service, as guaranteed by articles 18 to 21 of the Universal Declaration of Human Rights. The source concludes that Mr. Maillot’s detention is arbitrary under category II.

c. Category III

35. According to the source, Mr. Maillot’s detention is arbitrary under category III since his rights to be presumed innocent and to be heard by an independent tribunal have been violated.

36. The source states that, the day after Mr. Maillot was taken into custody, the President’s diplomatic adviser gave an interview in which he discussed Mr. Maillot’s arrest and indicated that Mr. Maillot had “confessed”. The source submits that Mr. Maillot had not, however, been interviewed or informed of the charges against him at that point. The source adds that Mr. Maillot has always denied the charges against him.

37. Furthermore, on 8 August 2021, fewer than 20 days after Mr. Maillot’s arrest, the President made the following remarks during an address:

I have already received a report on the content of the Apollo 21 plan. Apollo 21, as we all know, and as the Attorney General of the Republic has stated, contains a request for funding for the plan to destabilize the Government and the entire country and assassinate some of our important figures.

38. When asked about the presumption of innocence, the President made particularly strong and hostile remarks about Mr. Maillot.

39. According to the source, these remarks amount to interference by the Head of State in ongoing judicial proceedings, which jeopardizes the independence of the judiciary and the rule of law. The source also argues that the particularly strong and hostile comments made by the President with regard to Mr. Maillot violated the latter’s right to be presumed innocent.

In this connection, the source adds that, in response to the President's remarks, the Presidents of the Malagasy Senate and National Assembly and party leaders called for Mr. Maillot to receive severe punishment. These statements were made to local television stations and were raised by Mr. Maillot's lawyers before the criminal court. Furthermore, following Mr. Maillot's arrest, the Attorney General, who reports to the executive branch, stated that Mr. Maillot was guilty of the charges against him and that the accused persons had "devised a plan to eliminate and neutralize various Malagasy personalities, including the Head of State".

40. The source also submits that Mr. Maillot was not informed of the reasons for his arrest until three days after the fact, on 23 July 2021, when he was interrogated for the first time. He was able to speak with his lawyers only after his third day in police custody. The source states that, during the 15 days that Mr. Maillot was held in police custody, the authorities in charge of the investigation had microphones and cameras installed in the visiting room so that he would be unable to communicate freely with his lawyers. In addition, once Mr. Maillot was placed in pretrial detention, all meetings with his lawyers were held in the presence of two prison officers and were limited to 10 minutes. The source adds that Mr. Maillot's lawyers did not receive a copy of the investigation file or the evidence against their client. It was only after the investigation had been closed that they were able to briefly read the file, without ever receiving a copy.

41. The source also submits that, after he had been interrogated, Mr. Maillot was not permitted to have the written transcripts of his statements changed and was required to sign them even though they were not consistent with what he had said. According to the source, the investigation was conducted exclusively on the prosecution's behalf, and the individuals who led it refused to hear from key players in the case who could testify on behalf of the accused or refute the charges against them. They also refused to allow the cross-examination of the accused persons and denied them the opportunity to present material evidence in their defence.

42. The source points out that, during the trial, the prosecutor submitted the following items of falsified evidence: a forgery of Mr. Maillot's signature, computer files with incorrect dates and an anonymous audio recording that had been edited and that the Office of the Attorney General had recognized as being flawed. In addition, the prosecutor failed to submit the material evidence that had been described as inculpatory in the indictment order. The source adds that one of the co-defendants retracted his earlier statements, indicating that he had made them after being subjected to pressure by the authorities to testify against Mr. Maillot.

43. According to the source, one of the documents on which Mr. Maillot's signature was forged is a letter dated 12 October 2020, which had been sent by Mr. Maillot to the managing director of the Benchmark Group, the majority shareholder in Madagascar Oil S.A., to request €10 million in financing. Mr. Maillot formally contests the authenticity of this document and his signature. A former senior government official, who is a strategic adviser to the Benchmark Group, also disputes the document's authenticity.

44. With regard to the computer files, the source explains that, during the hearing, the prosecutor accused Mr. Maillot of drafting a plan for a coup d'état and sharing that plan with another person in May 2021. These allegations were based on a computer file, the metadata of which reveal that it was created on three different dates. Two of those dates were in June 2021, after the events denounced by the prosecutor, and one was in August 2021, after Mr. Maillot had been imprisoned. Furthermore, during his hearing, Mr. Maillot stated that he had severed his ties with the above-mentioned person in March 2021 and provided evidence to support that claim.

45. The source notes that, during the investigation phase, Mr. Maillot denounced the absence of a report on the search of his home. During the trial, the prosecutor submitted a report that was said to have been signed by Mr. Maillot. Mr. Maillot formally declared that he had not signed the document and that his signature had been poorly forged. In this regard, the source notes that the search was carried out on 21 July 2021, the day after Mr. Maillot's arrest, when he was not present.

46. The source concludes that the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give Mr. Maillot's deprivation of liberty an arbitrary character, under category III.

(b) Response from the Government

47. On 29 February 2024, the Working Group transmitted a communication concerning Mr. Maillot to the Government, requesting it to provide detailed information about him by 29 April 2024 and to ensure his physical and mental integrity.

48. The Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted and lasted until 29 May 2024. The Government submitted a response on 18 June 2024, that is, after the established deadline. The Working Group cannot, therefore, accept the response as if it had been presented within the time limit.

2. Discussion

49. In the absence of a response from the Government within the deadline, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

50. In determining whether the deprivation of liberty of Mr. Maillot is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.³ In the present case, the Government has chosen not to challenge in a timely fashion the *prima facie* credible allegations made by the source.

51. The source submits that Mr. Maillot's detention is arbitrary under categories I, II and III. The Working Group shall consider these categories in turn.

(a) Category I

52. According to the source, it took three days for Mr. Maillot to be informed of the reasons for his arrest. Furthermore, the authorities arrested him and searched his home without presenting him with an arrest or search warrant.

53. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges against him or her. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁴ This is typically done through an arrest warrant, an arrest order or equivalent document.⁵ The reasons for arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.⁶

54. The Working Group notes that, in the present case, Mr. Maillot's arrest was conducted in a language he did not understand, which prevented him from being informed of the reasons for his detention, in direct breach of principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Furthermore, on the basis of the information available to it, the Working Group is unable to conclude that Mr. Maillot was arrested in *flagrante delicto*, which would usually mean that it was not possible to obtain a

² A/HRC/19/57, para. 68.

³ Ibid.

⁴ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

⁵ See, for example, opinion No. 4/2023, para. 64.

⁶ Opinion No. 71/2021, para. 64.

warrant. Based on the foregoing, the Working Group finds a breach of article 9 (2) of the Covenant.

55. The Working Group recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.⁷ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are to be detained in custody, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.⁸ In this case, Mr. Maillot was held in pretrial detention for 15 days and was informed of the renewal of his detention only after 10 days, which means that he was held for much longer than the legal 48-hour period, which could be extended once. According to the source, the possibility of extending the custody period to up to 12 days, as provided for by law, is not applicable in this case, and it was not mentioned in the Government's response. Furthermore, in view of the unrefuted allegations that Mr. Maillot was arrested on 20 July 2021 and was not brought before a judge until 4 August 2021, the Working Group considers that Mr. Maillot's right under article 9 (3) of the Covenant to be brought promptly before a judicial authority has been violated.

56. In view of the above, the Working Group finds that the Government violated articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 4, 10, 11, 14, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Mr. Maillot's detention is therefore arbitrary under category I.

(b) Category II

57. The source submits that Mr. Maillot's detention is arbitrary under category II because it occurred as a result of the peaceful exercise of his rights to freedom of thought, expression and assembly and his right of access to public service, as protected by articles 18 to 21 of the Universal Declaration of Human Rights. In this respect, the source notes that Mr. Maillot acted as an adviser to the Government on several occasions, in particular on ministerial appointments. After facing multiple threats and attacks, Mr. Maillot resigned from his position. Most of the individuals he had proposed for appointment by the President's office were then arrested on similar charges.

58. On the basis of the elements provided to it, the Working Group considers that it does not have sufficient information to conclude that Mr. Maillot's detention and subsequent conviction resulted from the exercise of his rights and freedoms guaranteed by articles 18 to 21 of the Universal Declaration of Human Rights.

(c) Category III

59. The source asserts that Mr. Maillot's detention is arbitrary under category III owing to the violation of his right to a fair trial, in particular his rights to be presumed innocent and to be heard by an independent tribunal.

60. The Working Group recalls that article 14 (3) (a) of the Covenant provides that everyone is entitled to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her. The source submits that it took three days for Mr. Maillot to be informed of the reasons for his arrest. It was at that point that he was allowed to communicate with his lawyers for the first time. In addition, Mr. Maillot's right to communicate freely with his lawyer was compromised by the installation of cameras and microphones in the visiting room and the imposition of a 10-minute time limit on their discussions.

61. The Working Group recalls that, in accordance with principle 8 of the Basic Principles on the Role of Lawyers, all arrested, detained or imprisoned persons are to be provided with

⁷ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 1/2020, para. 53; No. 8/2020, para. 54; and No. 66/2023, para. 48.

⁸ [A/HRC/19/57](#), para. 54.

adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. The right of a defendant to have private discussions with his or her legal counsel, without surveillance, constitutes one of the fundamental aspects of a fair trial. Preventing a lawyer from meeting with his or her client and obtaining confidential instructions defeats much of the purpose of legal assistance. In this respect, the Human Rights Committee has stressed that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications and, furthermore, that lawyers should be able to advise persons charged with a criminal offence without restrictions, influence, pressure or undue interference from any quarter.⁹

62. Noting principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), both of which stipulate that defendants must have access to legal counsel without delay, the Working Group concludes that Mr. Maillot was deprived of effective legal representation, in breach of article 14 (3) (b) of the Covenant, rule 61 (1) of the Nelson Mandela Rules and principle 18 (3) of the Body of Principles.

63. The source claims that Mr. Maillot's rights to be presumed innocent and to be heard by an independent tribunal were violated. In support of this claim, the source reports that the prosecutor submitted falsified evidence, forged Mr. Maillot's signature and altered audio recordings. Mr. Maillot claimed to be in possession of records of telephone exchanges that could exonerate him but was not authorized to use this evidence for his defence. In addition, government officials publicly stated that Mr. Maillot was guilty even before his trial had begun, thereby undermining the principle of the presumption of innocence. The Working Group regrets the fact that the Government has not contested these allegations.

64. Access to Mr. Maillot's file was granted only after the investigation had been closed, and his lawyers never received a copy. The Working Group recalls that, in principle, access to the case file must be provided from the outset.¹⁰ Every individual deprived of liberty has the right to access material related to his or her detention.¹¹ However, that right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.¹² The Government did not provide any justification for the denial of access to the case file. Accordingly, the Working Group considers that the authorities violated Mr. Maillot's rights, under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1), (2) and (3) (b) and (e) of the Covenant, to a fair trial, to adequate time and facilities for the preparation of a defence and to be presumed innocent.

65. Article 14 (5) of the Covenant provides that everyone convicted of a crime has the right to his or her conviction and sentence being reviewed by a higher tribunal according to law. The source argues that this right has been violated as, under Malagasy law, criminal court decisions may not be appealed. Mr. Maillot lodged an appeal on points of law with the Court of Cassation, which is competent only to examine the application of the law by the lower court and cannot review that court's evaluation of the facts or the finding of guilt. The Working Group recalls that the right of a person convicted of a criminal offence to have his or her case reviewed by a higher court is not absolute and may be limited. However, in the absence of any rebuttal from the Government, the Working Group finds a breach of article 14 (5) of the Covenant.

⁹ Human Rights Committee, general comment No. 32 (2007), para. 34. See also the Basic Principles on the Role of Lawyers, para. 16; A/HRC/45/16, para. 54; and opinions No. 29/2017, No. 32/2017, No. 34/2017, No. 36/2017, No. 70/2017, No. 66/2019 and No. 70/2021.

¹⁰ See opinions No. 78/2019, No. 29/2020, No. 67/2020, No. 77/2020 and No. 83/2021.

¹¹ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 2 and guidelines 11 and 13.

¹² Ibid., guideline 13, paras. 80 and 81.

66. In the light of the foregoing, and in the absence of a detailed response from the Government that addresses the substance of the allegations made by the source, the Working Group concludes that the violations of Mr. Maillot's right to a fair trial are of such gravity as to render his deprivation of liberty arbitrary under category III.

(d) Concluding remarks

67. The Working Group takes note of the source's allegations, which have not been refuted by the Government, that Mr. Maillot has been held in solitary confinement since 2021 and is under constant video surveillance. The Working Group takes this opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person.¹³ In addition, the Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that solitary confinement that exceeds 15 days, at which point some of the harmful psychological effects of isolation can become irreversible, could amount to torture.¹⁴

3. Disposition

68. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Paul Maillot, being in contravention of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

69. The Working Group requests the Government of Madagascar to take the steps necessary to remedy the situation of Mr. Maillot without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

70. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Maillot immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

71. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Maillot and to take appropriate measures against those responsible for the violation of his rights.

72. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

73. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Maillot has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Maillot;
- (c) Whether an investigation has been conducted into the violation of Mr. Maillot's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Madagascar with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

¹³ Opinions No. 46/2020, para. 64; and No. 66/2020, para. 66.

¹⁴ [A/63/175](#), para. 56; and [A/66/288](#), para. 61.

74. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

75. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

76. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹⁵

[Adopted on 30 August 2024]

¹⁵ Human Rights Council resolution 51/8, paras. 6 and 9.