



---

**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020****Opinion No. 1/2020, concerning Amadou Vamouké (Cameroon)\***

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 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 1 October 2019, the Working Group transmitted to the Government of Cameroon a communication concerning Amadou Vamouké. The Government replied to the communication on 29 November 2019. 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,

---

\* In accordance with para. 5 of the Working Group's methods of work, Sètondji Roland Adjovi did not participate in the discussion of the present case.



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*

(a) Background

4. Amadou Vamouké is a Cameroonian citizen born in Garoua on 10 February 1950. Prior to his detention, Mr. Vamouké resided in the Essos-Abattoir neighbourhood in Yaoundé. Mr. Vamouké is a journalist and former Director of the public broadcaster Cameroon Radio and Television (CRTV).

(b) Arrest and detention

5. According to the source, Mr. Vamouké was arrested on 29 July 2016 at the Special Criminal Court, to which he had travelled to answer a summons. The source explains that, when the hearing finished, Mr. Vamouké was arrested and placed in a van by gendarmes and police officers from the special operations task force, pursuant to a pretrial detention warrant issued by the prosecutor at the Special Criminal Court.

6. According to the authorities, Mr. Vamouké was arrested in connection with proceedings instituted against him for the misappropriation of public funds, which led to a budgetary deficit at CRTV during his time as Director.

7. The source reports that Mr. Vamouké has been held in pretrial detention at Kondengui Central Prison in Yaoundé since 29 July 2016. In the most recent indictment, Mr. Vamouké's detention was justified on the grounds that he allegedly had no known address and that it would not therefore be possible to ensure that he would appear for trial following the commencement of the proceedings against him for the misappropriation of public funds while he was Director of CRTV. However, the source claims that Mr. Vamouké does in fact have a known address in the Essos-Abattoir neighbourhood of Yaoundé.

8. According to the source, the lack of a known address is a pretext frequently used by the Cameroonian authorities to justify placing in detention or custody a person suspected of having committed a crime or offence, and arises from a very broad, and *a contrario*, interpretation of article 118 (2) of the Code of Criminal Procedure, which provides that persons with a known address cannot be placed in police custody, except in cases of in flagrante delicto or where compelling and consistent evidence against them exists.

9. The source further alleges that it has been impossible for Mr. Vamouké to gain access to any domestic administrative or judicial remedies, particularly as his first lawyer was persuaded to step down by the Ministry of Justice in exchange for a position within the Ministry. Although Mr. Vamouké has a new lawyer, to date, no domestic remedies have been exercised.

(c) Legal analysis

10. The source first describes the general situation of journalists in Cameroon. The source reports that, in 2019, Cameroon was ranked 129th out of 180 countries in the World Press Freedom Index because the authorities were said to be creating an atmosphere of fear and self-censorship. The source explains that many radio stations have not received their final authorization, a technique often used by the Government to keep them under constant threat of closure. According to the source, the authorities also prosecute journalists for defamation without their knowledge. The journalists concerned then find themselves facing exorbitant fines or prison sentences without having been able to defend themselves in a court of law.

11. According to the source, the ground for Mr. Vamouké's deprivation of liberty is not recognized in domestic law. Since criminal law must be interpreted strictly, it cannot,

unlike civil law, be subject to *a contrario* reasoning, which is what the Cameroonian authorities are seeking to do in the case of Mr. Vamouké through their interpretation of article 118 (2) of the Code of Criminal Procedure. The source therefore argues that, in accordance with international standards, when doubt exists, accused persons should benefit from the most favourable interpretation.

12. Furthermore, the source alleges that Mr. Vamouké's detention violates Act No. 2011/028 of 14 December 2011 establishing a Special Criminal Court, article 10 of which stipulates that judges must render decisions within nine months. The first hearing in his trial was held on 31 July 2017. Consequently, the source argues that the maximum period of nine months set by domestic law has been exceeded.

13. The source claims that Mr. Vamouké has been deprived of his liberty for having exercised the right to freedom of opinion and expression guaranteed in article 19 of the Universal Declaration of Human Rights.

14. The source argues that, after 15 consecutive postponements of his hearing since the beginning of his detention, and despite his having been officially granted bail, Mr. Vamouké remains arbitrarily detained. The source claims that the authorities are trying to make him pay for his ethical management of the public broadcaster CRTV, where he served as Director between 2005 and 2016, his support for opening up the audiovisual market in Cameroon, which is currently a monopoly, and the editorial policy that he pursued at CRTV. The source also explains that, under his leadership, the public broadcaster had begun to cover all aspects of the news, including the most sensitive subjects, such as counter-terrorism activities in the north of Cameroon.

15. The source explains that, according to some of his former colleagues, Mr. Vamouké instituted a freer and bolder editorial policy than his predecessors at CRTV and turned the broadcaster into a genuine public service media outlet, as opposed to an instrument for simply relaying government messages. Furthermore, the source explains that Mr. Vamouké had not hesitated to show his support for one of his colleagues, a freelance journalist who had been detained for 10 months in the late 1990s over an article on the health of the President of Cameroon.

16. The source concludes that, for these reasons, Mr. Vamouké's detention is arbitrary.

#### *Response from the Government*

17. On 1 October 2019, the Working Group transmitted to the Government a communication concerning Mr. Vamouké. The Working Group requested the Government to provide further information, by 2 December 2019, on the situation of Mr. Vamouké since his arrest, including any comments that it might wish to make on the allegations contained in the communication. In particular, the Working Group requested the Government to clarify the facts and legal provisions justifying Mr. Vamouké's deprivation of liberty and its compatibility with the obligations of Cameroon under international human rights law. Moreover, the Working Group called upon the Government to safeguard Mr. Vamouké's physical and mental integrity.

18. The Government submitted its response on 29 November 2019. According to the Government, Mr. Vamouké served as Director General of CRTV from January 2005 to June 2016. He is being prosecuted for acts that he committed while managing that public company, which have given rise to two sets of proceedings.

#### (a) First case

19. From 4 to 30 April 2018, a mobile audit unit set up by the Supreme State Audit Office conducted a review of the management of CRTV during the 2004, 2005 and 2006 fiscal years. The audit, which mainly concerned the management of CRTV during the terms of two successive Directors General, revealed that CRTV commercial revenue and assets had been misappropriated, that the audiovisual licence fee had been unjustifiably inflated and the revenue in question misused, and that bonuses and other undue benefits had been awarded to certain staff members and third parties.

20. A judicial investigation was therefore conducted by both the Criminal Investigation Department and the specialized criminal investigation corps of the Special Criminal Court. Preliminary investigation reports were issued on 6 May 2009, 15 March 2011 and 1 and 12 November 2014, and a set of expert and second expert reports were also published. As part of this investigation, Mr. Vamouké was interviewed and then brought before the prosecutor at the Special Criminal Court on charges of misappropriation of public funds.

(b) Second case

21. The Government explains that, following the appointment of a new Director General of CRTV by presidential decree on 29 June 2016, the new incumbent commissioned an accounting audit in order to demarcate his management from that of his predecessors. On 27 December 2016, a chartered accountant delivered his audit report, which revealed numerous financial irregularities, including irregular cash payments of more than 500,000 CFA francs (CFAF) amounting to CFAF 222,162,975 in total, unjustified transfers of money abroad, unwarranted payments to certain staff members for work covered by their regular salaries, and cash shortages. An investigation was opened into these acts, which amount to the misappropriation of public funds, and Mr. Vamouké and several of his former colleagues were arrested.

(c) Proceedings leading to Mr. Vamouké's deprivation of liberty

22. According to the Government, in the first case, following the submission, under article 145 of the Code of Criminal Procedure, of a written application to the investigating judge by the prosecutor at the Special Criminal Court on 12 November 2014, an initial investigation was opened into Mr. Vamouké and two other persons. Mr. Vamouké was charged with misappropriation of public funds and with acting as an accessory to misappropriation of public funds, offences provided for in and punishable under articles 74, 96 and 184 of the Criminal Code. He was then released by the investigating judge. During the initial investigation, the investigating judge, acting under article 218 (2) of the Code of Criminal Procedure, issued a pretrial detention order in respect of Mr. Vamouké, followed by a pretrial detention warrant on 29 July 2016. The warrant was extended on 27 January 2017 pursuant to article 218 of the Code of Criminal Procedure.

23. The Government explains that the proceedings were brought to a close on 27 June 2017 by an order remitting Mr. Vamouké to the Special Criminal Court for trial on charges of misappropriation of public funds in the amount of CFAF 3,908,147,385, an offence provided for in and punishable under articles 74, 96 and 184 of the Criminal Code.

24. With regard to the second case, an initial investigation was opened and Mr. Vamouké was charged with being an accessory to misappropriation of public funds. A warrant for his placement in pretrial detention was issued on 22 February 2018. The initial investigation was closed on 24 January 2019 and Mr. Vamouké was remitted to the Special Criminal Court to answer the charge of misappropriation of public funds. The Ministry of Finance then appealed that decision on points of law before the Review Chamber of the Supreme Court, which declared it inadmissible in a decision dated 29 May 2019. The case is now being enrolled on the cause list.

25. The Government argues that the proceedings brought against Mr. Vamouké demonstrate that, far from being deprived of his liberty arbitrarily, as the source claims, he is being tried in accordance with due process and the relevant legal provisions and the rights accorded to all persons charged with a criminal offence. Moreover, in its efforts to combat corruption, a practice that deprives it of significant resources, the State party has complied with its procedural obligations under international instruments guaranteeing the right to a fair trial.

26. With regard to Mr. Vamouké's deprivation of liberty, the source claims that, since he has a known address in Yaoundé, his detention was not justified under article 118 of the Code of Criminal Procedure. According to the Government, the source has confused the legal provisions applicable to police custody with those applicable to pretrial detention. Article 118 of the Code of Criminal Procedure concerns police custody.

27. The Government explains that Mr. Vamouké was not held in police custody during the investigation phase. During that phase, the judicial authorities did not consider taking any measures to deprive Mr. Vamouké of his liberty and therefore strictly applied the provisions of article 118 of the Code of Criminal Procedure in his case. Moreover, after he was indicted by the investigating judge, Mr. Vamouké remained free; it was only as the proceedings unfolded that the judge decided to issue a warrant and to place him in pretrial detention.

28. The source, while noting that Mr. Vamouké is being prosecuted for misappropriation of public funds, which led to a budgetary deficit at CRTV, alleges that the ground for depriving Mr. Vamouké of his liberty is not recognized in domestic law. Mr. Vamouké was indeed charged with misappropriation of public funds, an offence provided for in and punishable under article 184 of the Criminal Code.

29. The Government argues that it is indeed one of the offences for which pretrial detention may be justified according to the law. Article 218 (2) of the Code of Criminal Procedure is unequivocal, since it permits the investigating judge to issue a pretrial detention warrant at any time after the indictment has been issued and before the case is remitted for trial, provided that the offence is punishable by deprivation of liberty. This article also provides that the investigating judge must immediately issue an order justifying the decision to place the accused in pretrial detention.

30. The source further alleges that Mr. Vamouké's deprivation of liberty stems from the exercise of his right to freedom of opinion and expression. However, according to the Government, in Cameroon there are a large and growing number of media outlets exercising freely determined editorial policies. The former Director General of CRTV, whom Mr. Vamouké replaced, is also being held for misappropriation of public funds. The prosecution and detention of Mr. Vamouké are not related to his status as a journalist or the practice of his profession, but to misappropriation of public funds in the course of managing a public company. Mr. Vamouké's support for a journalist who was detained in the late 1990s did not prevent him from being appointed as head of a public service media outlet in 2005. Contrary to the source's allegations, Mr. Vamouké is being prosecuted and detained for a common law offence and in accordance with the law.

(d) Remedies to challenge the lawfulness of his detention

31. According to the Government, Mr. Vamouké was free to make use of the effective domestic remedies available to him in order to challenge the lawfulness of his detention, which he did.

32. Regarding requests for release, article 224 of the Code of Criminal Procedure allows any detainee to submit an application for release to the investigating judge or trial court. Mr. Vamouké has exercised this remedy more than once. In addition, the remedy of habeas corpus, which is also available, is regulated by articles 584 et seq. of the Code of Criminal Procedure. This remedy has been exercised successfully on several occasions by numerous defendants, as evidenced by the decisions handed down by the Mfoundi *tribunal de grande instance* (court of major jurisdiction) in 2018 and 2019. Mr. Vamouké does not provide any evidence that he exercised the remedy of habeas corpus, nor does he describe any obstacles that allegedly prevented him from doing so.

(e) Respect for Mr. Vamouké's rights

33. According to the source, the proceedings brought against Mr. Vamouké before the Special Criminal Court violate his right to be tried within a reasonable time, because the time limits for the investigation of cases brought before the Court have been exceeded. The Government recalls that, according to well-established jurisprudence in international law, the reasonableness of the length of proceedings is assessed in the light of the complexity of the case, the behaviour of the litigants, the attitude of the judges and the stakes of the trial.

34. In the present case, the Government reports that the first hearing in connection with the case that was the subject of the first set of proceedings took place on 31 July 2017. On that occasion, Mr. Vamouké was notified of the charges against him and pleaded not guilty. However, the rest of the trial was marred by attempts by Mr. Vamouké and his

defence team to obstruct the progress of the proceedings by entering multiple procedural pleas and lodging multiple appeals, including in instances where these were not expressly permitted by law.

35. According to the Government, Mr. Vamouké's defence team entered several procedural pleas, notably at the hearing on 19 September 2017, calling for the proceedings to be declared invalid, and asked for the list of witnesses on behalf of the public prosecutor's office and the civil parties to be rejected on the ground that it had not been shared with the defence. At the hearing on 20 November 2017, Mr. Vamouké's defence team admitted to having appealed the Court's decision to allow the witness list, even though there is no legal provision permitting such an appeal. This action gave rise to further postponements, pending the decision of the Supreme Court. At the hearing on 11 April 2018, the defence requested a stay of proceedings to await the outcome of the appeal. On 17 May 2018, the Court decided to overrule the request, noting that the appeal did not have suspensive effect. At the hearing on 8 June 2019, the defence stated its intention to appeal that decision. The Court decided to disregard the defence's appeal and to continue with the proceedings. The case was adjourned until 20 November 2019, to allow time for the public prosecutor's office to consider Mr. Vamouké's request for release. On each occasion, the Court, as guarantor of the rights of the defence, duly recorded the appeals lodged by Mr. Vamouké or his defence team.

(f) Safeguarding Mr. Vamouké's physical and mental integrity

36. According to the Government, the right to physical and mental integrity is recognized in the Constitution and accorded to all persons. Consequently, Mr. Vamouké's physical and mental integrity are protected, including in prison. In particular, his right to health has been upheld and he has received health care and been allowed to attend medical consultations in hospital when required. For example, since 29 July 2016, when he was deprived of his liberty, Mr. Vamouké has attended at least 17 off-site medical consultations with a number of specialists so that his health conditions can be better managed.

37. The Government concludes that Mr. Vamouké's detention is not arbitrary and is consistent with the relevant legal provisions.

*Further information from the source*

38. The source reiterates that, on the basis of an analysis supported by the many testimonies gathered, the primary aim of Mr. Vamouké's detention and the proceedings instituted against him in relation to his management of CRTV is to silence him and to punish him for his journalistic exercise of freedom of expression, in particular the professional independence and ethical practices that he sought to promote at CRTV.

39. According to the source, Mr. Vamouké's detention must be examined in the context of a sharp deterioration in press freedom in Cameroon and a climate of increasing repression against journalists. The authorities regularly employ various administrative or judicial practices to keep the media and journalists under constant threat; journalists are sometimes prosecuted before special courts so that they can be held in detention for lengthy periods.

40. The Government alleges that, in Cameroon, there are a large and growing number of media outlets exercising a freely determined editorial policy. However, the number of media outlets in the country does not, in itself, demonstrate the existence of a climate in which independent, free journalism can be exercised without fear of reprisals. This media pluralism often conceals political interest groups seeking to hinder the free dissemination of independently produced information for democratic purposes. The Human Rights Committee expressed concern about this worrying situation in its concluding observations on the fifth periodic report of Cameroon.<sup>1</sup>

41. Moreover, the source argues that Mr. Vamouké's trial was marred by events that could be described as interference by the executive branch. The way in which the trial has

<sup>1</sup> CCPR/C/CMR/CO/5, paras. 41 and 42. See also CCPR/C/CMR/CO/4, para. 25.

been conducted reveals an unwillingness to move the proceedings forward and a determination to keep Mr. Vamouké in detention. Even though 26 hearings have taken place since 31 July 2017, the merits of the case have still not been addressed. Most of the hearings have lasted only a few minutes and have only been held to postpone the hearing further. The evidence, if it exists, has never been discussed. At the twenty-fourth hearing on 21 November 2019, neither the judges nor the prosecutor expressed an opinion on the refusal to provide Mr. Vamouké with medical care, even though they had not rejected the medical reports attesting to his very poor state of health.

42. The source alleges that the length of the trial, the number of postponements and the failure to discuss important evidence give reason to suspect that the excessive prolongation of the trial, vis-à-vis domestic and international standards, is deliberate. Article 10 of Act No. 2011/028 and article 10 of Act No. 2012/011 of 16 July 2012 amending and supplementing provisions of Act No. 2011/028 both specify that judges must render decisions within nine months. In the first case, Mr. Vamouké was remitted to the Special Criminal Court on 27 June 2017. In the second case, Mr. Vamouké was remitted to the Special Criminal Court on 24 January 2019. In both cases, the legal time limit within which the Court must render a decision has been exceeded. A trial lasting nearly five years, having exceeded the time limit set in domestic law, must also be deemed to be inconsistent with the international obligation of Cameroon to conclude trial proceedings within a reasonable period of time.<sup>2</sup> The Government states that the only factor that could justify this length of pretrial detention is the behaviour of the accused and his lawyers. However, the full exercise by an accused person of his or her right to a defence cannot in any way justify lengthy proceedings.

43. In addition, Mr. Vamouké has been in pretrial detention for more than three and a half years, since 29 July 2016. The length of this pretrial detention must also be considered excessive. It should be noted that Mr. Vamouké's co-defendants, who are being prosecuted for the same conduct, remain free. Article 221 of the Code of Criminal Procedure sets the maximum length of pretrial detention at 18 months. Mr. Vamouké has been detained for almost 45 months. Even taking into account the two separate cases against him, the duration of his pretrial detention is more than double the 18-month time limit.

44. The Government justifies the continued detention of Mr. Vamouké by claiming that he has not made use of the domestic legal provisions allowing him to request a remedy of habeas corpus. On the one hand, therefore, the Cameroonian authorities argue that the length of the proceedings can be explained by the fact that Mr. Vamouké has exercised his rights, while, on the other hand, they justify the length of his detention by claiming that he has not exercised them. The Government explains that Mr. Vamouké's detention is not arbitrary, as he has been able to challenge the lawfulness of his detention, and that the many appeals that he has lodged prove that effective remedies are available to him. According to the source, the fact that remedies are provided for in domestic law and that those remedies have been exercised does not in any way prove that they are effective or that they are regularly reviewed.<sup>3</sup>

45. The source recalls that it was impossible for Mr. Vamouké to exercise any domestic remedies due to a lack of legal representation, as his lawyer of 19 months decided to step down the day before Mr. Vamouké was deprived of his liberty. According to the source, international human rights bodies are also concerned about violations of the independence of the judiciary.<sup>4</sup>

46. According to the source, Mr. Vamouké is not receiving the medical treatment that he urgently requires. He is in severe pain and risks losing the use of his legs. The deterioration of his physical and mental health is intended to prevent him from effectively defending himself. In its response, the Government provided as documentary evidence only

<sup>2</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 27 and 35.

<sup>3</sup> CCPR/C/CMR/CO/5, paras. 33 and 34; Opinion No. 46/2014, para. 36, in which the Working Group found that pretrial detention of more than four years was excessive.

<sup>4</sup> CCPR/C/CMR/CO/5, paras. 37 and 38; Opinion No. 38/2014, para. 31.

five exit passes, which do not prove that Mr. Vamouké has received or is currently receiving medical treatment. The Special Criminal Court has not discussed Mr. Vamouké's state of health or the urgent care that he needs, which shows that he has been purposefully refused the necessary care. The source considers that, in this case, the denial of emergency medical treatment is a form of torture. Mr. Vamouké is being deprived of medical care deliberately by way of punishment for his journalistic activities.

### Discussion

47. The Working Group thanks the source and the Government for their submissions.

48. In determining whether Mr. Vamouké's deprivation of liberty 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

#### *Category I*

49. In its initial observations, the source alleges that the ground used to justify Mr. Vamouké's detention is not recognized in Cameroonian law. Article 118 (2) of the Code of Criminal Procedure provides that persons with a known address cannot be placed in police custody, except in a limited number of situations. According to the source, Mr. Vamouké has a home in the Essos-Abattoir neighbourhood of Yaoundé, and his detention therefore cannot be justified.

50. In its response, the Government argues that the source has confused the legal provisions applicable to police custody with those applicable to pretrial detention. While article 118 of the Code of Criminal Procedure applies to police custody, Mr. Vamouké was not initially detained during the investigation phase. After the investigating judge issued the notice of charges on 17 February 2015, Mr. Vamouké remained at liberty. It was only at a later stage, on 29 July 2016, during the investigation, that the investigating judge decided to issue a pretrial detention warrant and to place him in detention. The Government points out that Mr. Vamouké is being prosecuted for misappropriating public funds in the course of managing CRTV, an offence for which pretrial detention is permitted under article 218 (2) of the Code of Criminal Procedure.

51. In view of these circumstances, the Working Group is not in a position to confirm the source's allegations regarding this matter. Although the Working Group considers that it is entitled to determine whether the facts demonstrate that detention was ordered without a legal basis under applicable international standards, it has consistently refrained from taking the place of national judicial authorities.<sup>5</sup> It is therefore unable to interpret the applicability of articles 118 and 218 of the Code of Criminal Procedure in the present case, since that is a task for the national courts.<sup>6</sup>

52. The source further alleges that Mr. Vamouké was kept in pretrial detention beyond the maximum period of 18 months permitted under article 221 of the Code of Criminal Procedure.<sup>7</sup> In its jurisprudence concerning Cameroon, the Working Group found that prolonged pretrial detention beyond the 18-month limit established by Cameroonian law

<sup>5</sup> Opinions No. 64/2019, para. 89; No. 63/2017, para. 45; No. 59/2016, para. 60; No. 33/2015, para. 89; No. 12/2007, para. 18; No. 40/2005, para. 22; and No. 10/2002, para. 18.

<sup>6</sup> Opinion No. 49/2019, para. 58.

<sup>7</sup> Article 221 (1) of the Code of Criminal Procedure: "The investigating judge shall set out in the warrant the duration of pretrial detention, which shall not exceed 6 months. However, it may be extended, by a reasoned order, for a maximum of 12 months, in the case of crimes, and for a maximum of 6 months, in the case of offences."



violated article 9 (1) of the Covenant.<sup>8</sup> It is clear from the Government's observations that Mr. Vamouké has now been in pretrial detention since 29 July 2016 – a period of almost four years – which is well in excess of the maximum limit of 18 months prescribed by law.<sup>9</sup>

53. Moreover, according to article 9 (3) of the Covenant, pretrial detention must be the exception rather than the rule and should be ordered for the shortest time possible.<sup>10</sup> In other words, under article 9 (3) of the Covenant, liberty is recognized as a principle and detention as an exception made to it in the interests of justice.<sup>11</sup> As noted by the Human Rights Committee in paragraph 38 of its general comment No. 35 (2014) on liberty and security of person, it should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as “public security”.

54. The Working Group notes that the Government has not explained the reasons that led to the decision to place Mr. Vamouké, who is 70 years of age and in poor health, in pretrial detention and to keep him there for almost four years. Consequently, the Working Group considers that the Government has not established a legal basis for the pretrial detention of Mr. Vamouké in accordance with the requirements of article 9 (3) of the Covenant.

55. The Working Group considers that Mr. Vamouké's pretrial detention beyond the maximum limit prescribed by law, given the failure to provide a satisfactory explanation as to the reasonableness and necessity of this measure, has no legal basis and is arbitrary under category I.

#### *Category II*

56. The source alleges that Mr. Vamouké has been arbitrarily detained for having exercised his right to freedom of opinion and expression, as protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. According to the source, Mr. Vamouké was targeted because of his ethical management of CRTV, including his stance on issues of public interest that was not aligned with the Government's views. For example, Mr. Vamouké supported opening up the audiovisual market in Cameroon and took editorial decisions to report on sensitive issues such as counter-terrorism activities in the north of Cameroon. Lastly, the source highlights the fact that Mr. Vamouké expressed support for a colleague who was allegedly detained in the late 1990s for his work as a journalist.<sup>12</sup>

57. To support their allegations, the source provided and cited testimonies from several of Mr. Vamouké's journalist colleagues attesting to his high ethical standards and independence. The source alludes to the apparently repressive climate in which media outlets operate in Cameroon and refers to the concerns previously expressed by the Human Rights Committee about press freedom and attacks on journalists by the authorities. The source also indicates that the media and journalists in Cameroon are under constant threat of being prosecuted before special courts and of being detained for lengthy periods.

58. In its response, the Government points out that, in Cameroon, there are a growing number of media outlets and that they are free to exercise their own editorial judgment. In addition, the Government points out that the former Director General of CRTV, whom Mr. Vamouké replaced, was also detained for similar offences involving the alleged

<sup>8</sup> Opinion No. 10/2015, para. 34. Contrary to the argument concerning the applicability of articles 118 and 218 of the Code of Criminal Procedure, the violation of article 9 (1) of the Covenant is clear. See also CCPR/C/CMR/CO/5, para. 34.

<sup>9</sup> This is true for both cases against Mr. Vamouké. He was placed in pretrial detention on 29 July 2016 in connection with the first case and on 22 February 2018 in connection with the second.

<sup>10</sup> A/HRC/19/57, paras. 48–58.

<sup>11</sup> *Ibid.*, para. 54.

<sup>12</sup> See Opinion No. 31/1998, noting the arbitrary character of the detention under category II.

misappropriation of public funds. Mr. Vamouké is therefore being prosecuted and detained not for acts related to his work as a journalist or the practice of his profession, but for criminal offences committed in the course of managing a public company. The Government also asserts that Mr. Vamouké's support for a journalist in the late 1990s did not prevent him from being appointed Director General of CRTV in 2005, and therefore cannot be taken as a credible reason for his being singled out.

59. The Working Group has considered the information submitted by both parties. Although it takes note of the serious situation prevailing in Cameroon with regard to the media and journalism in general,<sup>13</sup> the Working Group does not have sufficient information to conclude that, in the present case, Mr. Vamouké was detained solely for having exercised his rights under international human rights law. Although the source provided various testimonies and statements from professionals about Mr. Vamouké's stance on a range of issues, the Working Group is not convinced that the manner in which Mr. Vamouké expressed himself or practised his profession at CRTV led directly to his detention. While it would generally be expected that persons in leadership or management roles in a national public media outlet such as CRTV would be able to exercise their freedom of expression by shaping editorial content, among other things, there is no specific evidence to show that this is what actually happened in the present case. The Working Group emphasizes that, while the expression of ideas through journalism is certainly within the limits of the conduct protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant,<sup>14</sup> a violation of that right has not been established by the facts in this particular case.

60. On the other hand, in the annexes to its response, the Government submitted detailed information concerning the charges against Mr. Vamouké, including his remittal to the Special Criminal Court. This information indicates that one of the charges brought against Mr. Vamouké concerning the alleged personal misappropriation of public funds was deemed to be insubstantial and was dismissed,<sup>15</sup> suggesting that his case was assessed in accordance with the law and was not simply a means of singling him out for being a journalist. In this regard, the Working Group took note of the fact that there were two co-defendants in the first case and 12 co-defendants in the second case against Mr. Vamouké, many of whom appear to have varied professional backgrounds outside the field of journalism.<sup>16</sup>

61. Therefore, the Working Group is unable to find a category II violation in the present case.

### *Category III*

62. The source alleges that the executive branch has interfered in the proceedings against Mr. Vamouké in a manner that violates the independence of the judiciary. According to the source, the conduct of the trial reveals an unwillingness to move the proceedings forward and a determination to keep Mr. Vamouké in detention. Since Mr. Vamouké's detention on 29 July 2016 – almost four years ago – the merits of the two cases against him have still not been addressed, even though 26 hearings have been held. The source indicates that most of these hearings lasted a few minutes and were only held to schedule the next hearing. The evidence and supporting documents, if they exist, have never been discussed. At the twenty-fourth hearing, on 21 November 2019, neither the judges nor the prosecutor expressed an opinion on the refusal to provide Mr. Vamouké

<sup>13</sup> CCPR/C/CMR/CO/5, paras. 41 and 42; and CAT/C/CMR/CO/5, paras. 8, 41 and 42.

<sup>14</sup> Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11. See also Opinions No. 45/2019, No. 44/2019, No. 3/2019, No. 7/2016, No. 44/2015, No. 40/2015, No. 52/2013 and No. 31/1998.

<sup>15</sup> Annex 4 to the memorandum setting out the Government's position, p. 22. The source has not challenged the validity of these documents. See Annex 7, p. 21 (partial dismissal of the charges in the second case).

<sup>16</sup> Annex 4, pp. 2 and 3, and Annex 7, pp. 2 and 3, to the memorandum setting out the Government's position. The co-defendants include, inter alia, a university professor, accountants, a marketing specialist and an evangelist.

with medical care, even though they had not rejected the medical reports attesting to his very poor state of health.

63. Furthermore, the source asserts that it was impossible for Mr. Vamouké to gain access to a domestic administrative or judicial remedy to challenge his detention, in particular owing to his lack of legal representation. According to the source, after 19 months, Mr. Vamouké's first lawyer decided to step down the day before he was deprived of his liberty.<sup>17</sup> The source asserts that the lawyer made that decision after having been persuaded by the Ministry of Justice to step down in exchange for a position within the Ministry. Mr. Vamouké has a new lawyer, but no redress has been sought. The source also refers to the concerns expressed by the Working Group, in its Opinions, and by the Human Rights Committee regarding the executive branch's influence over judicial proceedings.

64. The Government has not directly addressed the allegations that the executive branch interfered in the proceedings, including the source's assertion that Mr. Vamouké's first lawyer was persuaded to step down. Rather, the Government focuses on the existence of remedies for challenging the lawfulness of detention under articles 224 and 584 of the Code of Criminal Procedure, as well as on examples of the remedies that Mr. Vamouké and his lawyers used in exercising the right to a defence.<sup>18</sup>

65. The Working Group considers that the source has not provided sufficient evidence to establish a credible *prima facie* case based on Mr. Vamouké's first lawyer's decision to step down and the alleged involvement of the Ministry of Justice.

66. However, the Working Group considers that the source has established a *prima facie* case based on the unfairness of the proceedings and the fact that the public prosecutor's office and the Special Criminal Court did not move swiftly to examine the merits of the two cases against Mr. Vamouké. Evidence of this unfairness includes the length of the proceedings, which so far have been inconclusive, the numerous hearings and postponements and the failure to act on medical reports showing that Mr. Vamouké, who is now 70 years of age, requires urgent medical care.<sup>19</sup> In particular, the Government has not provided sufficient information to refute this evidence, even though the facts must be known to the authorities in the context of the proceedings against Mr. Vamouké. These issues were also raised in the source's initial submissions.<sup>20</sup> Accordingly, the Working Group concludes that Mr. Vamouké's right to a fair trial, as provided for in article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, has been violated.<sup>21</sup> The Working Group has decided to refer the present case to the Special Rapporteur on the independence of judges and lawyers.

67. Furthermore, the source asserts that the length of the proceedings against Mr. Vamouké is excessive by both national and international standards. Firstly, the source alleges that Mr. Vamouké's detention violates the domestic laws establishing the Special Criminal Court, namely, Acts No. 2011/028 and No. 2012/011, which both stipulate in their respective article 10 that judges have a maximum of nine months to render their decision. In the first case, Mr. Vamouké was remitted to the Special Criminal Court on 27 June 2017. In the second case, Mr. Vamouké was remitted to the Special Criminal Court on 24 January 2019. In both cases, the time limit set in domestic law within which the Court must render a decision has been exceeded. Secondly, the source alleges that the proceedings as a

<sup>17</sup> The source does not explain when the second lawyer began to represent Mr. Vamouké, or whether any shortcomings in his representation had an impact on the fairness of the proceedings.

<sup>18</sup> Memorandum setting out the Government's position, para. 27.

<sup>19</sup> Human Rights Committee, general comment No. 32, paras. 8, 13 and 27, which refer to the importance of equality of arms for a fair trial – which, in the present case, required that account be taken of the main medical reports submitted by the defence – and state that expeditiousness is an important aspect of the fairness of proceedings.

<sup>20</sup> In its initial communication, the source raised the fact that the Special Criminal Court had exceeded the maximum time limit for rendering a decision permitted under Cameroonian law, as well as the fact that Mr. Vamouké remained in detention after numerous consecutive hearings (see paragraphs 12 and 14 of the present Opinion).

<sup>21</sup> Opinions No. 38/2014, paras. 30, 31 and 34; No. 38/2013, para. 27; and No. 32/2011, para. 29.

whole have lasted five years,<sup>22</sup> in breach of the international obligation of Cameroon to conclude the trial within a reasonable period of time.

68. In its reply, the Government notes that Mr. Vamouké has not exercised his right to the remedy of habeas corpus under the Code of Criminal Procedure. The Government also argues that the proceedings have been prolonged by the actions of Mr. Vamouké and his lawyers, namely, the filing of numerous appeal applications between 2017 and 2019. However, in the additional information submitted, the source argues that the fact that Mr. Vamouké fully exercised his right to a defence cannot justify such a lengthy procedure.

69. The Working Group recalls that the reasonableness of any delay in bringing a case to trial must be assessed in the light of the circumstances of the case, taking into account its complexity, the conduct of the defendant and the manner in which the authorities have handled the case.<sup>23</sup> The delay in Mr. Vamouké's trial, which has resulted in his spending almost four years in pretrial detention, is unreasonably long.

70. In reaching this conclusion, the Working Group took into account the source's argument that some of Mr. Vamouké's co-defendants, who are being prosecuted for the same conduct, have been released. There is no apparent reason why Mr. Vamouké should remain in pretrial detention, in violation of domestic laws that require a decision to be taken within nine months. In addition, the Government submitted a copy of Mr. Vamouké's request for release,<sup>24</sup> but merely stated that the Special Criminal Court had responded to the request, without providing any later decision of the Court setting out the reasons why the request had not been granted. The Government has therefore not provided any legal reasoning to explain how Mr. Vamouké's continued detention was reasonable and necessary.<sup>25</sup> Although some of the delays that occurred during the pretrial period were caused by various requests made by the defence and were therefore not attributable to the authorities,<sup>26</sup> Mr. Vamouké was held in detention for almost 14 months before the requests referred to by the Government were submitted to the Court.<sup>27</sup> The delays that occurred during that period do not appear to be attributable to Mr. Vamouké. Lastly, the source provided information and medical certificates showing that Mr. Vamouké's health had deteriorated and that he might lose the use of his legs. This circumstance alone would have justified the release of Mr. Vamouké pending his trial.<sup>28</sup> According to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the rule, and anyone detained on a criminal charge has the right to be tried within a reasonable time or to be released. Article 14 (3) (c) of the Covenant provides for the right of accused persons to be tried without undue delay.<sup>29</sup> These two provisions have been violated in the present case.

71. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give Mr. Vamouké's detention an arbitrary character under category III.

<sup>22</sup> According to Annex 1 to the memorandum setting out the Government's position, the indictment issued in the preliminary investigation is dated 17 February 2015.

<sup>23</sup> Human Rights Committee, general comment No. 35, para. 37, and general comment No. 32, para. 35.

<sup>24</sup> Annex 9 to the memorandum setting out the Government's position, which contains a request dated 16 February 2018; and the memorandum setting out the Government's position, para. 22.

<sup>25</sup> Human Rights Committee, general comment No. 35, para. 38, which stresses the need for pretrial detention to be reviewed periodically to determine, inter alia, whether it remains reasonable and necessary.

<sup>26</sup> Opinions No. 24/2015, para. 41; and No. 15/2001, para. 23. See also the 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), para. 53 (a).

<sup>27</sup> In paragraph 27 of the memorandum setting out the Government's position, the Government refers to the requests made by the defence from 19 September 2017 onward. Mr. Vamouké was placed in detention on 29 July 2016.

<sup>28</sup> Mr. Vamouké's poor health must be taken into account as a factor that may hinder his ability to participate in his own defence in future trials; Opinions No. 59/2019, para. 69; and No. 29/2017, para. 63. See also Opinion No. 46/2014, para. 37.

<sup>29</sup> Opinion No. 46/2014, paras. 33 and 36, in which the Working Group determined that being held in pretrial detention for more than four years violates the right to be tried within a reasonable time.

72. The Working Group is deeply concerned about Mr. Vamouké's health, which has reportedly deteriorated during the almost four years that he has spent in pretrial detention. The source states that Mr. Vamouké, who is 70 years of age, is not receiving the medical treatment that he urgently needs. He is in severe pain and risks losing the use of his legs. In its response, the Government states that Mr. Vamouké has had access to health care and been able to attend medical consultations while in detention, including at least 17 outpatient medical consultations with various specialists.

73. The Working Group urges the Government to release Mr. Vamouké immediately and to ensure that, to the greatest extent possible, he receives the medical treatment that he needs, given the limited possibility of national and international travel during the coronavirus disease (COVID-19) pandemic.<sup>30</sup> In view of the seriousness of Mr. Vamouké's condition and the fact that he has repeatedly requested medical care, the Working Group decided to submit the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

74. The Working Group recognizes that all States have an obligation to investigate, prosecute and punish those responsible for crimes, including in cases of alleged misappropriation of public funds. However, the Working Group's opinion in this case is focused not on the charges that are the subject of the proceedings against Mr. Vamouké, but rather on the conditions under which those proceedings have been conducted. States must respect, *inter alia*, the provisions of articles 9 and 14 of the Covenant, violations of which have been found in the present case.<sup>31</sup>

75. Lastly, the Working Group would welcome the opportunity to visit Cameroon in order to assist the Government in its efforts to deal with the issue of arbitrary deprivation of liberty. On 24 January 2017, the Working Group submitted a written request to the Government for a country visit, which, if accepted, would allow the Working Group to visit Cameroon for the first time. Since Cameroon is currently a member of the Human Rights Council, this would be an opportune occasion for the Government to extend such an invitation. The Working Group recalls that the Government issued a standing invitation to all thematic special procedure mandate holders on 15 September 2014, and looks forward to a positive response to its request to visit Cameroon.

### **Disposition**

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

The deprivation of liberty of Amadou Vamouké, being in contravention of articles 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.

77. The Working Group requests the Government of Cameroon to take the steps necessary to remedy the situation of Mr. Vamouké without delay and to bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

78. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Mr. Vamouké's health, the appropriate remedy would be to release Mr. Vamouké immediately and to accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent measures to ensure the immediate release of Mr. Vamouké.

<sup>30</sup> One of the medical reports attached to the additional information submitted by the source states that Mr. Vamouké should ideally be examined in a facility outside Cameroon (Annex 5).

<sup>31</sup> Opinion No. 24/2015, para. 45, in which it is noted that the role of the Working Group is to determine whether the alleged victim's rights under international human rights law have been violated, but that it is for the national courts to determine whether a criminal offence has been committed under the applicable law.

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

80. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

#### **Follow-up procedure**

82. 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. Vamouké has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Vamouké;
- (c) Whether an investigation has been conducted into the violation of Mr. Vamouké'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 Cameroon with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

83. The Government is invited to inform the Working Group of any difficulties that 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.

84. 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 any failure to take action.

85. 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 that they have taken.<sup>32</sup>

*[Adopted on 29 April 2020]*

---

<sup>32</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.