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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3–12 May 2021

Opinion No. 10/2021, concerning Tsi Conrad (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,¹ on 21 December 2020 the Working Group transmitted to the Government of Cameroon a communication concerning Tsi Conrad. The Government submitted a late response on 16 March 2021. 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.



Submissions

Communication from the source

4. Tsi Conrad is a national of Cameroon born in 1987. His place of habitual residence is Ntarinkon, in Bamenda, Cameroon. Mr. Conrad is a journalist, film-maker, writer, human rights defender and activist.

5. According to the source, Mr. Conrad regularly attended demonstrations related to the civil unrest in the English-speaking regions of Cameroon, in his capacity as a journalist. He also sought to exercise his right to freedom of expression and freedom of association through peaceful activities, including by distributing images of demonstrations to media outlets and other journalists and publishing them on his personal social media accounts.

a. Arrest, detention and prosecution

6. The source explains that, before the arrest which is the subject of the present communication, Mr. Conrad had been a victim of harassment by the State in retaliation for his journalistic activities since 2016. On 2 December 2016, while he was filming an opposition demonstration, he was approached by police officers who asked him to delete pictures he had taken. When he refused, he was threatened by a police officer, who shouted: “I know you and I am going to deal with you.” On 4 December 2016, while he was filming a demonstration and reporting on incidents of violence between demonstrators and police officers, Mr. Conrad was once again confronted by State authorities and threatened with arrest.

7. On 8 December 2016, Mr. Conrad was arrested while filming a demonstration organized by the ruling political party, the Cameroon People’s Democratic Movement. During this demonstration, the police allegedly shot at least four persons. Mr. Conrad was arrested at gunpoint by some ten men wearing military uniforms. He was taken to a police station and placed in detention by the Bamenda criminal investigation police. During the arrest, his camera was destroyed.

8. At the police station Mr. Conrad was interrogated for five hours about his presence at the demonstration, the photographs and footage he had taken and the location where they had been stored. The State officials who interrogated him demanded access to his social media accounts, including the passwords for his Facebook profile and blog. He was also asked to reveal the names of other journalists and media organizations with whom he had shared his pictures of the demonstration. When he refused to provide this information, Mr. Conrad was threatened with physical violence and reportedly also with death. He was apparently then beaten with belts and sticks on the soles of his feet and forced to sign a confession stating that he had been paid by a leader of the demonstration to collect and publish the images. He was also reportedly forced to say that he was himself a leader of the secessionist demonstration.

9. After his interrogation, Mr. Conrad was transferred to Yaoundé. Throughout this 360-km journey, he was dressed only in underwear and remained handcuffed to the military vehicle. Mr. Conrad was held incommunicado at the National Surveillance Directorate for approximately two weeks and was subjected to repeated interrogations about the images he had recorded of the demonstration.

10. On 23 December 2016, Mr. Conrad was transferred to Yaoundé Central Prison, where he is still being detained.

11. Mr. Conrad appeared for the first time before the Yaoundé Military Court on 23 December 2016. He was charged along with a number of other persons who had been arrested in the English-speaking regions, including Mancho Bibixy Tse.²

12. The source reports that Mr. Conrad’s lawyer was unable to meet with his client and receive instructions before the trial. Because prison visits were restricted, it was common for Mr. Conrad to give instructions to his lawyer during hearings. On the rare occasions when

² Mancho Bibixy Tse was the subject of opinion No. 46/2019.

Mr. Conrad's lawyer was able to visit him, the meetings generally lasted only 15 minutes and were monitored by guards, meaning that they did not take place in private. The source specifies that Mr. Conrad was therefore unable to openly discuss the details of his criminal case.

13. Mr. Conrad's trial was held before the Yaoundé Military Court from November 2017 to May 2018. The source states that it was adjourned more than 16 times, often with relatively little prior notice. The source also specifies that Mr. Conrad's lawyer did not receive all the prosecution documents and was not given the opportunity to call defence witnesses.

14. On 25 May 2018, Mr. Conrad was found guilty of hostilities against the fatherland, secession, propagation of false information, revolution, insurrection, contempt of public bodies and public servants, resistance and terrorism, under Law No. 2014/028 of 23 December 2014 on the Suppression of Acts of Terrorism and the Penal Code. He was sentenced to 15 years' imprisonment and a fine of 268 million CFA francs (approximately US\$ 479,850) as damages payable to the civil parties, including the Cameroonian State.

15. On 26 May 2018, Mr. Conrad's lawyers lodged an appeal with the Yaoundé Court of Appeal, highlighting the lack of evidence to support the conviction and challenging the military court's competence to try him. At the time of submission of the communication by the source, the appeal had not yet been considered.

b. Detention conditions

16. According to the source, Mr. Conrad is being detained in an overcrowded prison. Built to accommodate 800 prisoners, Yaoundé Central Prison held approximately 5,000 in July 2019. For the first five weeks of his detention, Mr. Conrad was in a small cell with 80 other prisoners.

17. Mr. Conrad also complained of having been violently assaulted by French-speaking prisoners and the prison staff. Such assaults often go unreported and the source alleges that the prison staff stoke tensions between English-speaking and French-speaking prisoners and turn a blind eye to clashes between them.

18. On 22 July 2019, several English-speaking prisoners took part in a demonstration to protest unsanitary detention conditions and delays in the handling of their cases. Many of them used non-violent methods, such as peaceful chanting in the prison yard, to ask for better detention conditions. Riot guards and prison guards used tear gas and live ammunition inside the prison to try to suppress the disorder.

19. Following this demonstration, Mr. Conrad and 100 other prisoners were transferred to an undisclosed location and held incommunicado for two weeks, until 4 August 2019, when they were sent back to Yaoundé Central Prison. After this period of detention, Mr. Conrad complained that security officers had beaten him with a wooden baton, causing a head injury that required eight stitches. Mr. Conrad still suffers from severe pain and headaches. The source states that, following this incident, Mr. Conrad was examined by a prison doctor, who ordered a computed tomography scan of his head. It was not possible to ascertain whether Mr. Conrad received any follow-up treatment.

20. On 2 September 2019, Mr. Conrad and 25 other prisoners were brought before Ekounou Court of First Instance. Following the trial, Mr. Conrad was found guilty of resistance and collective resistance, which are offences under sections 157 and 158 of the Penal Code, and he was sentenced to 18 months' imprisonment. On 6 September 2019, Mr. Conrad's lawyer filed an appeal against the conviction and sentence. This appeal was still pending in August 2020.

21. The source also explains that Yaoundé Central Prison saw an epidemic of coronavirus disease (COVID-19) in April 2020. The prisoners protested against the failure to take measures to reduce the infection rate in the prison. The prison medical staff were unable to handle the outbreak, which was worsened by overcrowding and inadequate sanitary conditions.

22. The source further reports that Mr. Conrad has complained of stomach problems during his detention. According to medical reports, he suffers from third-degree

haemorrhoids, among other problems, and needs an operation, which the prison administration has refused. The source alleges that this decision not to operate on Mr. Conrad is due to his status as a human rights defender.

c. Legal analysis

i. Category I

23. The source points out that Mr. Conrad was arrested without an arrest warrant and was not promptly informed of the charges against him, in violation of articles 9 (2) and 14 (3) (a) of the Covenant.

24. The source submits that Mr. Conrad was accused of ill-defined offences. The source recalls that under article 15 (1) of the Covenant and article 11 (2) of the Universal Declaration of Human Rights, everyone has the right to know what the law says and what conduct is considered to be in breach of the law. In the present case, the source reports that Mr. Conrad was prosecuted under a number of provisions of the Penal Code, including section 102, which prohibits participation in “hostilities against the Republic”; section 111, which imposes punishment on anyone who “undertakes in whatever manner to infringe the territorial integrity of the Republic”; and section 113, which prohibits the propagation of “false information liable to injure public authorities”. Moreover, section 236 provides that anyone who “as a member of an assembly or band” damages “any moveable or immovable property” is liable to 10 to 20 years’ imprisonment. The wording used in all these provisions is overly general and the key terms are not defined, which prevents individuals from regulating their conduct in accordance with the law. The source also reports that section 2 of Law No. 2014/028 on the Suppression of Acts of Terrorism establishes the death penalty for a number of acts, including those intended to “disrupt the normal functioning of public services”. This provision is not explained in any greater detail. In the absence of any definition or parameters regulating the use of these provisions, there is a significant risk that these laws will be applied arbitrarily, as occurred in the present case.

25. The source also maintains that the provisions under which Mr. Conrad was charged are not consistent with the principle of legal certainty as understood in international law and that there is no legal basis for his deprivation of liberty.

ii. Category II

26. According to the source, Mr. Conrad’s arrest and detention result from the legitimate exercise of his right to freedom of expression and opinion under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. His conviction and sentence were imposed in retaliation for his having filmed demonstrations in the English-speaking part of the country for the purpose of reporting on civil unrest. In addition, the conviction and the disproportionate sentence handed down against Mr. Conrad act as a deterrent for other persons engaging in journalistic activities, including coverage of the situation in the English-speaking regions.

27. The source recalls that, under article 19 (3) of the Covenant, any restriction on the right to freedom of expression must satisfy three requirements: it must be provided by law, be designed to achieve a legitimate aim and meet the requirements of necessity and proportionality. In the present case, Mr. Conrad’s arrest and detention do not meet any of these three requirements, for the reasons set out below.

28. With respect to the condition that the restriction must be provided by law, the source recalls that Mr. Conrad was charged under various provisions of the Penal Code that criminalize a wide range of activities related to the dissemination of information critical of the Government. He was also charged under section 2 of Law No. 2014/028 on the Suppression of Acts of Terrorism. The wording of this provision is overly general and does not indicate the constituent elements of the offence. The source alleges that the restriction therefore fails to meet the first criterion set out in article 19 (3) of the Covenant, owing to its lack of clarity and the risk of its being applied arbitrarily.

29. The source also argues that the restriction was not designed to achieve a legitimate aim. The prosecution of Mr. Conrad under counter-terrorism legislation implies that the

Government was seeking to protect national security. However, at no stage in the judicial proceedings did the authorities establish that Mr. Conrad's action in filming the demonstration for the purpose of public dissemination was an attempt to overthrow the Government or likely to incite violence. Moreover, the Government did not show that prosecution was necessary to protect public order or national security. The evidence put forward by the prosecution comprised Mr. Conrad's presence at the demonstration and the confession he signed under duress. Apart from the forced confession, the prosecution did not provide any evidence proving that Mr. Conrad was a leader of the secessionist demonstration.

30. The source recalls that, in circumstances such as those of the present case, in which the Government claims that the criminal prosecution of Mr. Conrad was necessary to protect national security or maintain public order, the Working Group has indicated that the publication on social media of documents about State policy does not constitute an act of incitement to public disorder or violence. Mr. Conrad was convicted for the legitimate exercise of his right to freedom of expression. In this context, the source alleges that he attended the demonstration of 8 December 2016 in his capacity as a journalist, to report on matters of public interest. Mr. Conrad's conduct was peaceful. Moreover, the online publication of images of the demonstration on his social media accounts constituted a legitimate exercise of his right to freedom of expression.

31. The source also considers that the restriction does not conform to the strict tests of necessity and proportionality. Mr. Conrad's work as a journalist, including his presence at the demonstration to film images for subsequent publication and his dissemination of information on social media accounts, falls squarely within the forms of expression that should never be restricted by State authorities. His reporting on discriminatory treatment by the State of persons living in English-speaking regions has contributed to the public scrutiny of government policy.

32. According to the source, even if the restriction imposed on Mr. Conrad was in pursuit of a legitimate aim, his arrest, detention, conviction and 15-year prison sentence, followed by an 18-month sentence for his participation in a demonstration in Yaoundé Central Prison, in which prisoners called for better health and safety conditions, are disproportionate.

33. The source considers that Mr. Conrad's deprivation of liberty also results from his exercise of the right to peaceful assembly and the right to freedom of association under articles 21 and 22 of the Covenant and article 20 of the Universal Declaration of Human Rights. To support this argument, the source reiterates that Mr. Conrad was arrested while he was present at a demonstration and gathering information about it. His detention and conviction were intended to punish him for having exercised his right of peaceful assembly, in the context of a broader push by the authorities to suppress any criticism of the Government.

34. The source recalls that all citizens have the right to take part in the conduct of public affairs, including those with minority or dissident opinions or beliefs, as do human rights defenders. In this regard, the source reports that Mr. Conrad had already been harassed by the State authorities in connection with his journalistic work before his arrest in December 2016. Through his online reporting and dissemination of images of the demonstration, Mr. Conrad contributed to efforts to hold the Government to account.

35. In addition, the source argues that Mr. Conrad's right of assembly and association was violated again in July 2019, when he took part in the demonstration in Yaoundé Central Prison. The demonstrations were peaceful and, contrary to the charge brought against him, there was no risk of Mr. Conrad's escaping. The source considers the sentence of 18 months' imprisonment to be excessive.

iii. Category III

36. The source submits that the criminal prosecution of Mr. Conrad, including his pretrial detention, was undertaken in violation of article 14 (1) of the Covenant, article 10 of the Universal Declaration of Human Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source alleges that Mr. Conrad did not receive a fair trial as he did not enjoy the same procedural rights as the prosecution, which clearly placed him at a disadvantage in the presentation of his defence.

Moreover, he was not afforded a fair and public hearing by a competent, independent and impartial tribunal.

37. Instead, the source reports that Mr. Conrad's trial was conducted by the Yaoundé Military Court, even though Mr. Conrad has no military status. The Court is a division of the army rather than a separate judicial body, which calls its independence into question. This situation is made worse by the fact that the Government has the power to intervene in proceedings of the Military Court.

38. The source recalls that the Human Rights Committee has criticized the practice of trying civilians before military courts.³ In its opinion No. 46/2019, concerning one of the persons accused alongside Mr. Conrad, the Working Group also confirms that a "court composed of military personnel" cannot fulfil the obligations set out in article 14 (1) of the Covenant.

39. Moreover, the source claims that Mr. Conrad was tried with six other accused persons and, on 25 May 2018, sentenced to 15 years' imprisonment and the payment of damages. The trial was adjourned more than 16 times, often for no reason. Evidence was missing from the prosecution file relating to Mr. Conrad and, owing to the number of co-defendants in the trial, Mr. Conrad did not have sufficient time to present his defence. He was not given the opportunity to call defence witnesses. Furthermore, Mr. Conrad was convicted and sentenced even though the court had not considered the evidence impartially and the trial had been held before a court reserved for military personnel.

40. The source also states that it is not clear whether an arrest warrant was shown to Mr. Conrad at the time of his arrest or whether he was informed of the charges against him. For the first two months of his pretrial detention, Mr. Conrad was held incommunicado. In this regard, the source recalls the provisions set out in articles 9 (3) and 14 (3) (c) of the Covenant. In the case of Mr. Conrad, none of the factors justifying a denial of bail were present, and the Government did not submit any evidence proving otherwise. Furthermore, Mr. Conrad's trial was adjourned many times. Therefore, the source considers that Mr. Conrad's right to be tried without undue delay was violated.

41. The source further reports that, in addition to periods of incommunicado detention, Mr. Conrad was not allowed to meet with his lawyer for the first time until 13 February 2017. As has already been stated, these visits were extremely short, generally lasting no longer than 15 minutes, and were closely monitored by prison guards. The source therefore argues that Mr. Conrad's detention conditions, as described above, constitute a blatant violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

iv. Category V

42. The source affirms that Mr. Conrad was targeted owing to his activities as a journalist, particularly his reporting on demonstrations occurring in the English-speaking parts of the country. He shared these images with other journalists and published them on his personal social media accounts. Mr. Conrad was arrested while present at a demonstration, convicted and sentenced to 15 years' imprisonment and the payment of exorbitant damages to the court and other civil parties. The source considers that this sentence was disproportionate and part of the Government's policy of targeting persons who highlight human rights violations in the country. Moreover, Mr. Conrad's additional conviction for resistance and his 18-month prison sentence show discriminatory attitudes towards English-speaking prisoners.

43. The source argues that Mr. Conrad was deprived of his liberty for discriminatory reasons in connection with his status as a journalist and based on his political opinions and criticism of government actions. Such deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

³ Human Rights Committee, general comment No. 32 (2007), para. 22.

Response from the Government

44. On 21 December 2020, the Working Group transmitted to the Government a communication concerning Mr. Conrad. The Working Group requested the Government to provide detailed information about Mr. Conrad by 19 February 2021 at the latest.

45. In a note verbale dated 1 March 2021, the Government asked for the response time to be extended for one month, until 19 March 2021. Since the request was submitted after the initial deadline, the Working Group did not grant the extension.⁴

46. On 16 March 2021, the Government submitted its response. Since the response was sent after the initial deadline, the Working Group cannot consider it to have been submitted on time. In accordance with paragraph 16 of its methods of work, the Working Group is rendering its opinion on the basis of all the information it has obtained.

Discussion

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

48. In determining whether Mr. Conrad's detention 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.⁵

49. According to the source, Mr. Conrad was convicted in two different criminal cases: (a) for the offences of hostilities against the fatherland, secession, propagation of false information, revolution, insurrection, contempt of public bodies and public servants, resistance and terrorism,⁶ he was sentenced on 25 May 2018 to 15 years' imprisonment and a fine of 268 million CFA francs; and (b) for the offences of resistance and collective resistance,⁷ he was sentenced on 2 September 2019 to 18 months' imprisonment, to be served concurrently with his 15-year prison sentence.

Category I

50. The source alleges that Mr. Conrad was arrested in Bamenda on 8 December 2016, without an arrest warrant and without being promptly informed of the charges against him. In its late response, the Government indicates that Mr. Conrad was arrested in *flagrante delicto*, because he was actively participating in the riot with a hammer in his hand.

51. According to the Government, Mr. Conrad initially denied the allegations, claiming that he had taken photographs of the demonstration for dissemination on social media. However, the Government affirms that "having returned to his senses", Mr. Conrad "spontaneously" confessed that he and other demonstrators had taken to the streets of Bamenda, armed and waving the Ambazonian flag. Mr. Conrad allegedly confessed that the group had forced traders to close their shops⁸ and join the movement, because the Government was not investing sufficiently in the development of Bamenda. He reportedly also confessed that at the time of his arrest he was in possession of a hammer, which was seized and placed under seal.⁹

⁴ Opinions No. 1/2017, para. 36; No. 9/2019, para. 24; and No. 85/2020, para. 60.

⁵ A/HRC/19/57, para. 68.

⁶ The judgment states that Mr. Conrad was found guilty of terrorism, hostilities against the fatherland, individual resistance, contempt of public bodies and public servants, lack of a national identity card, electronic propagation of false information and secession.

⁷ According to the Government, Mr. Conrad was found guilty of collective resistance and sentenced to 18 months' imprisonment and payment of costs amounting to 141,250 CFA francs.

⁸ During his interrogation by the criminal investigation police on 13 December 2016, Mr. Conrad stated that he had picked up a hammer from the roadside and used it to order people to return to their homes.

⁹ Mr. Conrad's confession is contained in the statement he made to the criminal investigation police on 8 December 2016.

52. In its jurisprudence, the Working Group has consistently found that an arrest is made in flagrante delicto if the accused is apprehended either during the commission of a crime or immediately thereafter, or is arrested in hot pursuit shortly after a crime has been committed.¹⁰ While the Working Group notes that Mr. Conrad was arrested while filming and participating in a demonstration, it is not convinced that he was arrested in flagrante delicto, since mere possession of a hammer is insufficient to indicate criminal conduct. Moreover, it is clear that the self-incriminating statement made by Mr. Conrad was given in the absence of a lawyer, which the Government acknowledges in its late response. As stated below, under category III, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings. Accordingly, the Government has not shown that during the demonstration Mr. Conrad engaged in criminal conduct that could serve as a basis for an arrest in flagrante delicto. The confession he allegedly made seems rather to have been used as a retroactive justification for the lack of an arrest warrant.

53. According to article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (2) provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest and must be promptly informed of any charges against him or her. Mr. Conrad was arrested without a warrant, in violation of article 9 (1) of the Covenant.¹¹ However, the source does not specify when Mr. Conrad was informed of the charges against him. The Working Group is unable to determine whether there was a further violation of his right under articles 9 (2) and 14 (3) (a) of the Covenant to be promptly informed of the charges against him.¹²

54. The source further alleges that Mr. Conrad was held incommunicado for the first two months of his pretrial detention, including during his two weeks of detention at the National Surveillance Directorate, from 8 to 23 December 2016. According to the source, Mr. Conrad appeared for the first time before the Yaoundé Military Court on 23 December 2016, 15 days after his arrest, and was not allowed to meet with his lawyer until 13 February 2017. The Government indicates that Mr. Conrad was brought before the Commissioner of the Yaoundé Military Court on 21 December 2016.

55. Under article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹³ According to the information submitted by the two parties, this time limit was not respected. Mr. Conrad was not brought before the Commissioner until 21 December 2016 at the earliest, 13 days after his arrest. The Working Group therefore considers that Mr. Conrad was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant.¹⁴

56. Moreover, in accordance with article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before “a judge or other officer authorized by law to exercise judicial power” and must be tried within a reasonable time or released. The Working Group reiterates that the review of a civilian’s detention by a military court does not satisfy the requirement of appearance before a judge or other officer authorized by law.¹⁵ Even though Mr. Conrad has no military status, his pretrial detention was reviewed by the Commissioner of the Yaoundé Military Court, in violation of article 9 (3) of the Covenant. As the Working Group has stated, the placement of civilians in pretrial detention

¹⁰ Opinion No. 9/2018, para. 38.

¹¹ Opinions No. 45/2019, para. 51, and No. 46/2019, para. 51.

¹² Human Rights Committee, general comment No. 35 (2014), para. 30, and opinion No. 3/2019, para. 43.

¹³ Human Rights Committee, general comment No. 35, para. 33; and CAT/C/CMR/CO/5, para. 14 (b).

¹⁴ Law No. 2014/028 allows for a custody period of 15 days, renewable by the Commissioner, which is not compatible with article 9 (3) of the Covenant. See opinions No. 36/2020, para. 50, and No. 61/2020, para. 68.

¹⁵ Opinion No. 46/2019, para. 53. This finding was made in the case of Mancho Bibixy Tse, one of the persons arraigned alongside Mr. Conrad. The Government indicates that the Commissioner acts as prosecutor at this court, providing further confirmation that the matter was not heard by a judge.

by military courts constitutes a violation of the Covenant and customary international law.¹⁶ Military courts are not competent to review the arbitrariness and lawfulness of the detention of civilians.¹⁷

57. As stated previously, Mr. Conrad was allegedly held incommunicado for the first two months of his pretrial detention. In its late response, the Government rejects these allegations, noting that since 21 December 2016 Mr. Conrad has regularly received visits from his lawyer and members of his family at Yaoundé Central Prison. However, the Government does not challenge the allegation that Mr. Conrad was held incommunicado until 21 December 2016 at the National Surveillance Directorate. As the Working Group has pointed out, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.¹⁸ Before 21 December 2016, Mr. Conrad did not have access to his lawyer, an essential safeguard that might have assisted him in challenging the legal basis for his detention.¹⁹ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.²⁰ Given that Mr. Conrad was unable to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

58. Lastly, the Working Group considers that violations of Mr. Conrad's rights also resulted in his arbitrary detention in relation to the second case opened against him. According to the source, following a peaceful protest on 22 July 2019 in Yaoundé Central Prison, Mr. Conrad was transferred to an undisclosed location and held incommunicado for two weeks, until 4 August 2019. He was subsequently brought before Ekounou Court of First Instance on 2 September 2019 and sentenced to 18 months' imprisonment.

59. As the Human Rights Committee has noted, if a person already detained on one criminal charge is also ordered to be detained to face an unrelated criminal charge, the person must be promptly brought before a judge for control of the second detention.²¹ The Government states that the accused, including Mr. Conrad, were brought before a prosecutor on 5 August 2019. However, it provides no information to indicate that Mr. Conrad's detention was subject to judicial control before 2 September 2019. This amounts to a violation of article 9 (3) and (4) of the Covenant. Moreover, the Government did not challenge the allegation that Mr. Conrad was transferred to an undisclosed location and held incommunicado for two weeks.

60. For these reasons, the Working Group finds that Mr. Conrad's detention is arbitrary under category I.

Category II

61. The source alleges that Mr. Conrad was arrested and detained in relation to the first case opened against him as a result of the legitimate exercise of his right to freedom of opinion and expression, his right of peaceful assembly and his right to freedom of association under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. According to the source, Mr. Conrad, a freelance journalist, was arrested on 8 December 2016 while he was filming and participating in a demonstration organized by the Cameroon People's Democratic Movement. His conviction and sentence were handed down in retaliation for his having filmed demonstrations in the English-speaking part of the country, in the context of a broader push by the authorities to suppress criticism

¹⁶ A/HRC/27/48, para. 66; and Human Rights Committee, general comment No. 35, para. 32.

¹⁷ 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, guideline 4, para. 55, and guideline 17; and opinion No. 46/2017, para. 20.

¹⁸ Opinions No. 15/2020, para. 56; No. 16/2020, para. 62; and No. 36/2020, para. 53.

¹⁹ Opinions No. 40/2020, para. 29, and No. 61/2020, para. 70. See also Human Rights Committee, general comment No. 35, para. 35.

²⁰ A/HRC/30/37, para. 3.

²¹ Human Rights Committee, general comment No. 35, para. 32.

of the Government. Mr. Conrad distributed images of these demonstrations to news outlets and other journalists and published them on his social media accounts.

62. Article 19 (2) of the Covenant guarantees the right to freedom of expression. This right includes political discourse, commentary on public affairs, discussion of human rights and journalism,²² and protects audiovisual, electronic and Internet-based modes of expression.²³ It protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.²⁴ Notably, freedom of expression protects the waving of flags, including as a sign of protest.²⁵

63. The Working Group considers that Mr. Conrad's conduct fell within the right to freedom of expression and that he was detained for exercising this right.²⁶ To reach this conclusion, the Working Group took into account the fact that the only other explanation provided by the Government for Mr. Conrad's arrest and detention was based on an inadmissible confession obtained in the absence of a lawyer. Moreover, other human rights mechanisms have observed a similar trend, noting that journalists have been detained in Cameroon for doing their job, particularly in the context of the crisis affecting the country's English-speaking regions.²⁷

64. Moreover, Mr. Conrad was arrested while filming, documenting and participating in a demonstration at which the police reportedly shot at least four persons. His conduct was clearly in the public interest in that its aim was to hold the public authorities accountable for their actions. In these circumstances, the Working Group considers that Mr. Conrad was detained for exercising his right of peaceful assembly and his right to take part in the conduct of public affairs under articles 20 and 21 (1) of the Universal Declaration of Human Rights and articles 21 and 25 (a) of the Covenant.²⁸

65. The Government has offered no credible information to suggest that the permissible restrictions under articles 19 (3), 21 and 25 of the Covenant apply in the present case. The Working Group is not convinced that prosecuting Mr. Conrad was necessary to protect a legitimate interest within the meaning of those provisions, or that his conviction and 15-year prison sentence were proportionate responses to his activities as a journalist. The Working Group is also not convinced by the Government's argument relating to the magnanimity of the court, which could have imposed a harsher sentence on Mr. Conrad but did not do so. Furthermore, apart from the inadmissible confession made by Mr. Conrad in the absence of a lawyer, there is no evidence to suggest that he called directly or indirectly for violence or in any way represented a threat to national security, public order, public health or morals, or the rights, reputations or freedoms of others.²⁹

66. The source also notes that Mr. Conrad was found guilty of resistance and sentenced to 18 months' imprisonment in the second case against him as a result of the exercise of his rights to peaceful assembly and freedom of association. On 22 July 2019, Mr. Conrad took part with other prisoners in a protest against unsanitary detention conditions at Yaoundé Central Prison and delays in the handling of their cases. According to the source, the protest was peaceful and there was no risk of Mr. Conrad's escaping. Although the Government describes this incident as a riot with the destruction of property and a mass escape attempt, it does not mention any specific acts of violence involving Mr. Conrad. The Working Group therefore considers that Mr. Conrad's conviction and sentence resulted from the exercise of his rights to freedom of opinion and expression and peaceful assembly. The Government has

²² See opinions No. 1/2020, No. 46/2020 and No. 65/2020.

²³ Human Rights Committee, general comment No. 34, paras. 11–12.

²⁴ Opinions No. 15/2020, para. 65, and No. 16/2020, para. 68.

²⁵ See opinion No. 82/2017.

²⁶ See opinions No. 44/2019 and No. 16/2020.

²⁷ CCPR/C/CMR/CO/5, paras. 41–42 and 45–46; CAT/C/CMR/CO/5, paras. 19–20 and 41–42; and A/HRC/39/15, paras. 121.51, 121.108, 121.124 and 121.125.

²⁸ Human Rights Committee, general comment No. 25 (1996), para. 8. See also opinions No. 36/2020 and No. 42/2020.

²⁹ In contrast with opinion No. 46/2019, in which the Government provided compelling evidence that the permissible restrictions on the exercise of the rights guaranteed by the Covenant may have been applicable (paras. 59–60).

not provided any specific information to suggest that the restrictions referred to in articles 19 (3) and 21 of the Covenant are applicable in the present case.

67. The Working Group concludes that Mr. Conrad's detention in relation to both of the cases opened against him resulted from the exercise of his right to freedom of expression, his right of peaceful assembly and his right to take part in the conduct of public affairs. His detention is therefore arbitrary under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

68. Lastly, the Working Group wishes to express its views on Mr. Conrad's conviction in May 2018 for various offences related to national security, under Law No. 2014/028 on the Suppression of Acts of Terrorism and the Penal Code. As the Working Group has emphasized, the principle of legality requires that laws be formulated with sufficient precision so that individuals can have access to and understand the law, and regulate their conduct accordingly.³⁰ Although the Government argues that the moral and material elements of each offence are clearly set out, the Working Group considers that the source's description of the language used in the relevant provisions shows that they are not sufficiently detailed and may, as in the present case, prohibit the peaceful exercise of rights.³¹

69. The application of vague and overly broad provisions to Mr. Conrad's conduct adds weight to the Working Group's conclusion that his detention is arbitrary under category II. The Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke them as a legal basis justifying the deprivation of liberty. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Category III

70. Given its finding that Mr. Conrad's detention is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, Mr. Conrad was tried and convicted on 25 May 2018 and 2 September 2019.

71. The source argues that Mr. Conrad's trial before the Yaoundé Military Court in relation to the first case violated his right to a fair hearing by a competent, independent and impartial tribunal. According to the source, military courts are a division of the armed forces rather than a separate and independent judicial body. Moreover, the Government is empowered to intervene in trials before the military courts.³²

72. The Working Group reiterates its statement, made in its opinion No. 46/2019, that military courts are competent to try only military personnel for military offences and that they must not try civilians under any circumstances, irrespective of the charges brought. A court composed of military personnel, such as that which tried Mr. Conrad, cannot be considered a "competent, independent and impartial tribunal", as required by international human rights law.³³ Military courts should never be competent to impose the death penalty.³⁴ As the Government notes in its late response, some of the charges against Mr. Conrad potentially carried the death penalty.

73. The trial of Mr. Conrad before a military court constituted a serious violation of his right to a fair hearing by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. Some of the accused, including Mr. Conrad, were acquitted of some charges, but the Working Group is

³⁰ Opinion No. 41/2017, paras 98–101. See also opinions No. 62/2018, paras. 57–59, and No. 37/2020, para. 60.

³¹ See paragraph 24 of the present opinion. See also CCPR/C/CMR/CO/5, paras. 11–12 and 23–24; CAT/C/CMR/CO/5, paras. 20 (c) and 42 (b); and A/HRC/39/15, paras. 121.91–121.96.

³² Opinion No. 46/2019, para. 67.

³³ A/HRC/27/48, paras. 66–71 and 85–86. See also opinions No. 3/2018, para. 57; No. 73/2018, para. 61; and No. 4/2019, para. 58. See also A/HRC/39/15, paras. 121.96 and 121.108.

³⁴ A/HRC/27/48, para. 69 (e); CCPR/C/CMR/CO/5, paras. 11–12, 23–24 and 37–38; and CAT/C/CMR/CO/5, paras. 19–20 and 27–28.

not convinced that this demonstrates the independence and impartiality of the Yaoundé Military Court.³⁵ The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

74. The source also claims that Mr. Conrad was the victim of further violations of his right to due process. Given the number of co-defendants at the trial, Mr. Conrad did not have sufficient time to present his defence. In addition, he did not have the opportunity to call defence witnesses and did not have access to all the materials in the prosecution file. The Working Group considers that Mr. Conrad's right to a fair trial and equality of arms under article 14 (1) and (3) (b) and (e) of the Covenant was violated.

75. The source further states that Mr. Conrad was not allowed to meet with his lawyer for the first time until 13 February 2017, two months after his arrest. The visits were brief, generally lasting only 15 minutes, and it was therefore common for Mr. Conrad to give instructions to his lawyer during hearings. When Mr. Conrad was allowed to meet with his lawyer, the visits were monitored by guards. The Government indicates that Mr. Conrad has regularly received visits from his lawyer since 21 December 2016 and was represented at trial, but did not respond to the source's other allegations.

76. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.³⁶ The Working Group considers that the failure to allow Mr. Conrad to meet with his lawyer from the outset of the proceedings, the restriction of meetings to very short periods and the fact that communications between Mr. Conrad and his lawyer were not confidential harmed Mr. Conrad's ability to prepare his defence. This violation of the right to due process is especially serious given that Mr. Conrad was accused of serious offences, including terrorism. Mr. Conrad's rights under article 14 (3) (b) and (d) of the Covenant to have adequate time and facilities to prepare his defence, to communicate with counsel of his choice and to defend himself in person or through legal assistance of his own choosing were violated. The Working Group reiterates that meetings with counsel may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.³⁷

77. The source also alleges that the first trial was adjourned more than 16 times, often for no reason, and that Mr. Conrad's right to be tried without undue delay was violated. In its late response, the Government states that the case was tried within a reasonable time frame of approximately 15 months, despite the large number of victims, accused persons represented by counsel and witnesses heard and despite the multiple allegations against the accused. According to the Government, Mr. Conrad's appeal was found admissible by the Court of Appeal on 14 April 2019 and is still pending.

78. The reasonableness of any delay in bringing a case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the authorities.³⁸ This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. All stages, whether in first instance or on appeal, must take place without undue delay.³⁹ The Working Group considers that the time taken to complete the first case against Mr. Conrad was unreasonably prolonged. He was arrested on 8 December 2016 and the appeal proceedings were still pending almost four and a half years later, in violation of his right under articles 9 (3) and 14 (3) (c) of the Covenant to be tried within a reasonable

³⁵ Opinion No. 46/2019, para. 65.

³⁶ A/HRC/30/37, annex, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35, para. 35.

³⁷ United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 61 (1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; and A/HRC/30/37, annex, guideline 8.

³⁸ Human Rights Committee, general comment No. 35, para. 37, and general comment No. 32, para. 35.

³⁹ Human Rights Committee, general comment No. 32, para. 35.

time frame and without undue delay.⁴⁰ In view of the finding that Mr. Conrad's detention is arbitrary under category II, any delay in bringing his case to trial would be unreasonable.⁴¹

79. According to the source, Mr. Conrad has been subjected to torture and ill-treatment during his detention. The source alleges that during the five-hour interrogation he underwent after his arrest, he received death threats, was beaten on the soles of his feet and was forced to sign a confession. When he was transferred to the National Surveillance Directorate to be placed in incommunicado detention, he was wearing only underwear and remained handcuffed to a military vehicle throughout the 360-km journey. The Government denies that Mr. Conrad was tortured.

80. The Working Group considers that the source has submitted a sufficiently credible *prima facie* case, which was not refuted by the Government, that Mr. Conrad has been subjected to torture and ill-treatment during his detention. The alleged treatment appears to violate article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Cameroon is a State party.⁴² The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

81. The source also claims that Mr. Conrad was forced to make a confession when he was interrogated at the police station in Bamenda following his arrest. In its late response, the Government claims that Mr. Conrad confessed voluntarily after having been informed of his right to remain silent and his right to be assisted by counsel. The Working Group considers that the allegations in relation to the forced confession are credible, and recalls that confessions obtained in the absence of legal representation are not admissible as evidence in criminal proceedings.⁴³ Furthermore, the admission into evidence of a statement obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.⁴⁴ The burden is on the Government to prove that Mr. Conrad's confession was given freely,⁴⁵ but it has not done so. Accordingly, the authorities violated Mr. Conrad's right to be presumed innocent and not to be compelled to confess guilt under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) and (3) (g) of the Covenant. The use of a confession extracted under torture also violates article 15 of the Convention against Torture and principles 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁶

82. Lastly, the Working Group considers that the second case against Mr. Conrad also involved a violation of his right to a fair trial. According to the source, Mr. Conrad was held incommunicado for two weeks following the protest held in the prison and subsequently suffered a head injury when he was beaten by security officers with a wooden baton. The Government noted in its late response that the appeal in this case has been concluded and the sentence has been reduced to 16 months' imprisonment, but did not respond directly to the other allegations.

83. The Working Group concludes that Mr. Conrad's detention is arbitrary under category III.

Category V

84. The source claims that Mr. Conrad is being detained for discriminatory reasons related to his status as a journalist and his political opinions, which are critical of the Government's

⁴⁰ In contrast with opinion No. 46/2019 in which the Working Group was unable to conclude that the time between the arrest of Mr. Conrad's co-defendant in January 2017 and his conviction and sentencing in May 2018 was unreasonable.

⁴¹ See, for example, opinions No. 15/2020 and No. 16/2020.

⁴² CCPR/C/CMR/CO/5, para. 41.

⁴³ Opinions No. 5/2020, para. 83; No. 15/2020, para. 76; and No. 41/2020, para. 70. See also E/CN.4/2003/68, para. 26 (e); and A/HRC/45/16, para. 53.

⁴⁴ Opinions No. 5/2020, para. 83, and No. 41/2020, para. 70.

⁴⁵ Opinions No. 5/2020, para. 83; No. 15/2020, para. 76; and No. 41/2020, para. 70. See also Human Rights Committee, general comment No. 32, para. 41.

⁴⁶ Opinions No. 28/2019, para. 70, and No. 31/2020, para. 58.

actions in the English-speaking parts of the country. The source also claims that Mr. Conrad's conviction for resistance demonstrates discrimination against English-speaking prisoners.

85. The Working Group considers that Mr. Conrad's detention in relation to the first case was based on his political opinions, which were expressed through his repeated efforts to draw attention to the anglophone crisis. Mr. Conrad had already been harassed at least twice while filming demonstrations on 2 and 4 December 2016, only a few days before his arrest, suggesting that he was targeted for documenting the civil unrest. In the discussion concerning category II, the Working Group established that Mr. Conrad's detention resulted from the peaceful exercise of his rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁴⁷

86. However, the Working Group is not convinced that Mr. Conrad's conviction in the second case resulted from discrimination against English-speaking prisoners. Although Mr. Conrad was one of the English-speaking prisoners who participated in the protest on 22 July 2019, the information provided does not show that his conviction resulted from the targeting of prisoners on the basis of their language.

87. The Working Group considers that Mr. Conrad was deprived of his liberty for discriminatory reasons, namely on the basis of his political or other opinion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and that his detention in relation to the first case against him is arbitrary under category V.

88. Lastly, the Working Group would welcome the opportunity to conduct a country visit to Cameroon. As Cameroon is currently a member of the Human Rights Council, it would be timely for the Government to invite the Working Group to conduct a visit. 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 previous request to visit.

Disposition

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

The deprivation of liberty of Tsi Conrad, being in contravention of articles 2, 5, 7, 8, 9, 10, 11 (1), 19, 20 and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 7, 9, 14, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

90. The Working Group requests the Government of Cameroon to take the steps necessary to remedy the situation of Mr. Conrad 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.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Conrad immediately and 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 action to ensure the immediate release of Mr. Conrad.

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

93. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to

⁴⁷ Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79. See also CCPR/C/CMR/CO/5, paras. 41–42 and 45–46.

freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

Follow-up procedure

95. 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. Conrad has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Conrad;
- (c) Whether an investigation has been conducted into the violation of Mr. Conrad'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.

96. 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.

97. 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.

98. 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.⁴⁸

[Adopted on 5 May 2021]

⁴⁸ Human Rights Council resolution 42/22, paras. 3 and 7.