



# General Assembly

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023

#### Opinion No. 1/2023, concerning Thomas Awah Junior (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 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 12 August 2022 the Working Group transmitted to the Government of Cameroon a communication concerning Thomas Awah Junior. The Government has not replied to the communication. 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).

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<sup>1</sup> [A/HRC/36/38](#).



## Submissions

### *Communication from the source*

4. Thomas Awah Junior is a national of Cameroon born on 3 January 1969. He is a journalist and an activist for the Anglophone movement of Cameroon. He was reportedly the English-speaking presenter for Équinoxe TV from 2009 to 2015 before becoming the North-West Region correspondent for the private channel Afrik 2 Radio. He is also the editor of the magazine Aghem Messenger.

5. Mr. Awah is reportedly involved in various journalism trade unions and organizations and organizations supporting the Anglophone movement. He took part in several protests by the Anglophone movement as an activist, but also as a journalist reporting on the events.

#### a. Context

6. According to the source, the Anglophone crisis in Cameroon began as early as October 2016, when the English-speaking minority of Cameroon organized protests to denounce its economic and political marginalization by the Francophone majority. The source explains that the country's Anglophone minority is claiming increased representation in Government, greater respect for English in schools and courts and more equitable distribution of government resources. According to the source, some separatist leaders of the movement have called for the North-West and South-West Regions, which make up the main Anglophone area of Cameroon, to secede and for the creation of the Ambazonia territory.

7. The source explains that the city of Bamenda is the largest Anglophone city of Cameroon and has been a hub for protests. According to the source, the Government suppressed the Anglophone protests, including by arresting protesters. The Government allegedly attempted to silence protesters and prevent their opinions from spreading, including by cutting the Internet in the country's English-speaking areas.

8. According to the source, Mr. Awah had already been arrested on a number of occasions. He was detained for two weeks in August 2015 at the police station of the 8th District of Yaoundé for insulting a member of Government; for a month and a half, in August and September 2015, at Kondengui central prison for his connection with the protests by the Anglophone movement; and for several hours in December 2016, in Bamenda, following protests there. He had not, however, been tried or found guilty in the past.

#### b. Arrest and detention

9. Mr. Awah was reportedly arrested while walking alone in the city of Bamenda on 2 January 2017, when businesses were closed in the context of the "Ghost towns" action whereby Anglophone residents did not open their businesses and remained home in protest.

10. Mr. Awah was arrested as he sought to interview residents of Bamenda regarding the protests for Afrik 2 Radio. He was arrested by a colonel and other gendarmes on the grounds that it was suspicious for a man to be walking around Bamenda on his own. After showing the officers his press badge, Mr. Awah was arrested without being shown a warrant or being explained the reasons for his arrest. According to the source, Mr. Awah initially believed he was being arrested in relation to a disagreement with his former employer or, owing to previous arrests on account of his activism, due to his position as Vice-President of the Cameroon Association of English-Speaking Journalists.

11. According to the source, on the day of his arrest, Mr. Awah took part in a meeting of the Southern Cameroon National Council, of which he was communication secretary. At the time of his arrest, he was in possession of documents received at the meeting that described the history of the independence of Cameroon, claiming that the colonial powers had agreed to recognize the independence of the Anglophone regions upon the country's independence.

12. The source explains that the Southern Cameroon National Council is a pacifist organization supporting the separatist movement in the Anglophone regions. On 17 January 2017, two weeks after Mr. Awah's arrest, the Government reportedly banned the organization's activities, arguing that they were contrary to the Constitution and jeopardized State security.

13. Following his arrest, Mr. Awah was allegedly taken to an undisclosed prison, where he was questioned for four hours about the Anglophone separatist movement. He was detained for some eight hours at the central police station in the old town of Bamenda, before being transferred to Yaoundé and placed in pretrial detention at Kondengui central prison, where he is currently being held.

14. The source reports that Mr. Awah was tried by the Yaoundé military court alongside two other journalists and five Anglophone detainees. According to the source, it is unclear why the court tried the eight detainees together, as the judgment does not contain any explanation or reasoning for this decision. The source notes that the eight detainees were arrested on different dates and that the only common denominator is their ties with the Anglophone movement.

15. Concerning the trial, the source reports that hearings began on 7 January 2017. Several hearings were allegedly scheduled in 2017 and were postponed at least 14 times owing to, inter alia, the prosecution's requests for more time to gather evidence, national public holidays and judge absences. The main hearing was reportedly held on 24 May 2018 and the judgment handed down the next day, on 25 May 2018.

16. The source notes that Mr. Awah was not informed of the charges against him until the hearing of 24 May 2018, at which the eight detainees were represented by counsel as a group. Mr. Awah suffered bouts of illness caused by toxoplasmosis.

17. On 25 May 2018, the Yaoundé military court found Mr. Awah guilty of terrorism, hostility towards the homeland, secession, revolution, insurrection, the dissemination of fake news, including via electronic means, and contempt of a public authority under articles 74, 102, 111, 113, 114, 116, 154 and 157 of the Criminal Code, article 2 of the Anti-Terrorism Act (No. 2014-28) of 23 December 2014 and article 78 of the Cybersecurity and Cybercrime Act (No. 2010-12) of 21 December 2010.

18. According to the source, the Yaoundé military court made these findings on the basis of unrelated circumstantial allegations, including Mr. Awah's involvement in the Ambazonian Journalist Union and the Southern Cameroon National Council, his participation in assemblies of which the authorities were not notified, his sharing of images and videos of events organized by the Southern Cameroon National Council and his statement recognizing two States on the territory of Cameroon, including Ambazonia. The source notes that the court did not demonstrate the soundness of any of these allegations.

19. Mr. Awah was sentenced to 11 years' imprisonment and a fine equivalent to US\$ 500,000, jointly with his co-defendants. Each of the co-defendants was also sentenced to pay \$10,000 or serve two additional years in prison. Mr. Awah was not convicted of the charges of organized rebellion, incitement to civil war, organized looting and damage to public or protected property.

20. Mr. Awah appealed the decision before the Military Court of Appeals on 31 May 2018, shortly after his trial. The source notes that numerous procedural errors, relating to, for instance, the irregular composition of the court, the impossibility for the appellants or their lawyers to be present and the coronavirus disease (COVID-19) pandemic, delayed the processing of Mr. Awah's appeals. According to the source, prior to the first hearing, the Military Court of Appeals rejected Mr. Awah's procedural argument concerning evidentiary irregularities, namely, the inadmissibility of the police report on which his conviction was based because Mr. Awah was not represented by counsel during questioning and neither he nor the gendarmes involved in his arrest signed the police report. The source reports that the hearing of 17 September 2020 was adjourned due to a procedural problem, namely that the Military Court of Appeals was unable to establish a regular composition.

21. In 2020, although it dismissed some of the terrorism charges against Mr. Awah, the Military Court of Appeals upheld his conviction. The source explains that Mr. Awah is currently waiting for the Supreme Court to consider his case but that, owing to difficulties in obtaining access to a lawyer, he knows little about the procedure, logistics and basis of this final appeal.

22. Indeed, the source notes that, throughout the proceedings against him, Mr. Awah had only intermittent legal representation. The source explains that, following his arrest on

2 January 2017, Mr. Awah did not have access to a lawyer for an entire year. He was represented by counsel at his trial before the Yaoundé military court alongside seven other detainees. The source notes that the eight co-defendants, including Mr. Awah, were represented by the same lawyer. Following his lawyer's death in October 2019, Mr. Awah was represented by another lawyer during his appeal and until 31 May 2021. Mr. Awah has not had legal representation since.

23. The source reports that Mr. Awah was detained at Kondengui central prison, in Yaoundé, throughout his trial. Mr. Awah, who was already in fragile physical and mental health, reportedly fell gravely ill with various diseases while there. The source explains that Mr. Awah already had toxoplasmosis and tuberculosis before being imprisoned, which caused him to suffer dizziness and confusion. The conditions of his detention allegedly worsened his health, and Mr. Awah developed pneumonia. Initially, the Government refused to transfer him to a medical facility. However, following a media campaign on a social network, Mr. Awah was admitted to Yaoundé Central Hospital on 17 September 2018. He was discharged a month later, on 16 October 2018.

24. After his first admission to hospital, Mr. Awah made frequent trips between the prison and the hospital. In April 2019, he was declared to be in good physical health but was later returned and admitted to Yaoundé Central Hospital in May 2020 on account of swelling, paralysis and discolouration of the legs due to complications from tuberculosis. During this stay in hospitals, doctors reportedly told Mr. Awah that prison was a dangerous environment for him and that his life was in danger. The source reports that Mr. Awah nearly died in prison due to complications from tuberculosis. In May 2020, he made some 15 visits to hospital.

25. In May 2020, Mr. Awah was sent back to Kondengui central prison, where detention conditions are reportedly particularly difficult. The source notes that Cameroonian prisons are notoriously overcrowded, with some reaching an occupancy rate of 294 per cent. Prison overcrowding is exacerbated by a rise in arrests in connection with the Anglophone crisis. According to the source, Kondengui central prison, the largest in the country, had an occupancy rate of 193 per cent in 2019. Mr. Awah is allegedly being held in a cell with 25 other prisoners, several of whom are forced to sleep on the floor owing to a lack of beds. According to the source, Mr. Awah was initially sleeping on the floor until a cellmate offered him a bed. Owing to a lack of reliable access to clean drinking water and food at the prison, inmates are forced to buy drinking water and depend on external donors, such as international non-governmental organizations, for food. They are also forced to purchase toilet paper and to wash using buckets.

26. The source reports that, as a consequence of the lack of clean drinking water, Mr. Awah and other prisoners contracted typhoid. Malnutrition, tuberculosis, bronchitis, malaria, hepatitis, scabies, parasites and dehydration are reportedly widespread in Cameroonian prisons, including the one in Kondengui. The source submits that, contrary to the authorities' claims, ill inmates are not held separately from the others. The source adds that prison overcrowding, lack of sleep and poor hygiene and nutrition contribute to physical suffering and psychological trauma among prisoners.

27. According to the source, several inmates of Kondengui central prison also contracted COVID-19, and international organizations expressed concern at the high number of cases at the prison. On 11 and 12 April 2020, Kondengui central prison experienced a particularly long power outage, which is suspected to have been a cover-up by the authorities for the purpose of removing ill inmates and dead bodies from the prison. The prisoners came together the following day to demand from the Government that it take the measures necessary to curb the spread of the virus in prisons. Although their appeal led the prison administration to distribute face masks and disinfectant wipes, this action remained insufficient. The source adds that Mr. Awah depends on independent organizations that support his cause for protective equipment but that those supplies remain insufficient. The source also adds that prison overcrowding hinders the roll-out of health measures such as isolation and social distancing.

28. The source explains that Mr. Awah's ongoing detention has exhausted him physically, mentally as well as financially. In this regard, the source states that the Government requires Mr. Awah to pay exorbitant amounts for his HIV treatment, which has allegedly worsened

his family's financial situation. The source notes that, following the death of Mr. Awah's father in 2021, the family's financial situation has not allowed them to visit Mr. Awah in prison. The source condemns Mr. Awah's isolation in prison, as, owing to a lack of funds, his family were able to see him only during his stay in hospital.

29. The source submits that the conditions of Mr. Awah's detention, which are contributing to the deterioration of his health, constitute treatment contrary to article 10 (1) of the Covenant, whereby everyone should be treated with humanity and with respect for the inherent dignity of the human person, and to the conditions established under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The source adds that the Working Group has previously expressed serious concern about conditions of detention, in particular about inmates not receiving appropriate care whose health has deteriorated due to these conditions.<sup>2</sup>

c. Legal analysis

30. The source argues that the arrest and detention of Mr. Awah is arbitrary under categories I, II and III of the working methods of the Working Group.

31. First, the source recalls that arbitrary detention is prohibited under article 9 (1) of the Covenant, to which Cameroon acceded on 27 June 1984, article 9 of the Universal Declaration of Human Rights and article 6 of the African Charter on Human and Peoples' Rights. In keeping with these international principles, the preamble to the Constitution establishes the Cameroonian people's attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations, the African Charter on Human and Peoples' Rights and any international instrument duly ratified by Cameroon.

32. The source submits that Mr. Awah's detention is contrary not only to international human rights law, but also to the national laws of Cameroon.

i. Category I

33. According to the source, Mr. Awah's arrest and detention have no legal basis and are therefore arbitrary under category I.

34. The source recalls that, under article 9 of the Universal Declaration of Human Rights, no one may be subjected to arbitrary arrest, detention or exile. Similarly, articles 9 (2) and 14 (3) of the Covenant provide that persons must be informed of the reasons for their arrest and of the charges against them.<sup>3</sup> The source notes that article 122 of the Code of Criminal Procedure also establishes the obligation to immediately inform suspects of the acts of which they are accused and to treat them with humanity, in both a material and an emotional sense. According to the source, when suspects are not immediately informed of the acts of which they are accused, their arrest has no legal basis.

35. When Mr. Awah was arrested, the Cameroonian authorities allegedly did not show a warrant or immediately inform him, either orally or in writing, of the reasons for his arrest. The authorities did not cite any legal basis justifying his arrest or detention until the main hearing on 24 May 2018. In other words, Mr. Awah had to wait until that date to be informed of the charges against him.

36. Furthermore, the source submits that the charges of which Mr. Awah was found guilty are themselves arbitrary and lacking legal basis. In this regard, the source recalls that the Working Group has determined that arrest with no legitimate motive is devoid of legal basis.<sup>4</sup> In the present case, the source submits that Mr. Awah was not convicted on the basis of legitimate evidence but, rather, with a view to preventing him from engaging in journalism and activism.

<sup>2</sup> Opinion No. 25/2016, para. 32.

<sup>3</sup> See also opinion No. 89/2018, paras. 68 and 69 (finding of a violation under category I in the event that a detained person is not informed of the reasons for his or her arrest following arrest).

<sup>4</sup> Opinion No. 58/2016, para. 21.

37. In this regard, the source emphasizes that, while Mr. Awah was convicted of a number of national security offences, he was never proven to be connected to the commission or involved in the commission of any act of violence. Therefore, the decision of the Yaoundé military court is based on Mr. Awah's role as journalist and activist, his participation in protests and assemblies by the Anglophone movement, his statements recognizing two States in Cameroon, including Ambazonia, and his ties with the Ambazonian Journalist Union, the Southern Cameroon Liberation Movement, the Southern Cameroon National Council and the Liberation Community. The source contends that Mr. Awah's activities as a journalist and activist cannot be considered as covered by national security law and that the authorities' use of this law to detain him lacks legal basis.

38. Consequently, the source submits that the arrest and detention of Mr. Awah are contrary to article 9 of the Universal Declaration of Human Rights and articles 9 (2) and 14 (3) of the Covenant and are therefore arbitrary under category I.

ii. Category II

39. According to the source, Mr. Awah's deprivation of liberty results from the exercise of his fundamental right to freedom of expression and freedom of association enshrined both in international and national law.

40. The source recalls that article 19 of the Universal Declaration of Human Rights and article 19 (2) of the Covenant safeguard the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media. Similarly, article 9 of the African Charter on Human and Peoples' Rights safeguards the right of all persons to receive information and to express and disseminate their opinions within the law.

41. The source further recalls that article 20 (1) of the Universal Declaration of Human Rights and article 22 (1) of the Covenant safeguard the right of all persons to freely associate. The source notes that the Human Rights Council has called on States to respect and protect the rights of all individuals to assemble peacefully and associate freely, including persons espousing minority or dissenting views or beliefs.<sup>5</sup> The source adds that the preamble of the Constitution of Cameroon also safeguards the right to freedom of expression and association.

42. According to the source, the treatment of Mr. Awah reflects the authorities' practice of restricting freedom of expression in the context of the Anglophone crisis by harassing the independent press and arresting political activists, journalists and anyone who makes public statements against the Government. The source argues that the police, gendarmerie and other government entities have arrested, detained and intimidated journalists, especially those reporting on the Anglophone crisis, including through physical assault.

43. The source submits that Mr. Awah was arrested on account of his activities as a journalist and activist on a day when he was seeking to interview Anglophone residents of the city of Bamenda who were taking part in a peaceful protest. Mr. Awah was arrested after showing his press card and was tried alongside other journalists and activists of the Anglophone movement. The source points out that the judgment is expressly based on Mr. Awah's activities as a journalist and activist, his participation in protests and assemblies linked to the Anglophone movement, his statements recognizing the State of Ambazonia and his involvement in various unions and organizations supporting the Anglophone movement.

44. The source submits that the restrictions on the right to freedom of expression and association permitted under articles 19 (3) and 22 (2) of the Covenant do not apply in the present case. Under these articles, the restrictions must be established by law and be necessary for the respect of the rights or reputations of others or for the protection of national security, public order or public health or morals. In the present case, the source argues that the restrictions on Mr. Awah's freedom of expression cannot be expressly provided for by law insofar as the arrest itself lacked a legal basis. The source also argues that Mr. Awah's detention on account of his activities as a journalist and activist was not necessary for the respect of the rights or reputations of others or the protection of national security, public order

<sup>5</sup> Human Rights Council resolution 15/21, para. 1.

or public health or morals. The source submits that to detain and imprison a journalist reporting on a protest and who expressed himself in a peaceful manner does not in any way protect national security or public order and constitutes a disproportionate measure in relation to any security interest of the Government.

45. Accordingly, the source concludes that Mr. Awah's detention is contrary to his right to freedom of expression and association and is therefore arbitrary under category II.

iii. Category III

46. The source also argues that the arrest and detention of Mr. Awah are arbitrary under category III.

47. The source begins by stating that the lack of a warrant at the time of Mr. Awah's arrest is a violation of article 9 (1) of the Covenant, according to which 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. The source points out that the Human Rights Committee, in its general comment No. 34 (2011), stated that this right entails States putting in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.<sup>6</sup> The source adds that Cameroonian law also requires an arrest warrant, except in cases of flagrante delicto.

48. In the present case, the source is of the view that Mr. Awah's journalism activities cannot be considered as flagrante delicto since they are protected by his right to freedom of expression. Therefore, the source considers that the lack of a warrant at the time of Mr. Awah's arrest is contrary to article 9 (1) of the Covenant, thus rendering his detention arbitrary under category III.

49. The source further argues that the Government did not inform Mr. Awah of the acts of which he was accused, either at the time of his arrest or in the period before his trial, in violation of article 9 (2) of the Covenant, principle 12 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 122 of the Code of Criminal Procedure. According to the source, Mr. Awah's situation is in line with the practice of the Cameroonian authorities of detaining individuals assumed to be involved in the Anglophone crisis without informing them of the charges against them.

50. In addition, the source submits that Mr. Awah was not brought before a judge until five days after his arrest, in other words, beyond the 48-hour period established in international law. The source recalls that, under article 9 (3) of the Covenant, pretrial detention should not be the general rule. Accordingly, the source concludes that Mr. Awah's right to be brought promptly before a judge, enshrined in article 9 (3) of the Covenant and principles 11 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, was violated.

51. The source recalls that, in accordance with Human Rights Committee general comment No. 35 (2014), 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.<sup>7</sup> The source considers that no such determination was made in Mr. Awah's case and that he was detained before and during his trial, which lasted over a year, even though he did not pose a flight risk or a threat to public security or to the gathering of evidence. The source concludes that Mr. Awah's right to be released pending trial was violated.

52. Furthermore, the source underscores that article 14 (3) (c) of the Covenant safeguards the right to be tried without undue delay. In its general comment No. 32 (2007), the Human Rights Committee stated that expeditiousness is an important aspect of the fairness of a hearing and that the accused must be tried as expeditiously as possible where they have been denied bail by the court. The Committee adds that this guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence,

<sup>6</sup> Human Rights Committee, general comment No. 34 (2011), para. 23.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

but also to the time until the final judgement on appeal.<sup>8</sup> The source recalls that the right to be tried without undue delay is also protected by principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In the present case, the source submits that the trial of Mr. Awah began on 7 January 2017 and ended on 25 May 2018, nearly a year and half after his arrest and following the adjournment of over 14 hearings. The source notes that the authorities did not sufficiently justify these delays and concludes that article 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment were violated.

53. In addition, the source argues that Mr. Awah did not enjoy his right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, enshrined in article 14 (3) (b) of the Covenant, article 7 of the African Charter on Human and Peoples' Rights and principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source adds that article 14 (3) (d) of the Covenant protects the right of the accused to a defence through legal assistance of his or her own choosing, including the right to defend himself or herself in person. According to the source, Mr. Awah was not informed of the charges against him until the start of his trial, which prevented him and his lawyers from preparing a defence and communicating effectively about the trial. Indeed, the source notes that, throughout the proceedings against him, Mr. Awah had only intermittent legal representation. He reportedly did not have access to a lawyer for an entire year after his arrest. Following his lawyer's death in October 2019, Mr. Awah was represented by another lawyer during his appeal and until 31 May 2021. Mr. Awah has not had legal representation since then.

54. Lastly, the source submits that being tried by a military court infringed Mr. Awah's right to a fair trial. The source recalls that the African Commission on Human and Peoples' Rights has stated that the right to a fair trial includes not prosecuting civilians before the military courts. Like the Commission, the Working Group considers that military courts are not competent to try civilians. The source points out that it is common practice for the Government to accuse journalists and activists of terrorism or similar offences in order to have them tried by the military courts. The source concludes that the trial and conviction of Mr. Awah by a military court breached his right to a fair trial.

55. Therefore, the source considers that the violation of Mr. Awah's right to a fair trial is of such gravity as to render his detention arbitrary under category III.

#### *Response from the Government*

56. On 12 August 2022, the Working Group transmitted a communication concerning Mr. Awah to the Government, requesting it to provide detailed information about him by 11 October 2022 and to ensure his physical and mental integrity.

57. The Working Group regrets that it did not receive a response from the Government and that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

#### **Discussion**

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

59. In determining whether the deprivation of liberty of Mr. Awah 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.<sup>9</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

<sup>8</sup> Human Rights Committee, general comment No. 32 (2007), paras. 27 and 35.

<sup>9</sup> [A/HRC/19/57](#), para. 68.



60. The source submits that Mr. Awah's detention is arbitrary under categories I, II and III. The Working Group will examine each of the allegations in turn.

*Category I*

61. The source submits that Mr. Awah's detention is arbitrary under category I because his arrest and detention are without legal basis. In particular, the source notes that, at the time of his arrest on 2 January 2017, Mr. Awah was not shown an arrest warrant and or informed of the reasons for his arrest or of the charges against him, either orally or in writing.<sup>10</sup> Mr. Awah was allegedly informed of the charges at the main hearing on 24 May 2018, over a year after his arrest.

62. Under 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 his or her arrest and be promptly informed of any charges against him or her. In this regard, the Working Group has previously stated that, for a deprivation of liberty to have a legal basis, it is not sufficient that there be a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>11</sup> This is typically done<sup>12</sup> through an arrest warrant, an arrest order or equivalent document.<sup>13</sup> Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group takes note of the source's allegations that Cameroonian law provides for the obligation to show a warrant when an individual is arrested.

63. In the present case, the source provided a detailed account, which the Government has chosen not to refute, showing that when Mr. Awah was arrested, he was not shown a warrant or equivalent document and was not informed of the reasons for his arrest. The Working Group notes that on the day of Mr. Awah's arrest in the city of Bamenda, Anglophone residents had remained home as part of the "Ghost towns" protest. While the context might have led to Mr. Awah's presence, alone in the streets, being noticed by police officers, it does not justify his arrest or the failure to explain the reasons for his arrest. At the time of his arrest, Mr. Awah was exercising his functions as a journalist and showed the officers his press badge, which explained his presence in the streets. The Working Group notes that it has not been provided with any reason for the lack of a warrant and the failure to inform Mr. Awah of the reasons for his arrest. Moreover, the Government has not provided an explanation for the delay in informing Mr. Awah of the charges against him, which was done over a year after his arrest, at the main hearing (this last-minute notification is also relevant to the consideration of the source's allegations under category III below). The Working Group finds that Mr. Awah's rights under article 9 (1) and (2) of the Covenant were violated.

64. The source further submits that Mr. Awah's detention is arbitrary under category I because he was not convicted on the basis of legitimate evidence of an offence but, rather, with the aim of preventing him from engaging in journalism and activism. The Working Group is of the view that the link between Mr. Awah's arrest and his activities as a journalist and activist is dealt with sufficiently under category II and that it would be redundant to consider it under category I.

65. As for the source's allegation regarding the lack of evidence against Mr. Awah, the Working Group recalls that it has consistently refrained from taking the place of the judicial

<sup>10</sup> Although the source makes the same allegations under category III, the Working Group considers that they are dealt with sufficiently in its discussion of category I.

<sup>11</sup> See, inter alia, opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018 and No. 79/2018.

<sup>12</sup> In cases of in flagrante delicto, it is generally not possible to obtain a warrant.

<sup>13</sup> Human Rights Committee, general comment No. 35 (2014), para. 21; and opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also article 14 (1) of the Arab Charter on Human Rights.

authorities or acting as a kind of supranational tribunal when it is urged to consider the application of domestic law by the judiciary.<sup>14</sup> It is not for the Working Group to reassess the sufficiency of the evidence or to deal with errors of law allegedly committed by the national court.<sup>15</sup> Moreover, the source does not explain in what manner the offences of which Mr. Awah was convicted lack legal basis. The Yaoundé military court found Mr. Awah guilty of terrorism, hostility towards the homeland, secession, revolution, insurrection, the dissemination of fake news, including via electronic means, and contempt of a public authority. In the absence of detailed information illustrating that the laws on the basis of which Mr. Awah was charged are vague or overly general, the Working Group considers that the source has not demonstrated a violation in this regard under category I.

66. The source submits that Mr. Awah was not brought before the judge until five days after his arrest. The Government has chosen not to contest these allegations.

67. The Working Group recalls that, 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 entitled to trial within a reasonable time or to release. The Human Rights Committee considers that a delay of 48 hours is ordinarily sufficient and should be exceeded only in exceptional cases.<sup>16</sup> Furthermore, article 9 (4) entitles anyone who is deprived of liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.

68. In the absence of a rebuttal or explanation from the Government to justify why it took five days to bring Mr. Awah before a judicial authority, the Working Group considers that the authorities violated the article 9 (3) and (4) of the Covenant. Mr. Awah was unable to challenge his detention and therefore his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

69. The source submits that Mr. Awah was detained for more than a year prior to and during his trial and that he posed no risk of flight or threat to public security or the gathering of evidence.

70. Under article 9 (3) of the Covenant, it should not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. The Human Rights Committee has interpreted this provision as meaning that pretrial detention should be the exception and that bail should be granted, except in situations in which the likelihood exists that the accused would abscond, destroy evidence, influence witnesses or flee from the jurisdiction of the State party.<sup>17</sup>

71. Noting that the Government has not provided any explanation of why Mr. Awah was held in pretrial detention for more than a year, the Working Group considers that this detention was contrary to his rights under article 9 of the Covenant.

72. For the above reasons, the Working Group finds that the authorities violated Mr. Awah's rights under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. His detention is therefore arbitrary under category I.

### *Category II*

73. The source submits that Mr. Awah's detention and conviction result from the exercise of his fundamental rights to freedom of expression and association, enshrined in the Covenant, the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and Cameroonian law. The Government chose not to refute these allegations when given the opportunity to do so.

<sup>14</sup> See opinions No. 49/2019, No. 58/2019, No. 60/2019, No. 5/2021 and No. 33/2021.

<sup>15</sup> See, for example, opinions No. 15/2017, No. 16/2017, No. 49/2019, No. 58/2019, No. 60/2019 and No. 5/2021.

<sup>16</sup> Human Rights Committee, general comment No. 35 (2014), para. 32.

<sup>17</sup> *Hill and Hill v. Spain* (CCPR/C/59/D/526/1993), para. 12.3.

74. The Working Group reiterates that the rights to freedom of opinion and expression, enshrined in article 19 of the Covenant, are indispensable prerequisites for the full development of the person and constitute the cornerstone of free and democratic societies.<sup>18</sup> The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, as well as the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.<sup>19</sup> It protects the holding and expressing of opinions, including those that are critical of or not in line with government policy.<sup>20</sup> Furthermore, article 9 of the African Charter on Human and Peoples' Rights, ratified by Cameroon on 20 June 1989, safeguards the right to express and disseminate opinions within the law.

75. Furthermore, under article 22 of the Covenant, everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests. Any restrictions must be prescribed by law and be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Similarly, article 10 of the African Charter on Human and Peoples' Rights safeguards the right to free association subject to the law.

76. According to the source's unrefuted allegations, at the time of his arrest, Mr. Awah was working as a journalist and activist and was seeking to interview Anglophone residents of the city of Bamenda who were taking part in a peaceful protest. The Working Group considers that the source has made a *prima facie* credible case, which has not been refuted by the Government, that Mr. Awah was arrested on account of his support of this political movement. In this regard, it notes that Mr. Awah was arrested after showing his press card and was tried alongside two other journalists. According to the source's allegations, which the Government has chosen not to refute, the decision of the Yaoundé military court was based on Mr. Awah's role as journalist and activist, his participation in protests and assemblies of the Anglophone movement, his statements recognizing the existence of two States in Cameroon, including Ambazonia, and his ties with the Ambazonian Journalist Union, the Southern Cameroon Liberation Movement, the Southern Cameroon National Council and the Liberation Community. These elements demonstrate a clear link between his detention and his statements in support of the creation of two States in the territory of Cameroon, as well as his association with others who share this position.

77. There is nothing in the information provided, which the Government has not contested, to indicate that the restrictions on these rights authorized in article 19 (3) of the Covenant apply to the present case. The Working Group is not convinced that prosecuting Mr. Awah was necessary to protect a legitimate interest, nor that his arrest and detention are a necessary or proportionate response to his activities. There is also nothing to indicate that, as allegedly claimed by the Government, his journalism work and activism were or could have been intended to incite violent behaviour. In this regard, the Working Group notes the source's unrefuted allegation that the decision in Mr. Awah's case failed to connect him to the commission or involvement in the commission of any act of violence.

78. In the light of the foregoing, the Working Group finds that the arrest and detention of Mr. Awah resulted from the peaceful exercise of his rights to freedom of expression, opinion and association enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the Covenant. His detention is therefore arbitrary under category II.

### *Category III*

79. Given its finding that the detention of Mr. Awah was arbitrary under category II, the Working Group emphasizes that no trial should have taken place. Yet, Mr. Awah was tried and convicted on 25 May 2018 and is currently serving his sentence after the conviction was upheld on appeal.

<sup>18</sup> Human Rights Committee, general comment No. 34 (2011), para. 2.

<sup>19</sup> *Ibid.*, para. 11.

<sup>20</sup> Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

80. According to the source, the Government violated Mr. Awah's right to be tried without undue delay, as the trial ended over one and half years after his arrest.

81. Article 9 (3) of the Covenant establishes that anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable time or to release. Furthermore, article 14 (3) (c) of the Covenant guarantees the right of everyone charged with a criminal offence to be tried without undue delay.

82. The Working Group notes that the period between arrest and trial depends on the specific circumstances of each case and should take into account the complexity of a case, the behaviour of the accused and the manner in which the administrative and judicial authorities have had to process the case. In the present case, no reason has been provided to the Working Group to justify such a delay. The Working Group considers that the obligations flowing from article 14 (3) (c) of the Covenant are particularly important in the present case given its findings under categories I and II. Therefore, it finds that the authorities have violated these provisions.

83. The source submits that by omitting to inform Mr. Awah of the charges against him until the start of his trial, the Government deprived him of the possibility of preparing a defence and receiving effective assistance from counsel. The source adds that Mr. Awah was deprived of a lawyer for an entire year following his arrest in January 2017 and that, although a lawyer represented him and other co-defendants at their trial in 2018, that lawyer died in 2019. Mr. Awah found another lawyer to defend him on appeal, but this lawyer was reportedly arrested by the gendarmerie on 31 May 2021, presumably for being in possession of photographs showing abuse committed by the military in the Anglophone regions of Cameroon. Mr. Awah has not heard from this lawyer since.

84. Under article 14 (3) (b) of the Covenant, all persons charged with a criminal offence are entitled to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. Article 14 (3) (d) of the Covenant provides for the right of the accused to defend oneself or to legal assistance.

85. In the absence of information to the contrary from the Government, the Working Group finds that Mr. Awah's right to assistance of counsel immediately following arrest and throughout the proceedings against him was violated. Furthermore, the Working Group considers that by omitting to inform Mr. Awah of the charges against him, the Government hindered his ability to obtain legal representation and therefore infringed his rights under article 14 (3) (b) and (d) of the Covenant. This is a separate violation of Mr. Awah's right, under article 9 of the Covenant, to be promptly informed of any charges against him. In addition, the Working Group remains concerned at information provided by the source, which the Government has not refuted, that Mr. Awah's appeal lawyer was arrested by the gendarmerie and that Mr. Awah has not heard from him since. The Working Group finds a violation of Mr. Awah's right to legal representation.

86. Furthermore, the source submits that the fact that Mr. Awah was tried before a military court is contrary to his right to a fair trial. Mr. Awah was sentenced to 11 years' imprisonment and, jointly with his co-defendants, to a fine equivalent to \$500,000. Each of the co-defendants, including Mr. Awah, was also sentenced to pay \$10,000 or serve two additional years in prison. The source clarifies that Mr. Awah's appeal was also adjudicated by a military court. Although some of the terrorism charges were dismissed, he did not obtain a sentence reduction. According to the source, Mr. Awah is waiting for the Supreme Court to consider his case. The Government chose not to refute any of these allegations when given the opportunity to do so.

87. Article 14 of the Covenant guarantees everyone's right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In this regard, the Working Group has noted its concerns regarding the use of military courts to judge civilians on a number of occasions.<sup>21</sup> It notes that military tribunals are often used to deal with political

<sup>21</sup> [A/HRC/27/48](#), paras. 66–70 and footnote 2.

opposition groups, journalists and human rights defenders.<sup>22</sup> The Working Group considers that military tribunals should only be competent to try military personnel for military offences.<sup>23</sup> Similarly, the Human Rights Committee has noted that trials of civilians by military or special courts should be exceptional, that is, limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.<sup>24</sup> The African Commission on Human and Peoples' Rights, meanwhile, has noted that civilians being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial.<sup>25</sup>

88. In the absence of any explanation from the Government, and in the light of the source's claims, unrefuted by the Government, that Mr. Awah was a civilian at the time of his arrest, the Working Group considers that his trial by a military court is a violation of his right to a fair trial. It notes that Mr. Awah's appeal was heard by a military court and that the Government has not cited any extraordinary circumstances to justify the use of such a court. While Mr. Awah has filed an appeal with the Supreme Court, the Government has not presented any evidence that this appeal is likely to remedy the harm caused to Mr. Awah through his trial by a military court. Therefore, the Working Group considers that the authorities violated Mr. Awah's right to a fair and public hearing by a competent, independent and impartial court established by law, as enshrined in article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights.

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

#### *Concluding remarks*

90. The Working Group takes note of the source's grave concern about Mr. Awah's health and the source's allegations that his health deteriorated rapidly as a result of his detention. According to the source, prison overcrowding and poor conditions of detention have heightened existing health problems and have triggered new ones. Among other ailments, Mr. Awah is reportedly experiencing swelling, paralysis and discolouration of the legs due to complications from tuberculosis. He has also contracted typhoid. The source adds that he is sharing a cell with 25 other prisoners, several of whom are forced to sleep on the floor, and that access to safe drinking water and food is unreliable in the prison, apart from what external donors provide.

91. The Working Group considers that the conditions of Mr. Awah's detention, which the Government has not refuted, are alarming. It recalls that under article 10 of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including enjoying the same standards of health care that are available in the community. Furthermore, rule 22 of the Nelson Mandela Rules guarantees the right of all detained persons to receive food of wholesome quality and drinking water. The Working Group expresses its concern at the source's unrefuted allegations that Mr. Awah does not have food or drinking water other than what he receives from external donors such as non-governmental organizations.

92. The present opinion concerns only the arrest and detention of Mr. Awah in Cameroon and is adopted without prejudging the matter of the establishment and status of the territory of Ambazonia.

93. 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

<sup>22</sup> Ibid., para. 66.

<sup>23</sup> Ibid., para. 69.

<sup>24</sup> Human Rights Committee, general comment No. 32 (2007), para. 22.

<sup>25</sup> African Commission on Human and Peoples' Rights, *Law Office of Ghazi Suleiman v. Sudan*, communications Nos. 222/98 and 229/99, decision of 29 May 2003, para. 64.

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**

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

The deprivation of liberty of Thomas Awah Junior, being in contravention of articles 3, 8, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, and III.

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

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

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

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

### **Follow-up procedure**

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

100. 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.

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

102. 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.<sup>26</sup>

*[Adopted on 27 March 2023]*

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<sup>26</sup> Human Rights Council resolution 51/8, paras. 6 and 9.