



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, 25–29 August 2014****No. 38/2014 (Cameroon)****Communication addressed to the Government on 23 December 2013****Concerning Paul Eric Kingue****The Government replied to the communication on 13 March 2014.****The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 27 June 1984.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.
2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Paul Eric Kingue is a citizen of Cameroon. He is an environmental law consultant, and in 2007 was elected mayor of the commune of Njombé-Penja. He appears to have acquired a solid reputation thanks to his efforts to combat corruption in his locality.

4. On 28 February 2008, he was arrested in Njombé-Penja, in front of his home and the people of his commune, by the rapid response battalion, a branch of the army responsible for tackling organized crime, and the National Gendarmerie.

5. He was charged with “aiding and abetting gang looting and inciting rebellion” in the context of the riots that had taken place in the town of Njombé-Penja between 25 and 28 February 2008, and with “forgery” and “misappropriation of public property” in connection with his mayoral mandate. Following the arrest, several criminal proceedings were instituted against him in relation to six cases.

6. Without specifying the place of detention as from 28 February 2008, the source indicated that, from 19 March 2008, Mr. Kingue was detained in Nkongsamba main prison, before being transferred to Douala main prison on 9 November 2009.

7. On 19 January 2009, after the hearing on the charge of “aiding and abetting gang looting” had been postponed several times, Nkongsamba Regional Court sentenced Mr. Kingue to 6 years’ imprisonment and ordered him to pay 800 million CFA francs (CFAF) in damages to the Société des Plantations du Haut Penja and CFAF 4 million to Daniel Nsonga, who had brought a claim for damages in the riots case.

8. Then, on 29 February 2012, the same Nkongsamba Regional Court sentenced Mr. Kingue to life imprisonment for the alleged embezzlement of a total sum of CFAF 10 million during his term as mayor of the commune of Njombé-Penja. Three criminal charges were brought against Mr. Kingue in this case: embezzling funds intended for a water supply project in the commune of Njombé-Penja; hiring out a grader owned by his commune to the communes of Dibombari, Mbanga and Melong; and counterfeiting a fuel delivery. Mr. Kingue’s lawyers appealed the conviction.

9. On 26 March 2012, the Littoral Court of Appeal acquitted Mr. Kingue in the forgery case, in which the defendant’s lawyers had been appealing his conviction since 2008.

10. On 14 November 2012, the same Littoral Court of Appeal upheld his conviction for misappropriation of public property, but only for the amount of CFAF 3.46 million, and so reduced his sentence from life imprisonment to 10 years.

11. According to the source, the detention of Mr. Kingue is arbitrary because, at the end of a procedure riddled with violations of the right to defence, including the judicial guarantees as defined in article 9, paragraph 2, of the International Covenant on Civil and Political Rights, he was convicted without having been informed of the charges against him

or summoned to appear in accordance with articles 3, 40, 41 et seq. of the Cameroonian Code of Criminal Procedure.

12. Moreover, the source asserts that he was tried and sentenced without prior notification of the date of the hearing before the trial court, as required by article 415, paragraphs 1, 2 and 3, of the Cameroonian Code of Criminal Procedure, and without having been heard by the investigating judge, in violation of article 142, paragraph 1, of the Code of Criminal Procedure. The source notes that, worse still, his arrest and subsequent detention took place in the absence of an arrest warrant or detention order, in violation of articles 14, 18, 19, 29, 30, 82 (b), 170, paragraph 6, and 251 of the Code.

13. According to the source, when sentencing Mr. Kingue to life imprisonment on 29 February 2012, Nkongsamba Regional Court failed to issue a warrant of commitment or arrest. Moreover, the issuance of a warrant of commitment on 14 November 2012 was in violation of articles 3, 397 (1) and 457, of the Code of Criminal Procedure.

14. In light of the foregoing, the source maintains that the detention of Mr. Kingue is arbitrary since the offences with which he is charged fall within the competence of judges who are under political pressure to keep him in detention. The offences are unrecognized and thus unfounded, and the entire procedure leading to his conviction is based on violations of domestic and international law.

15. The source reports that Mr. Kingue appealed before the Supreme Court of Cameroon, which, although it is normally allowed only six months to issue a ruling and complete its jurisdiction, has still not passed judgement on the appeal.

16. Consequently, the source asserts that the detention of Mr. Kingue is arbitrary and falls under categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group.

Response from the Government

17. On 23 December 2013, the Working Group transmitted the information from the source to the Government, requesting the latter to provide, by return of post, all available information on the current situation of Mr. Kingue, and to clarify the legal grounds for his detention.

18. The Government replied on 13 March 2014. In its response, it presented the three proceedings against Mr. Kingue and summarized the procedural documents and the judgements and rulings rendered. It then contested the legal arguments put forward by the source, regarding judicial guarantees on the one hand and the right to a fair trial on the other.

Comments from the source

19. On 26 February 2014, the source spontaneously submitted additional elements to the Working Group, which did not consider it necessary to communicate the information to the Government as the material related only to legal arguments that were additional to those already developed by the source in the initial submission and transmitted to the Government in the communication of 23 December 2013.

20. Once the Government's reply had been received, the Working Group transmitted it to the source on 18 March 2014 for any additional comments.

21. The source submitted further observations in that regard on 14 April 2014.

Discussion

22. The Working Group was seized of the case on 2 October 2013. It transmitted the information received from the source to the Government on 23 December 2013. On 26 February 2014, the source submitted additional information that, in substance, repeated the legal arguments that had already been communicated to the Government. The Government replied on 13 March 2014, in other words three weeks after the deadline, with the effect that the Working Group is unable to take this reply into account. Nevertheless, although it will not consider the substance of the Government's reply, in the interests of justice, it will take account of the annexes, in which the Government provided procedural documents, including the judgements and rulings cited by the source. Having dismissed the Government's response, the Working Group considers that there is no reason to take account of reply submitted by the source. On account of the size and complexity of the case file, the Working Group was unable to conclude its deliberations at its sixty-ninth session, but it is now in a position to reach a conclusion.

23. Firstly, the Working Group wishes to recall that it is not a court of higher instance than national courts. It is, indeed, for this reason that its entitlement to jurisdiction is not conditional on the exhaustion of domestic remedies. Its mandate is specific and limited to arbitrary detention. As a result, the Working Group is concerned with the facts and the reasoning in domestic procedural documents only insofar as they are relevant to its mandate related to arbitrary detention, particularly in terms of the right to a fair trial.

24. The Working Group further recalls that the circumstances of this case are well known, namely the sociopolitical crisis that shook Cameroon in 2008 and led to rioting in various places, including the commune of Njombé-Penja, where Mr. Kingue had recently been elected mayor. It was during that period that Mr. Kingue was arrested by an apparently heavily armed military unit, with some shots even being fired. The Government's silence in this respect is nothing new, since it took the same attitude in another case, when the Special Rapporteur Leandro Despouy questioned it about related facts (A/HRC/11/41/Add.1, paras. 65 and 66). Consequently, the Working Group must give credence to the relevant facts reported by the source.

25. After being arrested through the use of extreme force, Mr. Kingue was detained from 28 February to 19 March 2008 without being brought before a judge. It can therefore be concluded that there was no legal basis justifying the first 20 days of Mr. Kingue's detention, which made it arbitrary under category I.

26. There followed three proceedings against Mr. Kingue and, for the sake of analytical clarity, the circumstances of each one should be assessed individually. In addition, it should be stressed that the facts as reported by the source are not contested.

27. The first case involves a charge of unlawful assembly and other obstructions on the public highway, gang looting and aggravated theft. In this case, a guilty verdict was delivered on 19 January 2009, sentencing Mr. Kingue to 6 years' imprisonment and ordering him to pay in excess of CFAF 800 million in damages. The ruling of 23 March 2011 upheld the conviction for aiding and abetting gang looting but reduced the sentence to 3 years' imprisonment and CFAF 100 million in damages. Mr. Kingue lodged an appeal in cassation. Since his arrest, however, the 3 years' imprisonment to which he had been sentenced would already have passed since, by the date of the Government's reply, the Supreme Court had still not ruled on the matter.

28. The second case involves a charge of misappropriation of public funds amounting to CFAF 1.4 million and forgery of an authentic public document. In the ruling delivered on 14 January 2011, Mr. Kingue was found guilty and sentenced to 10 years' imprisonment, but the judgement of 26 March 2012 acquitted him on all charges. The source contends that Mr. Kingue should receive compensation for these proceedings, even though the

Compensation Commission for Wrongful Detention approved in 2005 has still not been set up.

29. The third case also involves a charge of misappropriation of public funds amounting to around CFAF 10 million. A guilty verdict was handed down on 29 February 2012, sentencing Mr. Kingue to life imprisonment and ordering him to pay CFAF 10 million in damages. Following the appeal lodged by Mr. Kingue, the Court of Appeal upheld the conviction but reduced the sentence to 10 years' imprisonment and CFAF 3 million in damages. In reaching its decision, the Court of Appeal acknowledged certain procedural irregularities without addressing the issue of the right to a fair trial, which it was alleged had been violated. Instead, it simply re-evaluated the evidence, dismissing only parts of it (see pages 6 to 8 of the Littoral Court of Appeal ruling No. 68/CRIM of 14 November 2012). Once again, Mr. Kingue lodged an appeal in cassation before the Supreme Court and, on the date of the Government's reply, the case was still pending.

30. The Working Group is intrigued by the circumstances of the proceedings. Firstly, the Working Group notes that all the proceedings have been exceedingly lengthy, resulting in a violation of the defendant's right to be tried within a reasonable time, which is one element of the right to a fair trial. This violation was not taken into account by the Court of Appeal in its various rulings. Moreover, it is particularly difficult to understand why the two cassation appeals are still pending, despite the fact that the maximum sentence imposed on the defendant is 10 years and that he has already spent more than 6 years in prison. It is in violation of judicial guarantees and of the right to a fair trial for proceedings to have lasted for so long without Mr. Kingue having received definitive confirmation of the charges against him. Since it then becomes unnecessary to assess the arguments, however pertinent, based on the evidence in order to evaluate the domestic court rulings, the Working Group is of the view that these violations of the right to a fair trial render Mr. Kingue's detention arbitrary under category III.

31. Lastly, the Working Group recalls its opinion on communication No. 38/2013 concerning Cameroon, in which it had already received serious allegations of collusion between the executive and the judiciary. In the present case, similar allegations are made, against the backdrop of an allegation of persecution on the grounds of integrity. This is a critical situation which, if confirmed, would be conducive to many other violations and would result in impunity, which is contrary to the rule of law. The Working Group therefore considers that the case needs to be referred to the Special Rapporteur on the independence of judges and lawyers for all appropriate action.

Disposition

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

The deprivation of liberty of Paul Eric Kingue constitutes arbitrary detention and falls under categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group.

33. The Working Group therefore requests that the Government take whatever measures are necessary to put an end to this situation and to grant appropriate reparation to Mr. Kingue.

34. In conformity with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on the independence of judges and lawyers for all appropriate action.

[Adopted on 29 August 2014]