



# General Assembly

Distr.: General  
9 September 2019  
English  
Original: French

---

## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

#### Opinion No. 46/2019 concerning Mancho Bibixy Tse (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 30 November 2018, the Working Group transmitted a communication to the Government of Cameroon concerning Mancho Bibixy Tse. The Government replied to the communication on 14, 24, 28 and 29 January 2019. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language,

---

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



religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

### **Submissions**

#### *Communication from the source*

(a) Background

4. Mancho Bibixy Tse is a journalist with Abakwa FM, a radio station based in Bamenda, Cameroon.

5. According to the source, Mancho Bibixy Tse uses his programme to report on the rights of the English-speaking minority in Cameroon, often focusing on that community's economic and social marginalization. He has also worked closely with the Cameroon Anglophone Civil Society Consortium to document human rights violations in the north-west of the country.

(b) Arrest and detention

6. According to the source, Mancho Bibixy Tse was arrested at the home of a friend on 9 January 2017. Armed soldiers reportedly climbed the fence of the house and forced open two doors before arresting him. He was then taken away in a vehicle, wearing a hood, without shoes or an identity card. The source states that he was neither shown an arrest warrant nor informed of the reasons for his arrest.

7. The source believes that Mancho Bibixy Tse was arrested because of a public speech that he made in Bamenda in November 2016, during a demonstration accompanied by strikes staged by English speakers in the west of Cameroon. The purpose of this event was to denounce the marginalization of English-speaking Cameroonians. The uprising is known as the "coffin revolution" because Mancho Bibixy Tse gave his speech while standing in a coffin.

8. The source states that Mancho Bibixy Tse was held in detention for 18 months after his arrest, during which time he was formally charged before the Yaoundé military court in the presence of his lawyers.

9. Mancho Bibixy Tse is currently being held at Kondengui central prison, a maximum security facility in Yaoundé. He may communicate on an irregular basis with his family, subject to the prosecutor's authorization, and must pay a fee in order to do so. The source also states that Mancho Bibixy Tse is locked in a cell with 15 other inmates. His health has deteriorated and he suffers from back pain. He was also weakened by a hunger strike that he undertook in June 2017 in protest at his poor detention conditions.

(c) Trial and conviction

10. According to the source, Mancho Bibixy Tse's trial began on 1 February 2017 but the hearing was immediately adjourned. It points out that, during the trial, the hearings were postponed more than 14 times for a variety of reasons, including a request by the prosecutor for additional time to collect evidence, public holidays and the lack of judges.

11. According to the source, on 25 May 2018 the Yaoundé military court sentenced Mancho Bibixy Tse to 15 years in prison and a fine of 268 million CFA francs (€408,564). This sentence follows his conviction on 25 April 2018 for acts of terrorism, secession, spreading false information, revolution, insurrection, contempt for public bodies and officials, and hostility against the nation. However, he was reportedly acquitted of charges of rebellion, civil war, destruction of public property, looting, dissemination of false information by electronic means, non-possession of a national identity card and murder. The charges against him are based on Act No. 2014/028 of 23 December 2014 on the punishment of acts of terrorism and the Criminal Code.

## (d) Legal analysis

12. According to the source, Mancho Bibixy Tse, as a journalist, led peaceful demonstrations to demand respect for the rights of the English-speaking population. The source submits that, in the present case, the provisions guaranteeing the rights to personal freedom, freedom of expression, freedom of peaceful assembly, freedom of association and freedom of participation in public affairs, as well as the right to the presumption of innocence and to a fair trial, within a reasonable time, before an impartial, competent and independent civil court, have been violated.

13. First, the source submits that Mancho Bibixy Tse was tried and sentenced before a military court. It explains that military courts are sometimes used to prosecute civilians and determine their rights, allowing the executive branch to exercise control over normally independent judicial decision-making and enabling the use of procedures that deviate from the standards applied by ordinary civilian courts. The source also argues that exceptional circumstances are often cited as justification for the use of these military courts. However, it points out that international law prohibits the use of military courts to try civilians. The source argues that there is an international consensus that the practice of trying civilians in military courts violates the inviolable right to a fair trial by a competent, independent and impartial court in that it violates the rights guaranteed by instruments such as the Universal Declaration of Human Rights and the Covenant, as confirmed by the Human Rights Committee in its general comment No. 13 (1984) on the administration of justice and the Working Group in its report to the Human Rights Council in 2014 (A/HRC/27/48).

14. In addition, the source claims that military courts, being a division of the armed forces, are accountable to the Government rather than the judiciary, which is independent of the Government. There is no way to enforce the rights protected by international instruments, and no access to effective remedies in the event of violations, without access to competent, independent and impartial courts.

15. Secondly, the source argues that Mancho Bibixy Tse's arrest, detention, prosecution and sentencing violate international law in that they are based on his exercise of freedom of expression to trigger a public debate on practices and policies that marginalize and discriminate against the country's English-speaking minority.

16. The source recalls that international law sets out conditions that specifically concern the restriction of the right to freedom of expression. Thus, any restriction must be prescribed by law, aimed at protecting one of the values or fundamental interests identified as a legitimate ground for restriction, and necessary for the protection of that value or fundamental interest. Therefore, the court must consider interference in the right to freedom of expression in the light of the case as a whole, including the content of the contested statements and the context in which they were made.

17. According to the source, however, the charges brought against Mancho Bibixy Tse and his conviction create restrictions relating to: (a) the banning of discussions on issues of concern to minorities who have suffered historical discrimination; and (b) special protection against criticism aimed at officials, institutions, historical figures, and national or religious symbols. As such restrictions are contrary to international law, the prosecution and sentencing of Mancho Bibixy Tse violate national and international obligations to protect and guarantee the right to freedom of expression.

18. The detention of Mancho Bibixy Tse was the subject of a letter sent to the Government by the Working Group and several other special procedures mandate holders on 28 May 2018 (CMR 2/2018).<sup>1</sup> The Working Group takes note of the Government's response of 5 September 2018,<sup>2</sup> while noting that it has not specifically responded to the allegations concerning the arrest and detention of Mancho Bibixy Tse, who has now been deprived of his liberty for over two and a half years.

<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23790>.

<sup>2</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34357>.

*Response from the Government*

19. On 30 November 2018, the Working Group transmitted a communication concerning Mancho Bibixy Tse to the Government. In it, the Committee requested the State party to provide further information, no later than 29 January 2019, on the situation of Mancho Bibixy Tse since his arrest, including any comments that it might wish to make on the allegations contained in the communication. In particular, the Working Group requested the Government to clarify the facts and legal provisions justifying the deprivation of Mancho Bibixy Tse's liberty and the compatibility of that deprivation of liberty with the obligations of Cameroon under international human rights law. Furthermore, the Working Group called on the Government to ensure Mancho Bibixy Tse's physical and mental integrity. On 14, 24, 28 and 29 January 2019, the Government submitted its responses, which are summarized in the following paragraphs.

20. The Government argues that the communication sent to it is not in conformity with the principle of the exhaustion of domestic remedies or the principle of adversarial proceedings. With regard to the former, the Government states that the source has referred the matter to the Working Group (taking into account all the possible consequences that might result from such a step) while Mancho Bibixy Tse has not made normal use of the effective remedies available under domestic law. With regard to the latter, the Government states that it has not received certain documents or information submitted by the source.

21. The Government then contests the assertion that an English-speaking minority exists in Cameroon.

22. The Government points out that article 4 (1) of the Covenant contains a derogation clause that recognizes the State party's prerogative to assess the circumstances in question and substitute exceptional legality based on the State party's higher interests (defending democratic society or the life of the nation) for ordinary legality (safeguarding individual rights). The Government specifies that this provision does not make the use of the derogation clause subject to formal conditions (the State party's obligation, as a competent administrative body, to inform the Secretary-General of the United Nations) and/or material conditions, which would limit the ability of Cameroon to exercise discretion. In this regard, the Government argues that the legality of the decisions and actions of Cameroon, in the light of the security crisis in its North-Western and South-Western regions, cannot be challenged if it is established that their aim is to safeguard the life or existence of the nation.

23. The Government explains that Mancho Bibixy Tse was arrested on 18 January 2017 when he was working with two of the leaders of the Cameroon Anglophone Civil Society Consortium and that all three men instigated the violent demonstrations held on 21 November and 8 December 2016 in Bamenda. The Government claims that the demonstrations led by Mancho Bibixy Tse were unlawful under Act No. 90/55 of 19 December 1990 on assembly and public demonstrations and seriously jeopardized peace and public security. On 8 December 2016, for example, two demonstrators suffered fatal head injuries, one gendarme was killed by a homemade weapon and eight law enforcement officers and several civilians were wounded. The damage to property was no less significant. The Government submits that, given the threat to social order posed by Mancho Bibixy Tse, his arrest and detention are in compliance with article 9 of the Covenant.

24. Against this backdrop, the Government argues that Mancho Bibixy Tse lost his civilian status and acquired the status of a combatant by taking up arms against the army and acting as one of the main instigators and planners of the secessionist crisis. The Government points out that combatants do, however, benefit from the guarantees provided by international law. Mancho Bibixy Tse's status makes him subject to the jurisdiction of the military courts of Cameroon. Nevertheless, the Government points out that international humanitarian law does not apply because the situation is linked to the fight against terrorism in Cameroon.

25. The Government states that Mancho Bibixy Tse was remanded in custody on 20 January 2017. It argues that the deprivation of his liberty results from the existence, confirmed by the source's allegations, of plausible reasons, facts or information likely to persuade an objective observer that the individual in question may have committed the

offences with which he has been charged. The plausibility of these grounds is borne out by all the circumstances, especially by the unconstitutional and terroristic nature of the offences. The Government states that the background to this case must be taken into account when assessing the proportionality of the measures taken by the Cameroonian authorities. It then states that Mancho Bibixy Tse was prosecuted for complicity in acts of terrorism, incitement to civil war, revolution, the spreading of false news, hostility towards the nation, secession, insurrection, contempt for constituted bodies and officials, group rebellion and failure to hold a national identity card, acts punishable by articles 74, 97, 102, 111–114, 116, 154 and 158 of the Criminal Code, article 5 of Act No. 90-42 of 19 December 1990 establishing a national identity card, article 78 of Act No. 2010/012 of 21 December 2010 on cybersecurity and cybercrime in Cameroon and article 2 of Act No. 2014/028.

26. As the acts allegedly committed by Mancho Bibixy Tse constitute terrorism, the Government states that, pursuant to articles 4 and 8 of Act No. 2017/12 of 12 July 2017 on the Code of Military Justice, these offences fall under the jurisdiction of the military courts. The Government specifies that, in Cameroon, the military court is not an extraordinary court but a permanent institution. It is a court of special jurisdiction that applies the procedures laid down by ordinary law, draws on international humanitarian law and respects the principles of human rights. Therefore, contrary to the source's allegations, civilians may be tried before military courts inasmuch as the guarantees of a fair trial are upheld. Generally speaking, the procedures applicable in the military courts are the same as those applied under ordinary law. The Government states that all the procedural requirements were met in the Yaoundé military court's trial of Mancho Bibixy Tse. The source states that the trial started on 1 February 2017 but was postponed more than 14 times "for a variety of reasons". However, the Government claims that the hearings were postponed because of requests made by the defendant's lawyers.

27. With regard to the lawfulness of Mancho Bibixy Tse's arrest and detention, the Government claims that the procedures prescribed by law were respected and the relevant legislation is sufficiently precise. With regard to respecting the right to a fair trial, the Government submits that Mancho Bibixy Tse was duly informed of the evidence against him at the preliminary investigation stage. He was not held in police custody for longer than 48 hours. The lawfulness of the deprivation of liberty was overseen by a magistrate from the Yaoundé military court and Mancho Bibixy Tse was personally heard by a judge after the first decision ordering him to be remanded in custody, that is, immediately after his arrest. The judge thus verified the lawfulness of the detention on the basis of a twofold requirement: the existence of a reasonable suspicion that Mancho Bibixy Tse committed the offences mentioned, and the existence of relevant and sufficient grounds to support the deprivation of liberty. The Government therefore argues that the use of pretrial detention was justified and that the defendant was lawfully notified of it. With regard to the duration of the pretrial detention, the Government argues that it was reasonable to keep him in detention, taking into account the principle of the presumption of innocence, because there was a genuine public interest requirement and he benefited from periodic judicial review. Mancho Bibixy Tse's continued detention was in compliance with the rule that pretrial detention should be used only exceptionally, as it was justified by the fact that he was arrested and removed from his hiding place while he was making plans to leave the country. He was then brought before the Yaoundé military court in accordance with a trial order issued pursuant to article 12 of Act No. 2014/028.

28. Given that the trial before the Yaoundé military court (complex proceedings that initially involved 25 defendants) lasted around 17 months, the Government is of the view that Mancho Bibixy Tse was tried within a reasonable time. The Government points out that Mancho Bibixy Tse also benefited from the right to an interpreter.

29. The Government also states that the principle of adversarial proceedings was fully respected. As the source acknowledges, Mancho Bibixy Tse was assisted by lawyers throughout the proceedings. Some defences were taken into account by the court, which acquitted him of several charges, while one of his co-defendants was fully acquitted.

30. With regard to the right to freedom of expression and its restrictions, the Government submits that they are provided for in Act No. 90/55 and are applicable in this

case. On the one hand, the Government argues that Mancho Bibixy Tse was not arrested in the course of his work as a journalist since he was not acting as such during the demonstrations, i.e. as an observer who was gathering information and reporting on the facts. This assertion is supported by the source's allegations that Mancho Bibixy Tse participated in the November 2016 riots by delivering speeches. According to the Government, he acted as a rabble-rouser and instigator of a popular uprising. On the other hand, the Government submits that Mancho Bibixy Tse's speeches are based on intolerance and are intended to propagate, incite or justify hatred, discrimination and the use of violence. More specifically, the Government argues that Mancho Bibixy Tse used his radio show to insidiously manipulate public opinion in preparation for a secessionist uprising. It states that he reportedly broadcast messages steeped in xenophobia and hatred, in which French speakers and their Government were asked to leave the North-West and South-West regions, considered to comprise a state known as Ambazonia. His speech contained clear threats against people who did not share this point of view and for whom a bloodbath was promised.

31. The Government therefore considers that the restrictions on Mancho Bibixy Tse's freedom of expression are guided by the criteria of necessity and proportionality.

32. The Government also points out that the defendants created a climate of terror, particularly for prosecution witnesses. It argues that social media were used to make death threats against anyone who collaborated with the law. Some witnesses were identified by name, exposing them to the risk of reprisals.

33. With regard to Mancho Bibixy Tse's detention conditions, the Government reports that his rights are adequately protected in Kondengui central prison. Where overcrowding in cells is concerned, the Government argues that inmates are accommodated in facilities that the State is working to develop in accordance with the available resources. With regard to the right to visits, the procedure described in article 238 of the Code of Criminal Procedure is respected. With regard to the health of inmates, the prison administration has a health-care system that is linked to the national system. In this context, inmates' medical ailments are initially addressed within the prison and then outside it if the situation requires. Mancho Bibixy Tse has been provided with medical care in line with this procedure. His health is regularly monitored by the prison's medical team and by external practitioners, when necessary.

*Further information from the source*

34. After receiving a copy of the Government's response, the source submitted additional information on 5 and 13 February 2019.

35. According to the source, the Government has not acknowledged the grievances of the country's English-speaking minority. For this reason, English-speaking Cameroonians have been forced to make public demands for the changes needed to ensure equality. This situation led Mancho Bibixy Tse to exercise his right to participate in public demonstrations in order to promote the rights of English-speaking Cameroonians.

36. The source states that the Government does not deny that Mancho Bibixy Tse's arrest and detention were, in part, a response to the public speech that he made during the demonstrations on 21 November 2016. However, this speech was not an incitement to violence, insurrection or even secession. It was a political message calling for Cameroon to be reconstituted as a federation, with appropriate guarantees of equality for the English-speaking minority. The Government associates the dissemination of information on human rights violations and advocacy for redress with criminal acts and intentions. The source denies that Mancho Bibixy Tse resorted to violence, incited others to commit acts of violence, threatened to harm opponents or was responsible for deaths, injuries or the destruction of property.

37. The source recalls that Mancho Bibixy Tse was arrested on 9 January 2017, at which date English speakers had not engaged in violent acts. The armed struggle began after his arrest. The source also notes that defenders of the English-speaking minority who were arrested around the same time as Mancho Bibixy Tse were subsequently released. If, as the Government claims, it was necessary to arrest and detain the leaders of the English-

speaking minority in order to prevent a threat to Cameroonian civil society, it is difficult to understand why these defenders of the English-speaking minority were released. The fact that Mancho Bibixy Tse has not been released testifies to the arbitrary, discriminatory and political nature of his deprivation of liberty.

38. The source also contests the Government's claim that Mancho Bibixy Tse had not exhausted domestic remedies before the matter was brought before the Working Group. It recalls that the mandate of the Working Group does not require the exhaustion of domestic remedies as a precondition for considering deprivation of liberty. In any event, the domestic remedies that would have been made available by an independent civilian court are not provided for by the military court.

39. The source notes that Mancho Bibixy Tse allegedly participated in a demonstration that was not authorized under article 3 of Act No. 90/55. However, article 21 of the Covenant requires the Government to recognize the right to peaceful assembly and prohibits restrictions other than those set out in that article. The State party may require notification of a protest but may not require prior authorization or ban protests or assemblies that have not been authorized. The purpose of the notification is to enable the State party's officials to make the meeting possible. Failure to provide such notification may not result in sanctions for the participants. The Government refers to internal restrictions on the location of debates, meetings and protests. These restrictions are incompatible with the freedoms of expression and assembly. Although demonstrations may disrupt daily life, the State party must show tolerance and consider them as equally legitimate uses of public space.

40. The source also points out that the trial of Mancho Bibixy Tse took place before a military court, which constitutes a derogation from the right to a fair trial. In addition, the Government notes in its responses that ministerial authorities, overseen by the President, may terminate proceedings before a military court when the social interest or public peace is allegedly being jeopardized. The possibility that the proceedings might be subject to political interference shows that military courts are neither independent nor impartial. In addition, the trial of Mancho Bibixy Tse was significantly delayed. The Government suggests, without evidence, that the delay was partly caused by him but it has not explained the full extent of the delay or the reasons for continued postponement. Mancho Bibixy Tse clearly had no control over many of these delays. The adjournments may have been requested by the defence when the prosecution made a late disclosure and time was required to review it.

41. The source submits that the vague and overly broad accusations that led to Mancho Bibixy Tse's conviction do not respect the principle of legality and cannot justify his deprivation of liberty. The principle of legality requires a clear definition of criminal conduct that sets out the elements of that conduct and allows it to be distinguished from non-criminal conduct or unlawful acts punishable by non-criminal measures.

42. Lastly, the source argues that the sentence handed down in this case is disproportionately harsh. The provisions of Act No. 2014/028 and the Criminal Code that resulted in a 15-year prison sentence and over €400,000 euros in damages are neither necessary to protect the alleged public or private interests against injury nor proportionate to guilt. The source notes that the Government makes accusations against Mancho Bibixy Tse without providing any evidence that he committed a criminal act. It also notes that there is no evidence that the persons called to testify against Mancho Bibixy Tse did not do so out of fear of reprisals.

## Discussion

43. The Working Group thanks the source and the Government for their timely submissions.<sup>3</sup>

<sup>3</sup> The Working Group has taken into account the arguments provided by the Government in its four responses. Owing to the word limit, however, it cannot repeat all of them, especially those that appear several times in the responses.

*Preliminary considerations*

44. The Working Group takes note of the procedural issues raised by the Government and wishes to address them before considering the merits of the case. The Government argues that the communication transmitted by the Working Group is inadmissible because Mancho Bibixy Tse did not exhaust domestic remedies before bringing the matter before the Working Group. The Working Group has already considered this issue, noting that its methods of work contain the rules of procedure governing the examination of communications on alleged cases of arbitrary detention. No provision in the methods of work prevents the Working Group from considering communications in cases where domestic remedies have not been exhausted. Consequently, complainants are not required to exhaust domestic remedies for a communication to be considered admissible.<sup>4</sup>

45. The Government also maintains that the communication does not comply with the principle of adversarial proceedings. In other words, it claims not to have received any copies of the documents or information provided by the source that might serve as a basis for the communication. The Working Group emphasizes that, when considering communications under its regular procedure, it strictly adheres to the requirements of its methods of work. In the present case, the information provided by the source met the requirements set out in paragraphs 9 to 12 of the methods of work. This information was then transmitted to the Government in accordance with paragraphs 15 and 16 of the methods of work. The Working Group notes that the Government has had the opportunity to respond to the source's allegations and that it has done so in four separate responses to the communication and in numerous annexes. It is often the Government, rather than the source, that has access to documents such as warrants, evidence used to arrest, detain and convict a person, and other documents in the case file.<sup>5</sup> The Working Group also wishes to emphasize that it has considered only the information made available to the Government in a comprehensive and fair manner.

46. As a final preliminary issue, the Working Group notes the Government's argument that, pursuant to article 4 (1) of the Covenant, the State party is authorized to suspend the enjoyment and exercise of rights in time of war or exceptional public emergency threatening the life of the nation. According to the Government, this provision grants Cameroon the prerogative to assess the circumstances and substitute exceptional legality, based on the higher interests of the country, for the protection of individual rights. This provision of the Covenant does not require the use of a derogation by a State party to be subject to formal conditions, such as the obligation to inform the Secretary-General of the United Nations. Consequently, the Government stresses that the decisions and actions that it took to deal with the security crisis in the North-West and South-West regions were lawful as they were aimed at safeguarding the life or existence of the nation.

47. Even if it can be supposed that the two preconditions set out in article 4 (1) of the Covenant have been met (namely, that the situation in Cameroon constitutes an exceptional public danger that threatens the life of the nation and that the State has officially proclaimed a state of emergency), the Working Group does not consider this provision to be applicable in the present case. It cannot respectfully agree with the Government's position that no formality is required to make a derogation under article 4 of the Covenant.<sup>6</sup> In this regard, the Working Group refers the Government to the position of the Human Rights Committee.<sup>7</sup>

48. In the discharge of its mandate, the Working Group is empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal Declaration of Human Rights, and to customary international law, and is not restricted to considering the rights set out in the Covenant. Even if a derogation had been

<sup>4</sup> E/CN.4/1993/24, p. 10 and 11, paras. 3–8. See also opinions No. 78/2018, 44/2018, 43/2018, 42/2018, 11/2018, 41/2017, 38/2017, 19/2013 and 11/2000.

<sup>5</sup> Opinion No. 41/2013, paras. 27–28.

<sup>6</sup> The Government does not make any reference to the formal notification of a derogation.

<sup>7</sup> General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 17.



made under article 4 of the Covenant (and this does not appear to be the case), the Working Group may assess Mancho Bibixy Tse's allegations in the light of other applicable international standards. In the present case, articles 9 and 14 of the Covenant are the provisions that are most relevant to the alleged arbitrary detention of Mancho Bibixy Tse. As the Human Rights Committee has indicated, States parties that derogate from articles 9 and 14 of the Covenant must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.<sup>8</sup> In addition, deviating from fundamental principles of fair trial is prohibited at all times.<sup>9</sup> The Working Group also wishes to stress that human rights must be fully respected, including when action is being taken to combat terrorism and in times of armed conflict.<sup>10</sup>

### *Merits*

49. In determining whether Mancho Bibixy Tse's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for a breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>11</sup>

50. The Working Group wishes to reaffirm that the Government has an obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty must be made and implemented in compliance with the relevant international provisions set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.<sup>12</sup> Consequently, even if the detention is in conformity with national legislation and national practices, the Working Group must assess whether such detention is also consistent with the relevant provisions of international human rights law.<sup>13</sup> The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.<sup>14</sup>

51. The source states that Mancho Bibixy Tse was arrested on 9 January 2017<sup>15</sup> without a warrant and that he was not informed of the reasons for his arrest. The Government has not denied these allegations.<sup>16</sup> Although the Government provided many documents relating to Mancho Bibixy Tse's initial detention, it did not provide a copy of an arrest warrant. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Pursuant to article 9 (2) of the Covenant, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest. The Working Group finds that Mancho Bibixy Tse was

<sup>8</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6. General comment No. 35 (2014) on liberty and security of person, para. 65.

<sup>9</sup> General comment No. 32 (2007) of the Human Rights Committee, para. 6.

<sup>10</sup> A/HRC/10/21, paras. 50–55.

<sup>11</sup> A/HRC/19/57, para. 68.

<sup>12</sup> General Assembly resolution 72/180, preambular para. 5; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9.

<sup>13</sup> Opinions No. 4/2019, para. 46; 10/2018, para. 39; 3/2018, para. 39; 94/2017, para. 47; 79/2017, para. 51; 76/2017, para. 49; 58/2017, para. 35; 27/2017, para. 33; 48/2016, para. 41; 28/2015, para. 41; and No. 41/2014, para. 24.

<sup>14</sup> Opinions No. 94/2017, para. 48; 88/2017, para. 24; 83/2017, para. 60; 76/2017, para. 50; and 33/2015, para. 80.

<sup>15</sup> In its response of 28 January 2019, the Government stated that the arrest took place on 29 January 2017. In its response of 29 January 2019, it stated that the date of the arrest was 18 January 2017.

<sup>16</sup> In its response of 14 January 2019, the Government refers to the right to be informed of the reasons for arrest but does not indicate that Mancho Bibixy Tse enjoyed this right at all times. Similarly, in its reply of 29 January 2019, the Government states that Mancho Bibixy Tse was informed of the reasons for his arrest during the preliminary investigation but does not specify whether he was so informed at the time of his arrest (para. 26).

arrested without an arrest warrant and without being informed of the reasons for his arrest, in violation of article 9 (1) and (2) of the Covenant. In order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>17</sup> In addition, as the Working Group has already pointed out, an arrest is arbitrary when it is made without the arrested person being informed of the reasons for the arrest.<sup>18</sup>

52. The Government claims that all appropriate procedures were followed to ensure Mancho Bibixy Tse's right to have the legality of his pretrial detention reviewed. In that regard, (a) a prompt review of the detention was conducted; (b) he was not held in police custody for longer than the prescribed period of 48 hours; (c) he enjoyed an automatic right of appeal that did not depend on his submitting a request for review; and (d) an independent and impartial review was carried out by a judge of the Yaoundé military court, who concluded that the pretrial detention was lawful as reasonable suspicion existed that Mancho Bibixy Tse had committed the alleged offences. The Government provided several documents to support these comments.<sup>19</sup>

53. Article 9 (3) of the Covenant provides that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." For the reasons set out below, the Working Group cannot, with all due respect, agree that the review of Mancho Bibixy Tse's detention by a judge of the Yaoundé military court satisfies the requirement for a "judge or other officer authorized by law". Mancho Bibixy Tse is a civilian<sup>20</sup> whose pretrial detention was reviewed by a military court in violation of article 9 (3) of the Covenant. The trial of civilians by military courts, and decisions taken by military courts that place civilians in pretrial detention, are in violation of the Covenant and customary international law, as shown by the jurisprudence of the Working Group.<sup>21</sup>

54. The Working Group also refers to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, which provide that military courts are not competent to review the arbitrariness and lawfulness of the detention of civilians and that military judges and military prosecutors do not meet the fundamental requirements of independence and impartiality.<sup>22</sup>

55. The Working Group considers that judicial oversight of deprivation of liberty, as a fundamental safeguard of personal liberty,<sup>23</sup> is essential in ensuring that detention has a legal basis. In this case, such oversight by an independent judicial authority is lacking. Consequently, Mancho Bibixy Tse's right to an effective remedy, under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant, has also been violated.

<sup>17</sup> Opinions No. 46/2018, para. 48; 36/2018, para. 40; 10/2018, para. 45; 38/2013, para. 23.

<sup>18</sup> See, for example, opinion No. 10/2015, para. 34.

<sup>19</sup> The documents provided by the Government include a remand warrant dated 20 January 2017, issued by the Yaoundé military court, which orders Mancho Bibixy Tse to be held in detention for 6 months, and an order dated 19 July 2017 extending his detention for a further 12 months. Contrary to the order of 19 July 2017, the remand warrant did not provide any justification for the detention of Mancho Bibixy Tse. It is therefore doubtful that this detention was duly justified. Both documents were signed by the "*colonel-magistrat*" (colonel-judge).

<sup>20</sup> In its response of 14 January 2019, the Government appears to argue that Mancho Bibixy Tse is not a civilian (p. 10). In its reply of 29 January 2019, however, it appears to maintain that he has retained his status as a civilian tried by a military court (p. 5).

<sup>21</sup> A/HRC/27/48, para. 66. See also general comment No. 35 (2014) of the Human Rights Committee, para. 32.

<sup>22</sup> A/HRC/30/37, paras. 55 and 93–96. See also opinion No. 46/2017, para. 20.

<sup>23</sup> See A/HRC/30/37, para. 3.

56. For these reasons, the Working Group considers that the Government has not established a legal basis for the arrest and detention of Mancho Bibixy Tse. His deprivation of liberty is therefore arbitrary under category I.

57. The source states that Mancho Bibixy Tse's arrest, detention, prosecution and sentencing were based solely on his legitimate work as a journalist and his activism in support of English speakers' rights in Cameroon. Mancho Bibixy Tse peacefully exercised his rights to freedom of opinion and expression, freedom of peaceful assembly and association, and freedom to take part in the government of his country under articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 (a) of the Covenant.

58. According to the source, Mancho Bibixy Tse protested peacefully against the marginalization of the English-speaking minority community. The speech that he gave on 21 November 2016 was not an incitement to violence, insurgency or secession. It was a political message calling for Cameroon to be reconstituted as a federation, with appropriate guarantees of equality for the English-speaking minority. The source stresses that Mancho Bibixy Tse has not engaged in violent or unlawful acts and has not encouraged anyone to carry out such acts. He was arrested at a time when no acts of violence were being committed by English speakers; the armed struggle began long after his arrest.

59. However, the Government claims that Mancho Bibixy Tse was one of the leaders and planners behind the secessionist armed groups engaging in terrorism in the North-West and South-West regions. According to the Government, these extremists have created a climate of fear and tension by spreading messages of hatred and xenophobia and inciting people to violence. The Government states that Mancho Bibixy Tse sparked the violent street riots that took place in Bamenda in November 2016. The calls for war that he issued on social media, and in his "coffin revolution", speeches are not the activities of a journalist. Rather, they reveal him to be a member and supporter of the Cameroon Anglophone Civil Society Consortium, which seeks to undermine the security of the State, its territorial integrity and national unity. The Government provides details of the violence that occurred on 8 December 2016, allegedly as a result of Mancho Bibixy Tse's actions.

60. The Working Group has considered the information provided by both parties, in particular the different interpretations of Mancho Bibixy Tse's conduct. Although the source has presented strong *prima facie* evidence that Mancho Bibixy Tse is in detention for exercising his rights, the Government has presented convincing evidence that the restrictions on the exercise of these rights that are permitted under the Covenant may be applicable.<sup>24</sup> Similarly, the Working Group notes the source's observation that Mancho Bibixy Tse remains in detention while other defenders of the English-speaking community who were detained at the same time as him have been released. In that regard, it is difficult to reconcile this difference in treatment with a real threat to national security. Given that the two parties present contradictory accounts of the threat posed by Mancho Bibixy Tse, the Working Group does not have sufficient information to determine whether the detention in this case is based on discriminatory grounds. Accordingly, the Working Group is not convinced that Mancho Bibixy Tse's deprivation of liberty is arbitrary under category II and V.

61. The source claims that there have been serious violations of the right to a fair trial. It states that Mancho Bibixy Tse was detained for 18 months after his arrest.<sup>25</sup> His trial began on 1 February 2017 but the hearing was immediately adjourned and postponed more than 14 times for a variety of reasons, including a request by the prosecutor for additional time to collect evidence, public holidays and the lack of judges. The source notes that the Government has not fully explained the extent of the delay or the reasons for the continued

<sup>24</sup> This evidence includes messages published on Mancho Bibixy Tse's social media accounts in November 2016 and January 2017 (before his arrest) as well as the Yaoundé military court's judgment of 25 May 2018.

<sup>25</sup> This period appears to have lasted about 16 months. The source states that Mancho Bibixy Tse was arrested on 9 January 2017. His trial began on 1 February 2017 but was adjourned several times. He was then convicted on 25 April 2018 and sentenced on 25 May 2018.

adjournments. Several of these adjournments were not caused by Mancho Bibixy Tse and some may have been requested by the defence when the prosecution made a late disclosure and time was required to review it.

62. In its response, the Government claims that Mancho Bibixy Tse enjoyed his right to be tried within a reasonable time or released. The decision to keep him in detention was justifiable as reasonable suspicion existed that he committed the alleged offences and the legality of the decision to keep him in pretrial detention was sufficiently well founded. As this case involved complex charges against 25 defendants, a period of 17 months was not unreasonable. In addition, the Government alleges that the defence was responsible for some of the adjournments.

63. Pursuant to articles 9 (3) and 14 (3) (c) of the Covenant, a defendant in criminal proceedings is entitled to a trial within a reasonable time and without undue delay. As the Human Rights Committee has indicated, the reasonableness of any delay in bringing a case to trial must be assessed in the light of the circumstances of each case, taking into account its complexity, the conduct of the defendant and the manner in which the authorities have handled the case.<sup>26</sup> In the present case, the Working Group is not in a position to conclude that the period between Mancho Bibixy Tse's arrest in January 2017, his conviction in April 2018 and his sentencing in May 2018 were unreasonable for a case involving several serious charges and several defendants.

64. The source claims that Mancho Bibixy Tse's trial before the Yaoundé military court violated his right to a fair trial before a competent, independent and impartial court, provided for in article 14 (1) of the Covenant. It also claims that military courts are a division of the armed forces and are therefore accountable to the executive branch rather than the judiciary, which is independent of the Government.

65. The Government states that, in Cameroon, military courts are not extraordinary courts but permanent institutions. They are courts of special jurisdiction that apply the procedures laid down by ordinary law, draw on international humanitarian law and fully respect the principles of human rights. According to the Government, appeals may be made to the Supreme Court of Cameroon. The existence of military justice is not unique to Cameroon as military courts are found in most States. However, the organization and functioning of the military courts in Cameroon are such that civilians are guaranteed to receive a fair trial. The Government has provided a copy of the rules of procedure of the military courts. It has also provided examples demonstrating that Mancho Bibixy Tse was given a fair trial, noting that he had been acquitted of certain offences by the Yaoundé military court and that one of his co-defendants had been fully acquitted. Military judges are trained in the same institutions as their civilian counterparts.

66. The Working Group considers that military courts have jurisdiction to try only military personnel for military offences and that they must not try civilians under any circumstances, irrespective of the charges brought. As the Working Group has consistently stated in its jurisprudence, a court composed of military personnel, such as that which tried Mancho Bibixy Tse,<sup>27</sup> cannot be considered "a competent, independent and impartial tribunal", as required by international human rights law.<sup>28,29</sup> In addition, the Working Group is of the view that military courts should never have jurisdiction to impose the death

<sup>26</sup> General comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35.

<sup>27</sup> The Government has provided a copy of the Yaoundé military court's decision of 25 May 2018, which states that the members of the court have the military ranks of "colonel-judge", "lieutenant/colonel" and "captain".

<sup>28</sup> A/HRC/27/48, paras. 66–71, 85 and 86. See also, for example, opinions No. 4/2019, para. 58; 73/2018, para. 61; 3/2018, para. 57; 56/2017, para. 58; 51/2017, para. 43; 51/2016, para. 26; 44/2016, para. 32; 15/2016, para. 25; and 6/2012, para. 45. See also the African Commission on Human and Peoples' Rights, Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, part 4 (B).

<sup>29</sup> During Cameroon's third universal periodic review in May 2018, some delegations expressed similar concerns about the trying of civilians before military courts (A/HRC/39/15, paras. 121.96 and 121.108).

penalty.<sup>30</sup> In the case at hand, some of the charges brought against Mancho Bibixy Tse were likely to result in such a penalty.

67. Although the Government has identified several guarantees of a fair trial that were respected in this case, it is clear from its response that Cameroon's military courts are subject to executive interference. The Government stated in its responses that the ministerial authorities, overseen by the President, may terminate proceedings before a military court when the social interest or public peace is allegedly being compromised.<sup>31</sup> The possibility that proceedings may be subject to political interference provides a strong indication that military courts lack independence and impartiality. In the present case, Mancho Bibixy Tse's trial before a military court constitutes a serious violation of his right to a fair trial before an independent and impartial court, pursuant to article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. The Working Group has decided to refer this case to the Special Rapporteur on the independence of judges and lawyers.

68. Lastly, the source claims that Mancho Bibixy Tse does not have regular access to his family. He may receive visits only with the prior authorization of the prosecutor and visitors must pay for the right to visit. In its response, the Government states that the regulations governing visits, which provide that visits may take place with the authorization of the prosecutor,<sup>32</sup> are set out in article 238 of the Code of Criminal Procedure and have been respected in this case. The Working Group notes that the Government has not denied that a fee must be paid to visit Mancho Bibixy Tse. The Working Group wishes to stress that visits by family members or other persons should not be subject to any charge. The fact that it is permissible under Cameroonian law to charge a payment for the right to visit a person in prison does not make such payments acceptable under international law. Consequently, the Working Group concludes that Mancho Bibixy Tse is denied the right to have contact with the outside world, in violation of rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

69. For these reasons, the Working Group concludes that the violations of the right to a fair trial were of such gravity as to give the deprivation of liberty of Mancho Bibixy Tse an arbitrary character under category III.

70. The Working Group wishes to express its serious concern about Mancho Bibixy Tse's health. According to the source, he is currently being held in Kondengui central prison, where he is confined to a cell with 15 other inmates. His health has deteriorated and he suffers from back pain. He was weakened by a hunger strike that he undertook in June 2017 in protest at his poor detention conditions. In its response, the Government states that inmates are accommodated in facilities that the State is striving to develop in accordance with the available resources. In addition, the prison administration has a health system linked to the national system and medical care is provided first within the prison and then outside it, if necessary. Mancho Bibixy Tse's state of health is regularly monitored by the prison's medical team and by external practitioners, where required. In particular, the Government does not deny the overcrowded conditions in which Mancho Bibixy Tse is being held. Given that he has been arbitrarily detained in such conditions for over two and a half years, the Working Group urges the Government to release him immediately.

71. Lastly, the Working Group would welcome the opportunity to visit Cameroon in order to assist the Government in its efforts to combat the arbitrary deprivation of liberty. On 24 January 2017, the Working Group submitted a written request to the Government for a country visit, which, if accepted, would allow the Working Group to visit Cameroon for the first time. 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. Noting that

<sup>30</sup> A/HRC/27/48, para. 69 (e). See also CCPR/C/CMR/CO/5, paras. 11, 12, 23, 24, 37 and 38; and CAT/C/CMR/CO/5, paras. 19, 20, 27 and 28.

<sup>31</sup> Government's response to the communication of 14 January 2019, p. 27 and 28.

<sup>32</sup> CCPR/C/CMR/CO/5, paras. 29 and 30.

the Government issued a standing invitation to all special procedure mandate holders on 15 September 2014, the Working Group looks forward to receiving a positive response to its request for a visit.

### **Disposition**

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

The deprivation of liberty of Mancho Bibixy Tse, being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 2, 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

73. The Working Group requests the Government of Cameroon to take the steps necessary to remedy the situation of Mancho Bibixy Tse 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 International Covenant on Civil and Political Rights.

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

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

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

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

### **Follow-up procedure**

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

79. 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.

80. 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.

81. 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>33</sup>

*[Adopted on 15 August 2019]*

---

---

<sup>33</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.