INDIVIDUAL CASE PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Ms Miriam Estrada-Castillo (Ecuador)
Vice-Chair: Mr. Mumba Malila (Zambia)
Ms. Priya Gopalan (Malaysia)
Mr. Mathew Gillett (New Zealand)
Dr. Ganna Yudkivska (Ukraine)

In the Matter of
Abdoul Aziz Goma,
Citizen of the Republic of Ireland

v.

Government of the Togolese Republic


Submitted by:
Joshua Newcomer
Saif Askar
McKool Smith, PC
600 Travis St.
Suite 7000
Houston, TX 77401
United States of America
+1 (713) 485-7316 (tel)
+1 (713) 485-7344 (fax)
jnewcomer@mckoolsmith.com
saskar@mckoolsmith.com

Maran Turner
Adam Lhedmat
Freedom Now
1750 K Street NW
7th Floor
Washington, DC 20006
United States of America
+1 (202) 223-3733 (tel)
+1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

March 3, 2023

1 Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]… all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights…” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 24/7, and 33/30.
IDENTITY

Family Name: Goma
First Name: Abdoul Aziz
Sex: Male
Age at the Time of Detention: 48
Nationality: Ireland
Identity document (if any): Irish Passport
   (i) Place of Issue: Ireland
   (ii) On (date): October 12, 2018
   (iii) No.: 

Profession and/or activity (if believed to be relevant to the arrest/detention): Mr. Goma is businessman.

Address of usual residence: Ireland / United Kingdom

ARREST

Date of arrest: December 21, 2018.
Place of arrest (as detailed as possible): Mr. Goma was arrested on Boulevard de la Kara in Lomé, Togo.
Did they show a warrant or other decision by a public authority? No
Authority who issued the warrant or decision: None

Relevant legislation applied (if known): No legislation was cited at the time of arrest. Ten days later, on December 31, 2018, Mr. Goma was informed that he was being accused of aggravated disturbance of public order, willful destruction of public property, criminal conspiracy, and undermining the internal security of the State.

DETENTION

Date of detention: Mr. Goma has been detained since his arrest on December 21, 2018.
Duration of detention (if not known, probable duration): Mr. Goma remains detained, and his detention has lasted for more than four years as of the date of this communication (1,533 days).

Forces holding the detainee under custody: Service Centrale de Recherches et d’Investigation Criminelles (S.C.R.I.C.); Special Intervention Unit of the Gendarmerie (U.S.I.G); Government of the Togolese Republic.

Places of detention (indicate any transfer and present place of detention): Mr. Goma has been detained at the secret prison of the S.C.R.I.C., the Brigade des Recherches Anti-gang, the Gendarmerie Nationale, and, since January 20, 2022, the Civil Prison of Lomé.

Authorities that ordered the detention: S.C.R.I.C.; Gendarmerie Nationale; Government of the Togolese Republic.

Reasons for the detention imputed by the authorities: Mr. Goma was not informed of the charges against him until December 31, 2018. Those charges included aggravated disturbance of public order, willful destruction of public property, criminal conspiracy, and undermining the internal security of the State.

Relevant legislation applied (if known): On February 24, 2022, the Government of Togo cited Articles 48, 49, 495, 549, 663, and 695 of the New Penal Code of Togo as the reason for his arrest and detention.

DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

Abdoul Aziz Goma was arrested in Lomé, Togo, on December 21, 2018 while visiting the country. He was not informed of the reasons for his arrest, was beaten and tortured, and has been imprisoned, without trial, ever since. As a result, his health has deteriorated irreparably. Part 1 of the Statement of Facts provides background information on the current human rights context in Togo, which illustrates the U.N. Human Rights Council’s concerns over Togo’s Human Rights abuses. Part 2 of the Statement of Facts details the circumstances surrounding the arrest and continuing detention of Mr. Goma.

1. Relevant Social, Legal, and Political Context in Togo

Togo is a constitutional democracy, but has in recent years engaged in crackdowns against the political opposition for the exercise of fundamental freedoms like speech, association, and assembly. Multiple international human rights monitors have found that critics and dissidents in Togo frequently face harassment, criminal penalties, and imprisonment for publicly challenging government policies and practices.2 Emblematic of these concerns is Togo’s crackdown of

---

political opposition since 2017. The Committee for the Liberation of All Political Prisoners in Togo has stated that there were more than 100 political prisoners. These persons did not receive the same protections given to other prisoners, and human rights and humanitarian organizations did not have access to them.\(^3\) Although Mr. Goma was not politically active, his arrest and detention were part of the same crackdown.

The UN Human Rights Committee (“UNHRC”) in its most recent periodic report on Togo expressed serious concern at the government’s excessive use of pre-trial detention and the significant number of persons subjected to prolonged and arbitrary detention.\(^4\) More than half of the prison population in Togo is currently being held in pre-trial detention. Individuals can go years in preventive detention without trial. “Despite legal rules, quite a few prisoners had been held in preventive detention for several years—some of them for periods longer than the sentences would have required had the concerned individuals been found guilty—and had not been compensated.”\(^5\) The UNHRC recommended that the Government amend criminal code provisions to ensure that all persons who are arrested or detained to petition a court for it to rule, in a timely manner, on the legality of the detention and order their release should the detention be found to be illegal.\(^6\)

Moreover, prison conditions in Togo are harsh and overcrowded. Prison conditions “remained harsh and potentially life threatening due to serious overcrowding, poor sanitation, disease, and insufficient and unhealthy food.”\(^7\) “Medical facilities, food, sanitation, ventilation, and lighting were inadequate. Prisoners did not have access to potable water, and disease was widespread.”\(^8\) The UNHRC has specifically expressed the need for Togo to consider alternatives to pre-trial detention to alleviate the overcrowding and harsh prison conditions.\(^9\) Furthermore, the UN Committee Against Torture has specifically recommended that Togo close Civil Prison of Lomé (where Mr. Goma is currently being detained) definitively and without delay.\(^10\)

---

\(^3\) As of June 2021, the national prison occupancy rate was 171 per cent. Pretrial detainees accounted for 58.79 per cent of the prison population. \(Id.\)


\(^7\) U.S. State Dep’t Country Report – Togo 2021, supra note 2.

\(^8\) Id.

\(^9\) Fifth Periodic Report, supra note 6.

2. The Detention of Abdoul Aziz Goma

a. Mr. Goma’s background

Abdoul Aziz Goma is a 52-year-old Irish national of Togolese origin. He lived in Ireland and the United Kingdom and made regular business visits to Togo. Mr. Goma is a businessperson by profession. As part of his business activities, he travelled from Manchester, England to Lomé, Togo on November 9, 2018, following a shipment of goods that he was conveying from Manchester.

Because Mr. Goma had only paid part of the amount due on the shipment of goods, he made a trip to the interior of Togo with the intention of asking his friend, Baba Yara Affo, to assist him financially so that he could pay the rest of the loading and transportation costs of his cargo. The shipment was due to arrive on December 21, 2018. Mr. Goma was able to meet his friend and subsequently returned to Lomé to facilitate the sale of his goods.

After returning to Lomé, Mr. Goma lived with his driver, Kevin, and his guide, Karrou Wawim.

b. Mr. Goma’s pre-arrest activities

On December 19, 2018, Mr. Goma received an unexpected call from a friend residing in Accra, Ghana. This friend asked Mr. Goma for assistance in helping eight young people who had traveled from Accra to Lomé. Mr. Goma did not know any of these individuals. These young people were unable to contact a man, named Mr. Kabila, who had invited them to Lomé. Mr. Goma did not know Mr. Kabila. The young people had no money or place to stay. Mr. Goma decided to help the young people and contacted his friend, Yaya Soulemane, who agreed to take them in. Mr. Goma learned that they were originally from Togo and were in Lomé to participate in a peaceful protest march surrounding the then-upcoming elections in Togo.
Mr. Goma provided the young people 50,000 CFA Francs to assist them in their return to Ghana the next morning. The next day, December 20, 2018, the borders were closed because of the elections, so the young people were unable to return home. As a result, they returned to the place where they were staying and spent the whole day there. The planned peaceful march in Lomé never took place due to the Government’s systemic crackdown on peaceful political opposition.

In the evening of December 20, the young people finally managed to get in touch with Mr. Kabila, the man who had invited them to Lomé. Mr. Kabila asked to see Mr. Goma to thank him for the help he had given the young people. Mr. Goma went to meet Mr. Kabila at the place where the young people were staying, and Mr. Kabila expressed his gratitude. Mr. Kabila rehoused the young people in another hotel. Following this interaction, Mr. Goma parted ways from the individuals and Mr. Kabila and had no further communication with them.

Although at one time the Government alleged that a different contact of the young people that Mr. Goma assisted was found with Molotov cocktails, neither Mr. Goma nor the authors of this petition have seen any evidence supporting such allegations or any evidence that the protest march were intended to be anything other than peaceful.

c. **Mr. Goma is arrested and tortured.**

On December 21, 2018 at around 19:00, Mr. Goma and his companions, Mr. Wawim, Kevin, and a woman named Rebecca, met at a bar and went to dinner at a restaurant named Camillo, located at Boulevard du 13 Janvier. After dinner, the group headed back to the city.

When they arrived in front of the Gbossimé pharmacy on Boulevard de la Kara, where they were supposed to drop off Rebecca, a group of armed men in plain clothes surrounded them. The group of armed men assaulted and then handcuffed Mr. Goma and his companions. They gave no reason or warrant for the arrests. During the arrest and initial detention, the armed men physically assaulted Mr. Goma and his companions by kicking them, beating them with truncheons
and batons, stomping on their hands, feet, arms, legs, necks, and heads, and threatening to shoot them.\footnote{2020-09-26 Goma Declaration, pg. 2; 2021-06-14 Complaint of Torture by Goma, pg. 2.}

Following the assault, the armed men handcuffed Mr. Goma and his companions and transferred Mr. Goma and his companions to the headquarters of the judicial police (S.C.R.I.C.), where it was revealed that their attackers were members of the Special Intervention Unit of the Gendarmerie (U.S.I.G.).\footnote{Id.}

Mr. Goma and his companions remained detained at the S.C.R.I.C. where they were again physically assaulted, handcuffed against trees and cars, exposed to the elements, and beaten.\footnote{Id.} The assault continued the next day, December 22, 2018.\footnote{Id.} Mr. Goma was handcuffed to a car and then a tree and beaten until he vomited blood and passed out.\footnote{Id.}

It was not until after the assault that Mr. Goma and his companions were informed that their arrest was due to allegations that they had called upon the individuals from Ghana with the aim of destabilizing the country.\footnote{2020-09-26 Goma Declaration, pg. 2; 2021-06-14 Complaint of Torture by Goma, pg. 2.} From December 22 to December 23, Mr. Goma and his companions were detained at the Brigade des Recherches Anti-gang. Without a warrant, the officers searched Mr. Goma’s home, his car, and his cargo container for evidence to substantiate the allegations.\footnote{Id.} The search of the cargo container lasted from 8 a.m. to 6 p.m.\footnote{Id.} Although the assailants said they were looking for contraband, they only found sundry second-hand trade goods like sewing machines, tools, and a car chassis; the cargo container did not contain contraband.\footnote{Interview of Goma; CMA-CGM Waybill (on file with author).} The searches did not result in any evidence against Mr. Goma and the Government has never brought charges based on what it found in the searches.\footnote{Interview of Goma.}

Mr. Goma was detained at the S.C.R.I.C. from December 23, 2018 to January 9, 2019, during which time he underwent further physical assault and torture.\footnote{2020-09-26 Goma Declaration, pg. 2; 2021-06-14 Complaint of Torture by Goma, pg. 2.} During these two weeks, only two of Mr. Goma’s companions, Kevin and Rebecca, were released.\footnote{2020-09-26 Goma Declaration, pg. 2.}

On December 31, 2018, ten days after his arrest, Mr. Goma appeared before the public prosecutor to whom he showed the injuries inflicted by torture and ill-treatment.\footnote{Id.} The same day, Mr. Goma was informed of the charges against him, which included aggravated disturbance of public order, willful destruction of public property, criminal conspiracy, and undermining the
internal security of the State, but was not presented to a judge or provided any written documentation.\textsuperscript{52}

On January 9, 2019, Mr. Goma and his remaining companions were taken to the Director-General of the Gendarmerie Nationale, located opposite the Banque Togolaise du Commerce et de l’Industrie (B.T.C.I), on the Boulevard du 13 Janvier.\textsuperscript{53} They were handcuffed and seated with their backs to the wall, while agents of the U.S.I.G pointed weapons at them and threatened to kill them.\textsuperscript{54} Following this treatment, they all remained locked up in the villa of the Gendarmerie Nationale. The agents of the S.C.R.I.C. continued to detain Mr. Goma there until his appearance before the judge on January 15, 2019. At no time during these events did Mr. Goma have access to an attorney or contact with his relatives.\textsuperscript{55} In all, Mr. Goma spent 27 days at the hands of agents of the S.C.R.I.C.

d. Mr. Goma was transferred to the Civil Prison of Lomé

On January 15, 2019, Mr. Goma, without access to a lawyer, was sent before the investigating judge on the grounds that he was an agent who finances the PNP (Pan-African National Party), a political party in Togo.\textsuperscript{56} Mr. Goma was also accused of being an emissary of the Togolese diaspora in Europe.\textsuperscript{57} Mr. Goma denied these allegations and was subsequently moved to the Civil Prison of Lomé.\textsuperscript{58}

e. Mr. Goma was transferred to the secret prison of the National Gendarmerie of Lomé

On June 14, 2020, at around 3:00 a.m., Mr. Goma and about fifty other prisoners were moved from the Civil Prison of Lomé to the secret prison of the National Gendarmerie of Lomé, located on the Boulevard du 13 Janvier opposite the B.T.C.I.\textsuperscript{59} Mr. Goma was locked up with seventy-five other prisoners in a villa of only four rooms with only one shower and toilet.\textsuperscript{60} Mr. Goma was not permitted to communicate with family or relatives and was subjected to 24 hours of lockdown in a dark cell.\textsuperscript{61}

f. Mr. Goma was denied pretrial release

In October 2020, nearly two years after his arrest and the start of his detention, Mr. Goma was granted his first access to lawyers, counsel Kpandé-Adzaré and counsel Atsoo Daruis. His

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{52} Interview of Goma.
\item \textsuperscript{53} 2020-09-26 Goma Declaration, pg. 2; 2021-06-14 Complaint of Torture by Goma, pg. 4.
\item \textsuperscript{54} Id.
\item \textsuperscript{55} Interview of Goma.
\item \textsuperscript{56} 2020-09-26 Goma Declaration, pg. 3; 2021-06-14 Complaint of Torture by Goma, pg. 5.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} 2020-09-26 Goma Declaration, pg. 4; 2021-06-14 Complaint of Torture by Goma, pg. 5.
\item \textsuperscript{60} Id.
\item \textsuperscript{61} Id.
\end{itemize}
\end{footnotesize}
lawyers requested his provisional release from the investigating judge on October 6, 2020. To justify pretrial detention, the prosecutor did not point to any specific evidence that it feared Mr. Goma might destroy and did not specify what particularized risk Mr. Goma posed or how the investigation might be hampered. Rather, the prosecutor focused on the seriousness of the charges against others and the potential for the other arrestees’ return to Ghana. On October 26, 2020, the investigating judge issued an order rejecting Mr. Goma’s application for provisional release. On October 30, 2020, Mr. Goma’s lawyers appealed the decision. The Court of Appeals denied the appeal and affirmed the investigating judge’s order on November 18, 2020. The order affirming the denial made no particularized findings with regard to Mr. Goma.

On November 20, 2020, in response to Mr. Goma’s oral complaints to a presiding judge about his torture, the Indictment Division of the Court of Appeal of Togo ordered an official enquiry into the accusations of torture of Mr. Goma and his co-detainees. For example, Mr. Goma was subjected to a method of torture called Falaga (whipping of the feet), which can cause severe nerve injuries as well as serious malformation of the feet. On June 14, 2021, Mr. Goma filed an official complaint of torture. More than two years later, no inquiry has taken place.

On August 6, 2021, the investigating judge informed Mr. Goma and 15 other detainees that the two charges of “destruction of public property” and “undermining state security” had been dropped. The investigating judge made this announcement in private chambers without the presence of attorneys for Mr. Goma, and his attorneys were not thereafter notified that these charges were dropped.

On December 14, 2021, the United Nations provided a letter to the Togolese government from the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right to peaceful assembly and freedom of association, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This letter set forth the above-described facts and expressed concern over Mr. Goma’s detention and treatment by the Togolese government.

On January 20, 2022, Mr. Goma was transferred from the secret prison at the National Gendarmerie of Lomé, where he was held since June 2020, back to the Civil Prison of Lomé, where he remains incarcerated. The Civil Prison of Lomé is meant to house 600 prisoners, but is currently home to more than 2,000. During his detention, Mr. Goma was typically only fed once

62 2020-10-31 Saisine Cour d’Appel de Lomé.
63 2020-11-18 Togo Cour d’ Appel de Lomé, Arret No. 158.
64 2021-06-14 Complaint of Torture by Goma.
65 Interview of Goma.
66 Id.
67 2021-12-14 Letter of UN Special Rapporteurs to Togo, Ref: AL TGO 4/2021.
68 Id.
69 2022-05-22 Letter: Health Situation of Abdoul Aziz Goma (on file with author)
70 Id.; U.S. State Dep’t Country Report – Togo 2021, supra note 2.
per day and often not at all. This is the same facility specifically recommended for closure by the Committee Against Torture.

g. Mr. Goma’s health deteriorates

Due to the torture he suffered, Mr. Goma’s health has been rapidly deteriorating. On November 26, 2021, Mr. Goma was admitted to the hospital, where he remained until November 29, 2021. He was diagnosed with a slipped disk, resulting in a sciatica, causing severe nerve pain, which has since been left untreated. Mr. Goma is also developing symptoms of Charcot–Marie–Tooth disease (“CMT”). CMT is a degenerative nervous disorder that causes weakness and atrophy in the arms, hands, legs, and feet. As a result, Mr. Goma has gradually lost the use of both his legs and cannot walk. The torture has left him in a state of permanent muscle, joint, spine, and abdominal pain.

On April 4, 2022, Mr. Goma submitted an application for provisional release on health grounds. That application was rejected on April 12, 2022; the rejection was communicated orally to Mr. Goma and the reasons for it were not documented.

On September 14, 2022, Mr. Goma applied for liberty to have his doctor provide a medical certificate, which was necessary for Mr. Goma to apply to receive medical treatment. On November 21, 2022, the Court of Appeals granted his request. However, the prison administration did not let him go to his appointment based on a paperwork issue. Most recently, Mr. Goma’s jailors prevented him from visiting his physician for an appointment on December 5, 2022, despite having a letter and medical certificate.

B. Legal Analysis

The arrest and continuing detention of Mr. Goma is arbitrary under Categories I, II, and III of the Working Group’s Revised Methods of Work. The detention is arbitrary under Category I
because Mr. Goma is being detained without sufficient legal justification. The detention is arbitrary under Category II because it resulted from the peaceful and legitimate exercise of the right to freedom of association and assembly. The detention is arbitrary under Category III because the Government’s arrest and detention of Mr. Goma failed to meet the minimum international standards of due process.

1. **Arbitrary Detention under Category I**

A detention is arbitrary under Category I when there is no legal basis or justification for it. The Working Group has found a lack of a legal basis for the purposes of Category I when the government detains a person incommunicado, as well as when a government fails to support its legal basis for the detention with “enough factual specifics to indicate the substance of the complaint, such as the wrongful act.” In the present case, Mr. Goma’s detention is arbitrary under Category I because the Government held Mr. Goma incommunicado and the Government lacks a sufficient evidentiary basis under the New Penal Code of Togo to justify his detention.

   a. **The Government of Togo Held Mr. Goma Incommunicado.**

   The Working Group has consistently held that detaining a person *incommunicado* is a form of arbitrary detention under Category I because *incommunicado* detention violates the right to challenge the lawfulness of one’s detention before a competent tribunal, as protected under articles 8, 10, and 11 of the Universal Declaration of Human Rights (“UDHR”). *Incommunicado* detention occurs where an individual is “deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus.” In this context, the Working Group has affirmed that “secret and/or

---

85 Wang Quanzhang, supra note 83, at ¶ 55.
86 Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc. A/HRC/13/42, p. 2 (May 20, 2010), https://undocs.org/A/HRC/13/42. The Special Rapporteur’s report has been recognized by the Working Group as identifying the extent of human rights violations associated
incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law.”

In the present case, the Togo Government held Mr. Goma *incommunicado* during two separate periods. From his arrest on December 21, 2018 to December 31, 2018, Mr. Goma was held *incommunicado* until he appeared, without access to counsel, before the public prosecutor. On the second occasion, from June 14, 2020, when the Government transferred him to the secret prison of the National Gendarmerie of Lomé, until October 2020, when he was first granted access to a lawyer. From his initial transfer to the secret prison until January 20, 2022, Mr. Goma was kept in an overcrowded facility 24-hours a day without access to the outside world. Mr. Goma did not have access to his family, a lawyer, or consular staff during this time. The Government did not provide his family any information on where he was held or how to contact him. Accordingly, Mr. Goma was held *incommunicado*, and his detention is arbitrary under Category I.

b. *The Government of Togo Lacks A Sufficient Evidentiary Basis to Justify Detaining Mr. Goma.*

The Government’s detention of Mr. Goma is not founded on any evidence against him. Mr. Goma is being detained without trial on charges of aggravated disturbance of public order and criminal conspiracy under Articles 48, 49, 49, 549, 663, and 695 of the New Penal Code of Togo. 88

The initial allegations against Mr. Goma that the Government used to justify his arrest are baseless and lack any evidentiary support. His arrest is part of the broader crackdown on political expression. There have been more than 100 political prisoners or detainees since the Government started its crackdown during the 2017 elections. After a string of demonstrations and crackdowns, on December 6, 2018, the Government banned opposition protests planned in reaction to the parliamentary elections scheduled for December 20, 2018. 89 The Government then arrested numerous individuals that the Government claimed associated with the political opposition. 90

The Government to date has not presented any evidence that Mr. Goma engaged in any act reasonably giving rise to criminal culpability under these provisions. Mr. Goma, at the request of a friend, arranged for a place to stay for one night for eight young people who were unable to contact their sponsor. Mr. Goma did not solicit, call for, or recruit anybody to disturb the public order, did not undertake any act with the intent of overthrowing the government, and did not espouse violence. The Government has presented no reasonable evidentiary basis to detain him on those charges. These acts do not constitute the knowing participation required of accomplice...
liability under Articles 48 and 49 of the Penal Code and do not give rise to culpable conduct of incitement during a revolt under Article 495; participation in a group of criminals under Article 549; sponsorship of armed insurrection under Article 663; or destruction of property under Article 695. As noted, the search of his house and cargo container turned up no evidence against him.

The lack of substantive basis for the arrest and detention of Mr. Goma manifest further in the Government’s inconsistent charging of Mr. Goma, and it has contradicted itself regarding the applicable charges. The Government did not initially present Mr. Goma with any charging document or notify him of the charges against him, nor did they present a warrant for any of the searches they conducted. After charging him with crimes for which they lacked evidence, the government advised Mr. Goma that at least two of the charges against him had been dropped, but did so outside of the presence of his counsel. Later, the Government cited the dropped charges to justify his ongoing detention. At this time, the remaining charges against him are not clear.

The Government’s failure to follow formal legal process for bringing and amending charges shows that the charges lack legal basis. Indeed, the secrecy with which the procedure against Mr. Goma has been conducted does not comport with rule of law. Secret procedures for what should have been an ordinary criminal trial do not have an appropriate legal basis. The Government’s lack of a sufficient evidentiary basis to justify Mr. Goma’s detention constitutes arbitrary detention under Category I.

2. Arbitrary Detention under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of association and assembly.\(^\text{91}\) The Government arrested and detained Mr. Goma on the basis of his exercise of these rights.

\textit{a. The Government’s Detention of Mr. Goma Is a Restriction on His Right to Freedom of Association and Assembly.}

Article 20(1) of the UDHR provides that “[e]veryone has the right to freedom of peaceful assembly and association.” Article 21 of the International Covenant on Civil and Political Rights (“ICCPR”) commands that “[t]he right of peaceful assembly shall be recognized,” and Article 22(1) provides that “[e]veryone shall have the right to freedom of association with others . . .” The Human Rights Committee has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views. In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article

\(^\text{91}\) A detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights.” Revised Methods of Work, \textit{supra} note 82, at ¶ 8b.
25 [right to participate in public affairs].”\textsuperscript{92} The Togo Constitution likewise protects freedom of association and assembly.\textsuperscript{93}

Mr. Goma’s detention violates his right to association and the right to assembly. Mr. Goma’s arrest arises from no activity other than his association with individuals who were planning to (but did not) participate in peaceful protest. The Government accuses him of engaging with the opposition PNP party, which, although incorrect as a matter of factual allegation, would be well within the freedom of association protected under Article 25.

The Government also accused Mr. Goma of associating with individuals planning to assemble to protest the legislative elections, which violates Mr. Goma’s freedom of association and assembly. Mr. Goma’s arrest and detention create a significant chilling effect on the right of freedoms of association and assembly. The Government has shown that it will arrest and detain indefinitely anyone who has any interaction with protestors or provides any support for potential protesters, regardless of whether that support is intended to further the aim of the protest or not, whether the protest actually occurred, or whether there was any violent intent. The Government is criminalizing protest and having any affiliation at all with people who protest. By detaining Mr. Goma, the Government is making it harder to find transport, housing, food, and support needed to attend and organize a peaceful march. It creates an added risk of criminal liability, which will likely encourage many people and businesses who would otherwise help to disassociate with protestors. This violates international law.\textsuperscript{94}

The Government has not even offered a pretext to support Mr. Goma’s continuing detention, and it is undisputedly a violation of the rights protected by Article 20(1) of the UDHR and Article 22(1) of the ICCPR. Accordingly, his sentence is arbitrary pursuant to Category II.

\textit{b. None of the narrow exceptions to the freedoms of association and assembly apply to Mr. Goma’s conduct.}

Although the rights to freedom of association and assembly are not absolute, none of the exceptions to these rights apply to Togo’s detention of Mr. Goma. Under international law, the

\textsuperscript{92} Human Rights Committee, General Comment No. 25, UN Doc. CCPR/C/21/Rev.1/Add.7, at \(\S\) 26.

\textsuperscript{93} Article 30 of Togo Constitution (“The State recognizes and guarantees within the conditions established by the law, the exercise of the freedoms of association, of assembly and of peaceful demonstration without instruments of violence.”).

\textsuperscript{94} Sang-gyun Han (Republic of Korea), Opinion No. 22/2017, A/HRC/WGAD/2017/22, \(\S\) 74 (determining that criminalizing association “would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights”).
rights to freedom of association and assembly may only be restricted in limited circumstances. The Human Rights Committee has established a three-part “strict test of justification” in analyzing limitations on such fundamental rights. For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerate purpose, and (3) be necessary to achieve that purpose. The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others. The Government “must demonstrate in specific and individualized fashion the precise nature of the threat” by “establishing a direct and immediate

---

95 Article 22(2) of the ICCPR provides that “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.” See ICCPR, supra note 82, art. 22(2).

96 Article 21 of the ICCPR provides that “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” See ICCPR, supra note 82, art. 21.


100 Id.
connection” between the exercise of the right and the threat.\textsuperscript{101} The Human Rights Committee has emphasized that such restrictions must not “put in jeopardy the right itself.”\textsuperscript{102}

In this case, the Government detained Mr. Goma in violation of his right to freedoms of association and assembly without any justification. The Government has articulated no threat to national security, public safety and public order, public health, or the fundamental rights and freedoms of others that is particular to, and requires the continuing detention of, Mr. Goma. While the government offers the pretextual explanation that it suspects the individuals with whom Mr. Goma associated as having engaged in protest against the government, that does constitute an articulation of any particular threat posed by Mr. Goma.

3. \textbf{Arbitrary Detention under Category III}

Togo’s detention of Mr. Goma also amounts to an arbitrary deprivation of liberty under Category III of the Working Group’s Revised Methods of Work.\textsuperscript{103} Due process is one of the tenets of the right to a fair trial. The minimum international standards of due process are established in the ICCPR, the UDHR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”),\textsuperscript{104} and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”). The Constitution of Togo likewise ensures the rights of criminal defendants.\textsuperscript{105} Togo violated Mr. Goma’s rights under these standards.

a. \textbf{Togo Violated Mr. Goma’s Right to Be Free of Arbitrary Arrest}

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”\textsuperscript{106} This right is reiterated by Article 9

\begin{itemize}
\item[[102]] Human Rights Committee, General Comment No. 34, ¶ 21 (Sept. 12, 2011), https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.
\item[[103]] According to Category III, a deprivation of liberty is arbitrary “[w]hen 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.”
\item[[104]] Body of Principles at 298, supra note 82.
\item[[105]] Togo Const. arts. 15-19.
\item[[106]] ICCPR, supra note 82, art. 9(1).
\end{itemize}
of the UDHR and Principles 2 and 36(2) of the Body of Principles. The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.” Similarly, the Togolese constitution requires officers to notify arrestees of the charges against them.

In the present case, Mr. Goma was not informed of the legal grounds for his arrest at the time he was seized and detained, which is a direct violation of both Togolese law and international law under the ICCPR and the Body of Principles. In connection with the arresting officers’ failure to notify Mr. Goma of the legal reasons for his arrest, the officers did not show Mr. Goma a warrant for his arrest, and there is no indication that such a warrant exists. Accordingly, the pre-trial detention of Mr. Goma was unfounded ab initio, and the denial of his pre-trial release is a violation of Article 9(1) of the ICCPR, Article 9 of the UDHR, and principles 2 and 36(2) of the Body of Principles.

b. Togo Violated Mr. Goma’s Right to Release Pending Trial

Article 9(3) of the ICCPR guarantees an individual’s right to release pending trial, establishing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody . . . .” The Human Rights Committee has clarified that “[d]etention 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. . . .” Moreover, principles 38 and 39 of the Body of Principles confirm that, except in special cases, a criminal detainee is entitled to release pending trial.

In the present case, Mr. Goma has been and continues to be denied his right to release pending trial. He has been detained since December 21, 2018—that is, for 1,533 days—without trial. Mr. Goma has no history of violence and is not a threat to society. His alleged criminal activity was arranging for another person to host young people who could not contact their planned host and for providing them with a small amount of money.

On October 26, 2020, nearly two years after his arrest, he was officially denied pretrial release. To justify pretrial detention, the prosecutor did not point to any specific evidence that it feared Mr. Goma might destroy and did not specify what particularized risk Mr. Goma posed or how the investigation might be hampered. Rather, the prosecutor focused on the seriousness of the charges against others and the potential for the other arrestees’ return to Ghana. The order affirming the denial made no particularized findings with regard to Mr. Goma. Accordingly, the

107 UDHR, supra note 82, art. 9; Body of Principles, supra note 82, prin. 2, 36(2).
109 Togo Const. art. 17.
110 ICCPR, supra note 82, art. 9(3)
111 General Comment No. 35, supra note 108, ¶ 38
112 Body of Principles, supra note 82, prin. 38 & 39
113 2020-11-18 Togo Cour d’ Appel de Lomé, Arret No. 158.
pre-trial detention of Mr. Goma was unfounded, and the denial of his pre-trial release is a violation of Article 9(3) of the ICCPR and principles 38 and 39 of the Body of Principles.

The government based its decision to hold Mr. Goma on the fact that the crimes he is charged with are severe, but that is not a permissible ground for pre-trial detention.\(^\text{114}\) Pre-trial detention should not be used to detain an individual for a crime for which he has not yet been convicted, in effect pre-judging the crime itself.\(^\text{115}\) Instead, the government is required to make an individualized assessment of the risk factors associated with releasing Mr. Goma. It did not do so here, and the Government has presented no evidence justifying the pretrial detention of Mr. Goma.

The injustice of the current situation is enhanced because Mr. Goma has been detained for nearly the full length of the sentences for the crimes for which he was charged. Thus, the Government was not justified in detaining Mr. Goma, and pre-trial detention on the basis used by the government amounts to Category III arbitrary detention.

c. The Government Violated Mr. Goma’s Right to Trial Without Undue Delay

Article 14(3)(c) of the ICCPR guarantees the right of the accused to be tried “without undue delay.”\(^\text{116}\) As noted by the Human Rights Committee, “[i]n cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.\(^\text{117}\) Moreover, the Human Rights Committee has emphasized that all stages of the trial process, including the first instance and appeals must take place without undue delay.\(^\text{118}\) The right to be tried without undue delay is further reiterated by Principle 38 of the Body of Principles.

Mr. Goma has been detained since December 21, 2018, more than four years (1,533 days) without trial. No trial date is scheduled. There was no basis for the long delay between Mr. Goma’s arrest and the beginning of his trial. This length of delay is longer than the sentence for most of the charges. In light of these unjustified delays, the Government violated Article 14(3)(c) of the ICCPR and Principle 38 of the Body of Principles.

d. The Governments Violated Mr. Goma’s Right to Representation by Counsel

Article 14(3)(d) of the ICCPR guarantees the right to defense, by stating that a criminal defendant has the right to “be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.” In addition, Article 14(3)(b) of the ICCPR guarantees an accused criminal the right “to communicate with counsel of his own choosing.”\(^\text{119}\) The Human Rights Committee has clarified that this guarantee “requires that the accused is granted prompt

---

\(^{114}\) General Comment No. 35, supra note 108, ¶ 38 (authorizing pretrial detention based only on individual determination of a flight risk, evidence destruction, or recurrence of crime).

\(^{115}\) Id. (forbidding pretrial detention based on crime charged or potential sentence for crime charged).

\(^{116}\) ICCPR, supra note 82, art. 14(3)(c).


\(^{118}\) Id.

\(^{119}\) ICCPR, supra note 82, art. 14(3)(b).
access to counsel”\textsuperscript{120} and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”\textsuperscript{121} Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel” and that such right “may not be suspended or restricted save in exceptional circumstances.”\textsuperscript{122} Rule 119 of the Mandela Rules also provides for the right to access legal advice,\textsuperscript{123} and the Togolese Constitution guarantees the right to assistance of counsel.\textsuperscript{124}

Mr. Goma was arrested on December 21, 2018. He was tortured, detained at the S.C.R.I.C. where he was tortured again, transferred to the Brigade des Recherches Anti-gang, transferred back to the S.C.R.I.C., had his premises and effects searched, read a warrant of committal on December 31, 2018, taken to the Gendarmerie Nationale and then back to a locked cell at the S.C.R.I.C., presented to an investigating judge on January 15, 2019, and detained for another 21 months—all without counsel. The government did not permit Mr. Goma to meet with counsel until October 2020. Thereafter, Mr. Goma was permitted counsel. But, his counsel was not present when, on August 6, 2021, the investigating judge informed Mr. Goma that charges would be dropped and asked him to sign legal papers. He was also without counsel when, on April 12, 2022, his application for provisional release due to his health was denied. There is no justification for this delay in providing Mr. Goma with an attorney and denying him counsel for nearly two years, including during interrogations, his charging, and his presentation to an investigating judge. The Government thus violated Mr. Goma’s right to representation.

4. Conclusion

Togo targeted, arrested, and detained Mr. Goma for his exercise of the fundamental freedoms of association and assembly. After his arrest, the Togolese government violated Mr. Goma’s right to a fair trial, including by denying his release pending investigation and trial, his right to consultation with counsel, and his right to a trial. Mr. Goma’s continuing detention is a direct affront to the freedoms of association and assembly protected by international law and the Togolese Constitution. For the forgoing reasons, the detention of Mr. Goma is a violation of international law and is thus illegal.

\begin{footnotes}{\footnotesize
\item[120] General Comment No. 32, supra note 117, at ¶ 32. \\
\item[121] General Comment No. 35, supra note 108, ¶ 35. \\
\item[122] Body of Principles, supra note 82, prin. 18(1), (3). \\
\item[123] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, rule 119, available at https://undocs.org/A/RES/70/175 (stating “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”). \\
\item[124] Togolese Constitution art. 16. 
\end{footnotes}
We request that the Working Group on Arbitrary Detention accept Mr. Goma’s case under its individual complaint procedure and issue an opinion on the arbitrariness of the detention with respect to international human rights standards.

**INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

Mr. Goma applied for provisional release on October 6, 2020. His application for provisional release was denied on October 26, 2020. Mr. Goma appealed the denial on October 30, 2020. On November 18, 2020, the court of appeals affirmed, denying his appeal. On April 4, 2022, Mr. Goma applied again for provisional release due to his deteriorating health. On April 12, 2022, Mr. Goma’s application was again denied.

**FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION**

<table>
<thead>
<tr>
<th>Joshua Newcomer</th>
<th>Maran Turner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saif Askar</td>
<td>Adam Lhedmat</td>
</tr>
<tr>
<td>McKool Smith P.C.</td>
<td>Freedom Now</td>
</tr>
<tr>
<td>600 Travis St., Suite 7000</td>
<td>1750 K Street NW, 7th Floor</td>
</tr>
<tr>
<td>Houston, TX 77002</td>
<td>Washington, DC 20006</td>
</tr>
<tr>
<td>United State of America</td>
<td>United States of America</td>
</tr>
<tr>
<td>+1(713) 485-7316 (tel.)</td>
<td>+1(202) 223-3733 (tel.)</td>
</tr>
<tr>
<td>+1(713) 485-7344 (fax)</td>
<td>+1(202) 223-1006 (fax)</td>
</tr>
<tr>
<td><a href="mailto:jnewcomer@mckoolsmith.com">jnewcomer@mckoolsmith.com</a></td>
<td><a href="mailto:alhedmat@freedom-now.org">alhedmat@freedom-now.org</a></td>
</tr>
</tbody>
</table>

Date: March 3, 2023

Signature: [Signature]