

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman-Rapporteur: Ms. Leigh Toomey (Australia)
Vice-Chair: Ms. Elina Steinerte (Latvia)
Mr. José Guevara Bermúdez (Mexico)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Thomas Awah Junior,
Citizen of the Republic of Cameroon
v.

Government of the Republic of Cameroon

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31,
2006/102, 6/4, 15/18, 24/7, and 42/22¹

October 8, 2020

¹ Resolutions 1991/42, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the UN 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, ¶ 6, (15 Mar. 2006), later extended the mandate through Resolutions 6/4, 15/18, 24/7, 42/22.

Submitted by:

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
mturner@freedom-now.org

Arif Ali
Lauren Bowman
Dae Ho Lee
Dechert LLP
160 Queen Victoria St, London
EC4V 4QQ
United Kingdom
+(44) 20-7184 7000 (tel)
+(44) 20-7184 7001 (fax)
Arif.ali@dechert.com
Lauren.bowman@dechert.com
Daeho.lee@dechert.com

Darshak Dholakia
Dechert LLP
1900 K Street NW
Washington, DC 20006
United States of America
+1(215) 994-2205 (tel)
+1(215) 655-2205 (fax)
Darshak.dholakia@dechert.com

Quentin Muron
Dechert LLP
32 Rue de Monceau, 75008
Paris, France
+(33) 1-57-57-80-80 (tel)
+(33) 1 57 57 80 81 (fax)
Quentin.muron@dechert.com

BASIS FOR URGENT ACTION REQUEST

The Government of the Republic of Cameroon (“Cameroon” or the “Government”) is arbitrarily depriving Thomas Awah Junior of his liberty. As a direct result of this unlawful detention, Awah’s health has deteriorated precipitously, the overcrowded and short-supplied prison conditions exacerbating existing health issues and creating new ones. Continued detention under inhumane conditions will surely worsen Awah’s already precarious health, and may even lead to his death. Awah has nearly died from complications from tuberculosis during his time detained.² Awah’s personal medical issues aside, the presence of the novel coronavirus in the prison in which he is detained—suspected by some to be widespread—creates further urgency to this application.

Awah suffered from health issues prior to being detained, entering prison already suffering from tuberculosis, toxoplasmosis, and pneumonia.³ These conditions have seriously worsened while in prison, and Awah has been in and out of hospital.⁴ Most recently, he was admitted to Yaoundé Central Hospital on May 2020 to be treated for swollen, paralyzed, and discolored legs resulting from complications from tuberculosis.⁵ During this May visit, doctors informed Awah that prison was a dangerous environment for him, and that his life was at risk.⁶ As of May 2020, Awah visited hospital more than fifteen times.⁷

Prison conditions are dire. Kondengui Central Prison—where Awah is detained—is at double capacity.⁸ Awah shares an overcrowded cell with 25 other prisoners, several of whom are forced to sleep on the ground.⁹ There is no ready and reliable access to potable drinking water or food,¹⁰ with inmates forced to rely on external donors, such as international NGOs.¹¹ As a direct result of the lack of potable drinking water in the prison, Awah has now also developed typhoid.

The novel coronavirus, moreover, is likely widespread in Kondengui Central Prison. With cases already confirmed,¹² there have been reporting that prison authorities staged a power blackout to

² Source on file with author. Interview with BC (May 19, 2020).

³ *Thomas Awah Junior*, COMMITTEE TO PROTECT JOURNALISTS, <https://cpj.org/data/people/thomas-awah-junior/index.php> (last visited July 23, 2019). Source on file with author. Telephone Interview with BC (May 19, 2020).

⁴ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁵ *Thomas Awah Junior*, *supra* note 3. Source on file with author. Telephone Interview with BC (May 19, 2020).

⁶ *Id.*

⁷ *Id.*

⁸ Franck Foute, *Cameroun: comment une rumeur sur le coronavirus a failli embraser la prison de Yaoundé*, JEUNE AFRIQUE (April 15, 2020), <https://www.jeuneafrique.com/927891/politique/cameroun-comment-une-rumeur-sur-le-coronavirus-a-failli-embraser-la-prison-de-yaounde/>.

⁹ Source on file with author. Telephone Interview with BC (May 19, 2020).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Amnesty redoute un nombre “élevé” de cas de Covid dans les prisons du Cameroun*, LE JOURNAL DU DEVELOPPEMENT (May 6, 2020), <https://www.lejournaldudeveloppement.com/amnesty-redoute-un-nombre-eleve-de-cas-de-covid-dans-les-prisons-du-cameroun/>.

empty the prison of the sick and dead.¹³ Even though this led the administration of Kondengui Central Prison to finally distribute some masks and disinfectant wipes, this was widely described as insufficient.¹⁴ Awah reported that he relies on independent organizations for the provision of health-protective equipment, but that these supplies remain sorely lacking.¹⁵

The UNWGAD has voiced “grave concern” over the health conditions of detainees, in particular those detainees who have not received adequate healthcare and for whom the conditions of detention are contributing to deteriorating health.¹⁶ This treatment is a violation of the right under article 10(1) of the ICCPR for an individual to be treated with humanity and respect for his inherent dignity, and falls significantly short of the requirements of the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹⁷

Given Awah’s perilous health, the appalling conditions at Kondengui Central Prison, and the likely widespread presence of novel coronavirus, Awah’s life is in imminent danger. The Petitioner hereby requests that the Working group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure.

MODEL QUESTIONNAIRE

I. IDENTITY

- 1. Family name:** Awah
- 2. First name:** Thomas
- 3. Sex:** Male
- 4. Birthdate:** January 3, 1969
- 5. Nationality/Nationalities:** Cameroonian
- 6. a. Identity document (if any):** Unknown
- b. Issue by:** N/A
- c. On (date):** N/A
- d. No.:** N/A

¹³ Foute, *supra* note 8. Source on file with author. Telephone Interview with BC (May 19, 2020).

¹⁴ *Id.*

¹⁵ Source on file with author. Telephone Interview with BC (May 19, 2020).

¹⁶ Mohammad Hossein Rafiee Fanood v. Islamic Republic of Iran, Working Group on Arbitrary Detention, U.N. Doc. A/HRC/WGAD/2016, ¶ 32 (2016).

¹⁷ G.A. Res. 70/175 (Jan. 8, 2016).

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**

Thomas Awah Junior is a journalist and activist. He has been a proponent of the Anglophone movement in Cameroon.

8. **Address of usual residence:** Unknown

II. ARREST

1. **Date of arrest:** January 2, 2017

2. **Place of arrest (as detailed as possible):** Bamenda, Cameroon

3. **Forces who carried out the arrest or are believed to have carried it out:**
Cameroonian Armed Forces (Gendarmerie)

4. **Did they show a warrant or other decision by a public authority?** No.

5. **Authority who issued the warrant or decision:** N/A

6. **Relevant legislation applied (if known):** N/A

III. DETENTION

1. **Date of detention:** January 2, 2017

2. **Duration of detention (if not known, probable duration):**

Awah has been detained since the date of his arrest on January 2, 2017.

3. **Forces holding the detainee under custody:**

Government of the Republic of Cameroon

4. **Places of detention (indicate any transfer and present place of detention):**

Awah is currently serving his sentence in Kondengui Central Prison in Yaoundé. He was initially detained and held for approximately eight hours in Bamenda Central Police Station in Old Town before being transferred to Kondengui.

5. **Authorities that ordered the detention:**

Tribunal Militaire de Yaoundé (military tribunal of Yaoundé).

6. **Reasons for the detention imputed by the authorities:**

Terrorism, hostility to the fatherland, secession, revolution, insurrection, the spreading of false news, the spreading of false news through electronic means, and contempt for civil authority.

7. Relevant legislation applied (if known):

Articles 74, 102, 111, 113, 114, 116, 154 and 157 of the Penal Code, article 2 of the law n° 2014/028 of December 24, 2014, for the repression of acts of terrorism, and article 78 of the law n° 2010/012 of December 21, 2010, on cybersecurity and cyber-criminality.

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

The Statement of Facts presented in Part A details the political climate in Cameroon and the circumstances leading to Awah's arrest and detention. The analysis following in Part B explains how Awah's arrest and imprisonment constitute an arbitrary deprivation of liberty.

A. STATEMENT OF FACTS

1. Context in Cameroon

a. The Anglophone Crisis

Cameroon has been shaped by the Anglophone crisis which began in October 2016, when the minority Cameroonian Anglophone population started protesting their economic and political marginalization by the majority Francophone Government.¹⁸ The Anglophone movement is rooted in decades-old tension between Anglophones and the government, which dates back to the forced Anglophone-Francophone political union in the 1960s when the reunification of previous French and British territories into a single Cameroon focused on centralization and assimilation, leaving Anglophones economically and politically marginalized.¹⁹

Anglophones are calling for more English-speaking representation in the government, more respect for the English language in both schools and courts, and a more equitable distribution of government resources.²⁰ Separatist leaders of the Anglophone movement have also called for

¹⁸ Jonathan Pedneault & Bede Sheppard, "*These Killings Can Be Stopped*": *Abuses by Government and Separatist Groups in Cameroon's Anglophone Regions*, HUMAN RIGHTS WATCH (July 19, 2018), <https://www.hrw.org/report/2018/07/19/these-killings-can-be-stopped/abuses-government-and-separatist-groups-cameroons>.

¹⁹ *Cameroon's Anglophone Crisis at the Crossroads*, INTERNATIONAL CRISIS GROUP (Aug. 2, 2017), <https://www.crisisgroup.org/africa/central-africa/cameroon/250-cameroons-anglophone-crisis-crossroads>.

²⁰ Christian Freymeyer, *The United States Can Stop Cameroon's Brutal Crackdown*, FOREIGN POLICY (Sept. 20, 2018, 4:49 A.M.), <https://foreignpolicy.com/2018/09/20/the-united-states-can-stop-cameroons-bloody-crackdown-biya-anglophone-africa/>.

secession of the country's North-West and South-West regions, the two regions consisting predominantly of English-speakers, to create a new territory known as Ambazonia.²¹

The city of Bamenda, the largest Anglophone city in Cameroon, has served as a hub for protest. Government backlash against Anglophone protests have included the arbitrary arrest of protestors. The government has also sought to silence protestors and prevent the spread of their opinions, including conducting internet shutdowns in Anglophone regions of the country.²²

b. Prison Conditions in Cameroon

The U.S. State Department has called prison conditions in Cameroon “harsh and life threatening due to food shortages and poor-quality food, gross overcrowding, physical abuse, as well as inadequate sanitary conditions and medical care.”²³ Prisoners often rely on family to bring them clean water suitable for drinking.²⁴ Overcrowding has been “exacerbated by the significant increase in arrests related to the Anglophone crisis.”²⁵ Although prison authorities have claimed that they hold sick prisoners separately, sick prisoners are often not actually separated from the general population.²⁶ Illness is also widespread, including rampant cases of malnutrition, tuberculosis, bronchitis, malaria, hepatitis, scabies, parasites, and dehydration.²⁷

Kondengui Central Prison is no different. Conditions including overcrowding, sleep deprivation, and poor sanitation and nutrition contribute not only to physical suffering but psychological trauma as well.²⁸ As of 2016-2017, the prison housed twice as many inmates as its maximum capacity, and the situation has only gotten worse since.²⁹ Coronavirus is also in Kondengui

²¹ *Cameroon's Anglophone Crisis at the Crossroads*, *supra* note 19; Ctr. for Int'l Sec. and Coop., *Ambazonia Defense Forces*, STANFORD, https://cisac.fsi.stanford.edu/mappingmilitants/profiles/ambazonia-defense-forces#text_block_19007.

²² Siobhan O'Grady, *Divided by Language*, WASH. POST (Feb. 2, 2017), <https://www.washingtonpost.com/graphics/2019/world/cameroon-anglophone-crisis/>; Ruth Maclean, *Fears for Jailed Activists as Cameroon Cracks Down on Anglophone Minority*, GUARDIAN (Feb. 2, 2017), <https://www.theguardian.com/world/2017/feb/01/cameroon-activists-to-remain-in-jail-as-terrorism-trial-is-delayed>.

²³ *Id.* at 6.

²⁴ Source on file with author. Interview with AB (June 18, 2019).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Cameroon 2019 Human Rights Report, U.S. DEP'T. OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR 18 (2019), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/cameroon/>, at §1.C ¶ 9.

²⁸ *Traumatic Detention Conditions in the Cameroon Kondengui Prison*, CONTRA NOCENDI, <http://contranocendi.org/index.php/en/news-press/120-traumatic-detention-conditions-in-the-cameroon-kondengui-prison>.

²⁹ *Id.*

Central Prison.³⁰ The overcrowding in prisons makes it difficult to social distance, self-isolate, or take basic precautionary measures.³¹

2. Arbitrary Detention of Awah

a. Background on Awah

Awah is a journalist and activist. He was an English-speaking presenter from 2009 to 2015 for Equinoxe TV, before becoming the northwest correspondent for the privately-owned Afrik 2 Radio, and he is also the publisher of the monthly *Aghem Messenger* magazine.³²

Awah is a self-identified activist of the Anglophone movement.³³ He has been involved with the Cameroon Association of English Speaking Journalists, the Ambazonia Union of Journalists, and the Movement for the Liberation of Southern Cameroon, the Southern Cameroons National Council, and the Liberation Community.³⁴ Awah has also participated in several Anglophone protests, as an activist but also as a journalist covering and reporting on such protests.³⁵

He has had prior encounters with the government due to his journalism and activism. Prior to this detention, he has been detained by the Cameroonian government multiple times: (1) two weeks in August 2015 at the police station “*Commissariat 8ème*” in Yaoundé, in relation to alleged contempt towards a government official; (2) for 1.5 months from August to September 2015 at Kondengui Central Prison, in relation to his involvement in an Anglophone protest; and (3) for a few hours in December 2016 in Bamenda, during an Anglophone protest in the same town.³⁶ He has never, however, been tried or convicted before.³⁷

Awah is also suffering from, among other things, toxoplasmosis, which occasionally causes him to become dizzy and confused; although his condition arose prior to and is not a result of his imprisonment, his current situation has exacerbated his condition, as detailed further below.³⁸

b. Arrest

³⁰ *Amnesty redoute un nombre “élevé” de cas de Covid dans les prisons du Cameroun*, *supra* note 12.

³¹ Ilaria Allegrozzini, *Cameroon Should Protect Prison Population from COVID-19*, HUMAN RIGHTS WATCH (Mar. 27, 2020), <https://www.hrw.org/news/2020/03/27/cameroon-should-protect-prison-population-covid-19>.

³² *Thomas Awah Junior*, *supra* note 3.

³³ Source on file with author. Telephone Interview with BC (May 19, 2020).

³⁴ *Id.*; Tribunal militaire de Yaoundé, *Jugement n° 152/CRIM/018 du 25 Mai 2018*.

³⁵ Source on file with author. Telephone Interview with BC (May 19, 2020).

³⁶ Sources on file with author. Interview with CD (June 4, 2020).

³⁷ Source on file with author. Interview with AB, (June 18, 2019).

³⁸ *Id.* Other sources close to Awah, namely his Cameroonian lawyers, have reported him to be suffering from mental health issues, likely caused or exacerbated by his time in prison; however, there has been no formal and independent examination of his mental health and therefore he remains undiagnosed. Sources on file with author. Interview with CD (June 4, 2020); Telephone Interview with DE (June 3, 2020).

On January 2, 2017, Awah was arrested while he was roaming the streets of Bamenda City alone, on a day in which shops and businesses were closed and residents stayed at home as part of a “Ghost Town” effort. “Ghost Town” efforts in Cameroon involve Anglophone residents refusing to open businesses or leave their homes as a form for protest.³⁹

At the time of his arrest, Awah was seeking to interview Bamenda residents about the protest on behalf of Afrik 2 Radio.⁴⁰ Awah was stopped by a colonel and others of the gendarmerie, who claimed to be suspicious to find a man wandering Bamenda alone.⁴¹ After Awah presented the officers with a badge identifying himself as a journalist, the officers decided to arrest him.⁴²

The gendarmerie neither presented a warrant nor specified the grounds of arrest as they arrested him.⁴³ Awah initially worried that he was being arrested due to a dispute with a former employer, or because he was the former vice-president of the Cameroon Association of English Speaking Journalists – due to his previous arrests in relation to his activism.⁴⁴

At the time of his arrest, Awah was also found in possession of documents from the secessionist Southern Cameroons National Council (“SCNC”), a nonviolent organization supporting Anglophone secession.⁴⁵ Awah had been given these papers by the SCNC, for which he served as communication secretary, during a meeting of the same which he had attended earlier that day.⁴⁶ The papers outlined the history of Cameroonian independence and alleged that former colonial powers had, in fact, agreed to recognize the Southern Anglophone parts of Cameroon as an independent state at the time of Cameroon’s independence.⁴⁷ The Government banned the activities of the SCNC two weeks later, on January 17, 2017,⁴⁸ on the purported grounds that they were “contrary” to the country’s constitution and “jeopardise[d] the security of the state.”⁴⁹

³⁹ *Cameroon Town Observes Ghost Town Despite Mayor’s Directive*, AFRICANEWS (July 23, 2018), <https://www.africanews.com/2018/07/23/cameroon-town-observes-ghost-town-despite-mayor-s-directive/>; *Cameroon ‘Ghost Town’ Protects Against French-Speaking Bias*, France 24 Observers (Jan. 10, 2017), <https://observers.france24.com/en/20170110-cameroon-goes-quiet-operation-ghost-town-protest>; Shola Lawal, *South Cameroon a ‘Big Ghost Town’*, MAIL & GUARDIAN (Oct. 5, 2018), <https://mg.co.za/article/2018-10-05-00-south-cameroon-a-big-ghost-town/>.

⁴⁰ *Thomas Awah Junior*, *supra* note 3.

⁴¹ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁴² *Id.*

⁴³ *Id.*; Sources on file with author. Interview with AB (June 18, 2019).

⁴⁴ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁴⁵ *Thomas Awah Junior*, *supra* note 3; Pedneault & Sheppard, *supra* note 18.

⁴⁶ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁴⁷ *Id.*

⁴⁸ *Thomas Awah Junior*, *supra* note 3.

⁴⁹ Daniel Finnan, *Pro-Independence Anglophone Group Defies Cameroon Government Ban*, RFI (January 18, 2017), <https://www.rfi.fr/en/africa/20170118-pro-independence-anglophone-group-defies-cameroon-government-ban>.

After his arrest, Awah was taken to an unknown prison where he was interrogated for four hours about the Anglophone secessionist movement.⁵⁰ On the same evening, Awah was subsequently transferred to Yaoundé and sent to Kondengui Central Prison for pre-trial detention.⁵¹

c. Trial

In 2017 and 2018, Awah was tried before the Military Tribunal of Yaoundé along with two other journalists, Tsi Conrad and Mancho Bibixy, as well as five other Anglophone detainees.⁵² It is unclear why the court tried the eight detainees together, as the judgment gives no explanation or reasoning for this joinder. The eight detainees were arrested on different days and the only apparent link between them is their ties to the Anglophone movement. The proceedings formally began on January 7, 2017, with multiple hearings in 2017. During this period, the hearings were postponed at least fourteen times for various reasons, including requests from the prosecutor for more time to gather evidence, bank holidays, and the absence of judges.⁵³ The main hearing, however, occurred on May 24, 2018, and the judgment was rendered the following day, on May 25, 2018.

It was during this main hearing that Awah was informed of the charges against him for the first time.⁵⁴ The detainees were represented as a group by attorneys.⁵⁵ Awah was prone to outbursts at trial,⁵⁶ which were related to his toxoplasmosis.⁵⁷

In its final judgement dated May 25, 2018, the tribunal found Awah guilty of terrorism, hostility to the fatherland, secession, revolution, insurrection, the spreading of false news, the spreading of false news through electronic means, and contempt for civil authority, pursuant to articles 74, 102, 111, 113, 114, 116, 154 and 157 of the Penal Code, article 2 of the law n° 2014/028 of December 24, 2014, for the repression of acts of terrorism, and article 78 of the law n° 2010/012 of December 21, 2010, on cybersecurity and cyber-criminality.⁵⁸ To reach this conviction, rather than specifically demonstrating that these offences were legally proven, the court relied upon a series of unrelated and circumstantial allegations, such as allegations that Awah was involved in

⁵⁰ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁵¹ Angela Quintal, *CPJ Requests Information on Jailed Cameroonian Journalists*, COMMITTEE TO PROTECT JOURNALISTS (Mar. 1, 2017), <https://cpj.org/2017/03/cpj-requests-information-on-jailed-cameroonian-jou.php>.

⁵² Moki Edwin Kindzeka, *English Speaking Activists in Cameroon Given Jail Sentences*, VOA NEWS (May 26, 2018), <https://www.voanews.com/africa/english-speaking-activists-cameroon-given-jail-sentences>.

⁵³ *Cameroon: Conviction, Sentencing and Ongoing Arbitrary Detention of Mr Mancho Bibixy Tse | Letter*, LAWYERS' RIGHTS WATCH CANADA (July 14, 2018), https://www.lrwc.org/cameroon-conviction-sentencing-and-ongoing-arbitrary-detention-of-mr-mancho-bibixy-tse-letter/#_ftnref10.

⁵⁴ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁵⁵ Source on file with author. Interview with AB (June 18, 2019).

⁵⁶ *Id.*

⁵⁷ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁵⁸ Tribunal militaire de Yaoundé, *Jugement n° 152/CRIM/018 du 25 Mai 2018*.

the Ambazonia Union of Journalists⁵⁹ and the SCNC; had participated in SCNC meetings without reporting such meetings to the authorities; had shared images and videos of SCNC events; and had declared that he recognized the existence of two States in the territory of Cameroon, one of which being Ambazonia.

The tribunal sentenced Awah to 11 years in prison.⁶⁰ Along with the prison sentence, Awah and his co-defendants received a joint civil fine of approximately \$500,000; each defendant was also mandated to pay \$10,000 or spend an additional two years in prison.⁶¹ Additionally, although Awah had also been charged with group rebellion, inciting a civil war, group looting, and degradation of public or classified assets, he was found not guilty of those counts.⁶²

On May 31, 2015, shortly after the initial trial, an appeal was filed.⁶³ There are currently two appeals pending, one for each of his two convictions.⁶⁴

Awah appealed his convictions before the military court of appeal.⁶⁵ Numerous procedural shortcomings have caused delay in having his appeals move forward, including the irregular composition of judges, the inability for appellants to be present, and the inability for appellants' counsel to be present.⁶⁶ The coronavirus pandemic has also caused delays.⁶⁷ Prior to the first scheduled hearing, the appellate court dismissed Awah's procedural argument that the conviction was founded on improper evidence, namely that the police report upon which the conviction was based was inadmissible because Awah had not been represented by counsel during interrogations and he had never signed the report, and neither had the gendarmerie involved in the arrest.⁶⁸ The most recent hearing that we are aware of was set for September 17, 2020 and, while we have been unable to ascertain the outcome, we believe that it was adjourned again for procedural defects, namely the failure of the court's judges to be composed regularly.⁶⁹

d. Imprisonment

Awah was held in Kondengui Central Prison in Yaoundé during his trial.⁷⁰ There, Awah, who already suffered from poor physical and mental health, became critically ill from various

⁵⁹ As mentioned above, Ambazonia is the name given by the Anglophone movement to the country's North-West and South-West regions which are predominantly English-speaking.

⁶⁰ Tribunal militaire de Yaoundé, *Jugement n° 152/CRIM/018 du 25 Mai 2018*.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*; *Thomas Awah Junior*, *supra* note 3.

⁶⁴ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁶⁵ Source on file with author. Telephone Interview with DE (June 3, 2020).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Source on file with author. Interview with AB (June 18, 2019).

conditions, including tuberculosis, toxoplasmosis, and pneumonia.⁷¹ While Awah first contracted tuberculosis and toxoplasmosis before his arrest, detention worsened his medical conditions.⁷²

The Government initially refused to transfer Awah to a medical facility. However, following the efforts of a social media campaign on Twitter, he was finally admitted to Yaoundé Central Hospital on September 17, 2018.⁷³ He was then discharged a month later on October 16, 2018.⁷⁴

Following this first admission, Awah was regularly released from hospital to be imprisoned again, only to be later sent back to hospital due to the worsening of his condition. For instance, despite the fact that Awah was reported to be back in good physical health in April 2019,⁷⁵ he was later sent again to the hospital,⁷⁶ and in May 2020 was admitted again to be treated for swollen, paralyzed, and discolored legs as a result of complications from tuberculosis.⁷⁷

During this May 2020 stay in the hospital, doctors informed Awah that prison was a dangerous environment for him, and that his life was at risk.⁷⁸ Awah stated that he came close to dying from complications related to tuberculosis during his incarceration.⁷⁹ As of May 2020, it is estimated that Awah was sent to and from the hospital approximately fifteen times since his imprisonment.⁸⁰

e. Current Status

As of May 2020, Awah was back in Kondengui Central Prison, in which the current state of imprisonment conditions are particularly dire.

As mentioned above, prisons in Cameroon are notoriously overcrowded, to a point where the occupation rate of certain Cameroonian prisons is as high as 294%.⁸¹ Kondengui Central Prison – the biggest in the country – is no exception, as it had an occupation rate of 193% in 2019.⁸² As such, Awah shares an overcrowded cell with 25 other prisoners, several of whom are

⁷¹ *Thomas Awah Junior*, *supra* note 3. Source on file with author. Telephone Interview with BC (May 19, 2020).

⁷² Source on file with author. Telephone Interview with BC (May 19, 2020).

⁷³ *Thomas Awah Junior*, *supra* note 3.

⁷⁴ *Id.*

⁷⁵ UNITY Foundation Cameroon, FACEBOOK (Apr. 6, 2019), https://www.facebook.com/unityfoundationcameroon/posts/2298935340322141?__tn__=-R.

⁷⁶ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Amnesty redoute un nombre “élevé” de cas de Covid dans les prisons du Cameroun*, *supra* note 12; *Traumatic Detention Conditions in the Cameroon Kondengui Prison*, *supra* note 28.

⁸² Foute, *supra* note 8.

forced to sleep on the ground for lack of beds.⁸³ Awah was originally sleeping on the ground until a cellmate offered him a bed.⁸⁴

There is no potable drinking water at Kondengui Central Prison, which forces inmates including Awah to purchase drinking water.⁸⁵ Likewise, prisoners must purchase toilet paper and they are only able to shower in buckets.⁸⁶ Food in the prison is regularly provided by external donors, such as international NGOs.⁸⁷ As a direct result of this lack of potable drinking water, Awah, like many others in the prison, has now developed typhoid.

Like most prisons in Cameroon, Kondengui Central Prison was not spared from the novel coronavirus. In early May 2020, Amnesty International confirmed the existence of verified cases in the prison, and feared that a high number of inmates had contracted the illness.⁸⁸ On April 11 and 12, 2020, Kondengui Central Prison was hit by a particularly long power outage and blackout, which some suspected to be a cover-up by the authorities to empty the prison of the sick and the dead bodies.⁸⁹ This directly caused an outburst of tension within the prison on April 13, 2020, where inmates united to request the Government to take measures to curb the spread of the virus in the prison.⁹⁰ Even though this led the administration of Kondengui Central Prison to finally distribute some masks and disinfectant wipes, this was widely described as insufficient.⁹¹ Awah reported that he relies on independent organizations sympathetic to his cause for the provision of health-protective equipment, but that these supplies remain sorely lacking.⁹²

In addition, Awah has suffered from being in a very isolated situation in the prison. Although his mother and brother were able to visit him during his hospital stay, they have not had the means to visit him again.⁹³

As detailed above, there are currently two appeals pending on behalf of Awah.

B. LEGAL ANALYSIS

Awah's arrest and detention are arbitrary⁹⁴ under Categories I, II and III as established by the UN Working Group on Arbitrary Detention (the "Working Group"). The detention is arbitrary

⁸³ Source on file with author. Telephone Interview with BC (May 19, 2020).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Amnesty redoute un nombre "élevé" de cas de Covid dans les prisons du Cameroun, supra note 12.*

⁸⁹ Foute, *supra* note 8. Source on file with author. Telephone Interview with BC (May 19, 2020).

⁹⁰ Foute, *supra* note 8.

⁹¹ *Id.*

⁹² Source on file with author. Telephone Interview with BC (May 19, 2020).

⁹³ Source on file with author. Interview with AB (June 18, 2019).

⁹⁴ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political*

under Category I because there was no legal basis for his arrest and detention. The detention is arbitrary under Category II because it resulted from Awah's peaceful exercise of his right to freedom of expression and association. The detention is arbitrary under Category III because the Government's detention and prosecution of Awah failed to meet minimum international standards of due process.

Article 9(1) of the International Covenant on Civil and Political Rights ("ICCPR"), to which Cameroon acceded on June 27, 1984,⁹⁵ Article 9 of the Universal Declaration of Human Rights ("UDHR"),⁹⁶ and Article 6 of the African Charter on Human and Peoples' Rights ("ACHPR")⁹⁷ specifically prohibit arbitrary detention. In agreement with these international principles, the Cameroonian Constitution "affirm[s] [its] attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions."⁹⁸ Awah's detention is thus arbitrary and a violation of both international human rights law and the domestic laws of Cameroon.

1. Deprivation of Liberty Under Category I

Deprivation of liberty is arbitrary under Category I when it is clearly impossible to invoke any legal basis justifying that deprivation of liberty. Article 9 of the UDHR prohibits arbitrary arrest, providing that "no one shall be subjected to arbitrary arrest [or] detention."⁹⁹ Articles 9(2) and 14(3) of the ICCPR require a person to be informed about the reason for arrest and the charges laid against the arrested person.¹⁰⁰ Furthermore, Section 122 of the Cameroon Code of Criminal Procedure reiterates this in the domestic context, stating: "[t]he suspect shall immediately be

Rights, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on March 23, 1976, at art. 9(1). Such deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN Doc. A/810, at art. 9, (1948). "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." G.A. Res. 47/173, annex, *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, at Principle 2 (Dec. 9, 1988) [hereinafter "*Body of Principles*"].

⁹⁵ *International Covenant on Civil and Political Rights* art. 9, June 27, 1984, Cameroon, 999 U.N.T.S. 171 [hereinafter "*ICCPR*"].

⁹⁶ G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* art. 9(1) (Dec. 10, 1948) [hereinafter UDHR].

⁹⁷ See African (Banjul) Charter on Human and People's Rights, art. 6, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986 (stating "Every individual shall have the right to liberty and the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.").

⁹⁸ Constitution of the Republic of Cameroon Jan. 18, 1996, Law No. 96-06, preamble, available at <http://confinder.richmond.edu/admin/docs/Cameroon.pdf>.

⁹⁹ UDHR art. 9.

¹⁰⁰ Alexey Pichugin v. Russian Federation, Working Group on Arbitrary Detention, U.N. Doc. A/HRC/WGAD/2018/89, ¶¶ 68-69 (2018) (finding a Category I violation where Pichugin was not informed of the basis of his arrest until after he was detained).

informed of the allegations against him, and shall be treated humanely both morally and materially.”¹⁰¹ Failure to inform an arrestee promptly of the charges, therefore, strips that arrest of legal basis.

The Cameroonian government did not invoke any legal basis for Awah’s arrest and detention between Awah’s arrest on January 2, 2017 and his hearing on May 24, 2018. When Cameroonian authorities arrested Awah, they failed to present a warrant (in violation of Cameroonian law) and failed to promptly inform him—either verbally or in writing— of the reasons for his arrest and the charges against him. In fact, Awah was forced to wait until the date of his main criminal hearing to be informed of the charges against him. The Cameroonian government’s failure to present a warrant or inform Awah of the reasons for arrest means that his deprivation of liberty lacked any legal basis.

Furthermore, the charges for which Awah was eventually convicted and sentenced are arbitrary and lack a legal basis as applied to him. The Working Group has found a lack of legal basis for the purposes of Category I when an individual is arrested without substantive evidence to justify the arrest.¹⁰² In the present case, Awah’s conviction was not based upon legitimate evidence of a crime, but rather was an attempt to suppress his journalistic and advocacy activities. Awah was convicted under numerous national security charges, including terrorism, hostility to the fatherland, secession, revolution, insurrection. However, at trial, Awah was not identified as connected to the commission of any violent action or conspiracy to commit such action. Instead, the facts that the military court found relevant to these charges included Awah’s role as a journalist and activist, his involvement in protests and meetings of the Anglophone movement, his declarations that he recognized the existence of two States in the territory of Cameroon (one of which being Ambazonia), and his involvement in the Ambazonia Union of Journalists, the Movement for the Liberation of Southern Cameroon, the Southern Cameroons National Council, and the Liberation Community.¹⁰³ Awah’s journalism and activism cannot be considered to fall within the legitimate scope of Cameroon’s national security legislation. As the result, Cameroon’s use of such laws to detain Awah lacks an adequate legal basis in violation of Article 9 of the UDHR, and Articles 9(2) and 14(3) of the ICCPR and making his detention fall within Category I.

2. Deprivation of Liberty Under Category II

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and Articles

¹⁰¹ Criminal Procedure Code § 122, Law No. 2005 (July 27, 2005) (Cameroon), available at https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Cameroon_Criminal_Procedure_Code_2005.pdf.

¹⁰² *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

¹⁰³ Source on file with author. Telephone Interview with BC (May 19, 2020); Tribunal militaire de Yaoundé, *Jugement n° 152/CRIM/018 du 25 Mai 2018*.

12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.¹⁰⁴ This case meets the requirements of Category II because Awah’s detention is a result of his exercise of his fundamental freedoms of expression and association guaranteed by the UDHR and the ICCPR, ACHPR, as well as Cameroonian law.

a. The Government Violated Awah’s Right to Freedom of Expression and Association

Article 19(2) of the ICCPR guarantees the “right to freedom of expression,” a right that includes the “freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of [a person’s] choice.”¹⁰⁵ This right is further supported by Article 19 of the Universal Declaration of Human Rights, which provides for “the right to freedom of opinion and expression,” a guarantee that “includes freedom to . . . receive and impart information and ideas through any media and regardless of frontiers.”¹⁰⁶ Correspondingly, Articles 9(1) and 9(2) of the ACHPR assure one the “right to receive information”¹⁰⁷ and the “right to express and disseminate his opinions within the law.”¹⁰⁸

Furthermore, Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others....”¹⁰⁹ This right is also protected by Article 20(1) of the UDHR.¹¹⁰ The Human Rights Council has called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views or beliefs.¹¹¹

Freedom of expression and association are also fundamental rights under the Cameroonian Constitution, which states: “No person shall be harassed on the grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy. . . . The freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike, shall be guaranteed under the conditions fixed by law.”¹¹²

Awah’s treatment comports with the Government’s pattern of restricting the right to freedom of expression in the context of the Anglophone crisis. The Government regularly restricts its citizens’ right to freedom of expression through harassing independent newspapers and arresting political activists, journalists, and others who publicly speak out against the Government. Police,

¹⁰⁴ Hum. Rts. Council, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/36/38, para. 8(b) (July 13, 2017) [hereinafter “*Methods*”].

¹⁰⁵ ICCPR, at art. 19(1)-(2).

¹⁰⁶ UDHR, at art. 19.

¹⁰⁷ ACHPR, at art. 9(1).

¹⁰⁸ *Id.* art. 9(2).

¹⁰⁹ ICCPR, at art 22(1).

¹¹⁰ UDHR, at art 20.

¹¹¹ UN Human Rights Council Resolution 15/21, UN Doc A/HRC/RES/15/21, ¶ 1 (6 Oct. 2010).

¹¹² Preamble, Constitution of the Republic of Cameroon.

gendarmes, and other government agents have targeted journalists for arrest, detention, physical attacks, and intimidation, especially in connection with reporting on the Anglophone crisis.¹¹³

At the time of his arrest, Awah was a journalist and activist seeking to interview Anglophone residents in Bamenda who were engaging in passive protest. Despite the guarantees of both domestic and international law, Awah was arrested for his support of this political movement while making use of his rights to freedom of expression and association.

In particular, Awah was arrested only after showing his press credentials, he was tried along with other journalists and activists supporting the Anglophone movement, and his conviction is directly related to his non-violent political activities and statement. The military court convicting Awah made the true purpose of the trial abundantly clear. When listing the facts relevant to Awah's conviction, the judgment notably mentioned Awah's role as a journalist and activist, his involvement in protests and meetings of the Anglophone movement, his declarations that he recognized the existence of two States in the territory of Cameroon (one of which being Ambazonia), and his involvement in the Ambazonia Union of Journalists, the Movement for the Liberation of Southern Cameroon, the Southern Cameroons National Council, and the Liberation Community.¹¹⁴ Accordingly, Awah's detention amounts to a restriction on his rights to freedom of expression and association.

b. None of the Permissible Limitations Apply in This Case

Although the ICCPR allows the restriction of the rights to freedom of expression and association in certain circumstances, those circumstances do not present themselves here. Article 19(3) permits the government to restrict the right to freedom of expression only when the restriction is "provided by law" and when "necessary . . . to respect the rights or reputations of others" or "for the protection of the "national security or of public order (ordre public), or of public health or morals."¹¹⁵ Similarly, Article 22(2) allows the government to restrict the right to freedom of association only when the restriction is "prescribed by law" and is "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."¹¹⁶

The conditions outlined in articles 19(3) and 22(2) are not applicable in Awah's case for two reasons. First, Awah was not arrested pursuant to any law, making his initial detention fail the "provided by law" condition on restrictions of freedom of expression. Second, Awah's detention on the basis of his expressive activities is not necessary to protect the rights or reputations of others, the "national security or of public order, or the public health or morals. Detaining and imprisoning a journalist seeking to report on a protest does not protect any national security or public order interest of the government. Furthermore, imprisoning Awah for his non-violent

¹¹³ *Cameroon 2019 Human Rights Report*, *supra* note 27 at § 2.A ¶ 5.

¹¹⁴ Source on file with author. Telephone Interview with BC (May 19, 2020); Tribunal militaire de Yaoundé, *Jugement n° 152/CRIM/018 du 25 Mai 2018*.

¹¹⁵ ICCPR art. 19(3).

¹¹⁶ *Id.* art. 22(2).

political expression is disproportionate to any security interest maintained by the government. As a result, Awah's detention is a violation of the right to freedom of expression, making his detention fall under Category II.

3. Deprivation of Liberty Under Category III

Awah's arrest and detention are also arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where "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."¹¹⁷ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, the Body of Principles, and the UN Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules").¹¹⁸

a. The Government Did Not Present a Warrant for Awah's Arrest

Article 9(1) of the ICCPR confirms the right to liberty and freedom from arbitrary detention, guaranteeing 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."¹¹⁹ This right means that "[s]tate parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression."¹²⁰

Cameroonian law requires a warrant for arrest unless a person is caught in the act of committing a crime. Awah was not presented with a warrant when he was arrested. Because his actions interviewing protestors are protected under the fundamental right of expression and thus not tantamount to the commission of a crime, the government should have presented a warrant for his arrest. Accordingly, the government's failure to present a warrant upon Awah's arrest amounts to a violation of Article 9(1), making Awah's detention fall under Category III.

b. The Government Did Not Identify the Charges Against Awah

Article 9(2) of the ICCPR establishes that arrested persons should be promptly informed of the reason for arrest, providing that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."¹²¹ Furthermore, Principle 12(1) of the Body of Principles further provides that "[t]here shall be duly recorded: (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other

¹¹⁷ *Methods*, *supra* note 102, ¶ 8(c).

¹¹⁸ *Id.* ¶ 7.

¹¹⁹ ICCPR art. 9(1).

¹²⁰ Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, U.N. Doc. CCPR/C/G/34 ¶ 23 (September 12, 2011) [hereinafter "*General Comment No. 34*"].

¹²¹ ICCPR art. 9(2).

authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody.” In domestic law, Section 122 of the Cameroon Code of Criminal Procedure also requires that “[t]he suspect shall immediately be informed of the allegations against him, and shall be treated humanely both morally and materially.”¹²²

Awah was not informed of the charges against him at the time of his arrest. He was only informed of the charges against him at trial.¹²³ What happened to Awah fits the government’s broader trend of holding suspected participants in the Anglophone crisis without notifying the detained persons of charges.¹²⁴ Accordingly, the government’s failure to identify the grounds for Awah’s arrest amounts to a violation of Article 9(2), making Awah’s detention fall under Category III.

c. The Government Denied Awah the Right to Habeas Corpus and the Right to Release Pending Trial

Article 9 (3) of the ICCPR states that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power . . .”¹²⁵ The UN Human Rights Committee has interpreted the term ‘promptly’ in this context to be within 48 hours, except in exceptional circumstance.¹²⁶ The Body of Principles provide that “[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority”, and that “[a] person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.”¹²⁷

Furthermore, Article 9 states that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”¹²⁸ The UN Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all of the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime . . .”¹²⁹

Awah was not given the opportunity to be brought promptly before a judge or to have a determination made about whether he could be a candidate for pre-trial release. Awah was not

¹²² Criminal Procedure Code § 122, Law No. 2005 (July 27, 2005) (Cameroon), available at https://www.unodc.org/res/cld/document/criminal-procedurecode_html/Cameroon_Criminal_Procedure_Code_2005.pdf.

¹²³ Source on file with author. Interview with CD (June 4, 2020).

¹²⁴ *Cameroon 2019 Human Rights Report*, *supra* note 27 at §1.D ¶ 5.

¹²⁵ ICCPR art. 9(3).

¹²⁶ Hum. Rts. Comm., *General Comment No. 35*, U.N. Doc. CCPR/C/G/35 ¶ 33 (December 16, 2014) [hereinafter “General Comment No. 35”].

¹²⁷ *Body of Principles*, at Principles 11, 38.

¹²⁸ ICCPR art. 9(3).

¹²⁹ *General Comment No. 35*, ¶ 38.

presented before a judge until five days after his arrest, which is far outside the 48 hours standard established under international law...¹³⁰ Furthermore, Awah was held in detention before and throughout the course of his trial, which lasted over a year, despite the fact that Awah did not pose a threat to public security, a flight risk, or a threat to the collection of evidence at his trial. As a result, the government denied Awah his right to habeas corpus and his right to release pending trial in violation of due process, making his detention fall within Category III.

d. The Government Denied Awah the Right to be Tried Without Undue Delay

Article 14(3)(c) of the ICCPR guarantees that every defendant shall have the right to “be tried without undue delay.”¹³¹ As stated by the UN Human Rights Committee, “[a]n important aspect of the fairness of a hearing is its expeditiousness,”¹³² and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”¹³³ In addition, this right “relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal.”¹³⁴ The right to be tried without undue delay is reiterated by Principle 38 of the Body of Principles.¹³⁵

Although Awah’s trial began on January 7, 2017, the hearings were postponed at least 14 times, and his trial did not conclude until May 25, 2018, almost a year and a half after his arrest. The government has not provided adequate justification for the delays. Moreover, the importance of a prompt trial was further exacerbated by the fact that Awah was held in detention, having been denied release pending trial. As a result, the government violated Article 14(3)(c) of the ICCPR and Principle 38 of the Body of Principles.

e. The Government Denied Awah an Opportunity to Prepare a Defense and Assistance of Counsel

Article 14 (3)(b) of the ICCPR requires individuals to be given “adequate time and facilities for the preparation” of his or her defense, and be allowed to “communicate with counsel.”¹³⁶ Article 14(3)(d), in addition, provides that an individual must be allowed to “defend himself in person or through legal assistance.”¹³⁷ Article 7 of the ACHPR reinforces the ICCPR’s provisions, emphasizing that individuals shall have “[t]he right to defence, including the right to be defended

¹³⁰ Interview with CD (June 4, 2020).

¹³¹ ICCPR art. 14(3)(c).

¹³² Hum. Rts. Comm., *General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial*, U.N. Doc. CCPR/C/G/32 ¶ 27 (August 23, 2007).

¹³³ *Id.* at ¶ 35.

¹³⁴ *Id.*

¹³⁵ *Body of Principles*, at Principle 38.

¹³⁶ ICCPR art. 14(3)(b).

¹³⁷ *Id.* art. 14(3)(d).

by counsel of his choice.”¹³⁸ The Body of Principles is in accord, stating that “[a] detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.”¹³⁹

By failing to inform Awah of the charges against him until the onset of trial, the Government deprived Awah of both the opportunity to prepare a defense and to effectively obtain legal assistance. Without being informed of the charges against him prior to trial, Awah could not know what he would need to defend against, and thus was not accorded the right to defend himself. Moreover, for the same reason, Awah could not effectively communicate with his counsel regarding his trial, and his lawyers could not assist him in preparing his defense. As a result, the government violated articles 14(3)(b) and 14(3)(d) of the ICCPR, Article 7 of the ACHPR, and Principle 38 of the Body of Principles.

f. The Government Tried Awah in a Military Tribunal

The African Commission on Human and Peoples’ Rights has determined that the right to a fair trial dictates that civilians may not be tried before military tribunals. The African Commission has stated “[t]he only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.”¹⁴⁰ Furthermore, the African Commission has stated “[m]ilitary courts should not in any circumstances whatsoever have jurisdiction over civilians.”¹⁴¹ The Working Group has affirmed this principle, emphasizing that “[u]nder international law, military tribunals can only be competent to try military personnel for military offences.”¹⁴²

Awah was tried, convicted, and sentenced before a military tribunal. It has become commonplace for the Government to charge citizen journalists and activists with terrorism and similar crimes and try them in military courts.¹⁴³ Accordingly, the government’s trial of Awah before a military tribunal amounts to a violation of his fair trial rights, making his detention fall within Category III.

¹³⁸ ACHPR art. 7.

¹³⁹ *Body of Principles*, at Principle 18.

¹⁴⁰ Africa Comm’n Hum. & Peoples’ Rts., *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, at Principle L, AFRICAN UNION, https://www.achpr.org/public/Document/file/English/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf.

¹⁴¹ *Id.*

¹⁴² *Id.* ¶ 85.

¹⁴³ Sources on file with author. Interview with AB (June 18, 2019). In fact, one of the lawyers representing Awah in his appeal had been imprisoned for approximately one year due to her activism activities. Interview with CD (June 4, 2020).

V. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

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
mturner@freedom-now.org

Arif Ali
Lauren Bowman
Dae Ho Lee
Dechert LLP
160 Queen Victoria St, London
EC4V 4QQ
United Kingdom
+(44) 20-7184 7000 (tel)
+(44) 20-7184 7001 (fax)
Arif.ali@dechert.com
Lauren.bowman@dechert.com
Daeho.lee@dechert.com

Darshak Dholakia
Dechert LLP
1900 K Street NW
Washington, DC 20006
United States of America
+1(215) 994-2205 (tel)
+1(215) 655-2205 (fax)
Darshak.dholakia@dechert.com

Quentin Muron
Dechert LLP
32 Rue de Monceau, 75008
Paris, France
+(33) 1-57-57-80-80 (tel)
+(33) 1 57 57 80 81 (fax)
Quentin.muron@dechert.com

Signature



Printed Name:

Adam Lhedmat

Date:

October 8, 2020