

**Human Rights Council  
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-second session, 20-29 April 2015****No. 10/2015 (Cameroon)****Communication addressed to the Government on 18 February 2015****Concerning Annette Lydienne Yen-Eyoum****The Government has not replied to the communication.****The State is a party to the International Covenant on Civil and Political Rights.<sup>1</sup>**

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights, by its resolution 1991/42. The mandate of the Working Group was then clarified and extended by the Commission, by its resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102 and extended it for a three-year period by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by resolution 24/7 of 26 September 2013. Acting in accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

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

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

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

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

<sup>1</sup> The State became a party to the International Covenant on Civil and Political Rights on 27 June 1984.



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

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

## **Submissions**

### *Communication from the source*

3. Annette Lydienne Yen-Eyoum, born on 28 June 1959 and a French and Cameroonian dual national, is a lawyer registered with the Bar in Cameroon, domiciled in Douala.

4. According to the information received, on 29 December 2009, the Minister of State and Secretary-General of the Presidency sent a letter to the Deputy Prime Minister and Minister of Justice informing him that the Head of State had approved Ms. Yen-Eyoum's presentation before a judge and remand in custody.

5. The source states that Ms. Yen-Eyoum was arrested on 8 January 2010 during a visit to her uncle's domicile in Yaoundé by dozens of men bearing military weapons and the GSO insignia, which identified them as members of a special Cameroonian police unit. According to the source, the police commissioner who headed the operation and who claimed he was a member of the directorate of the judicial police presented no arrest warrant or documentation of any decision taken by a public authority. He merely stated that he had received an order from the State Counsel and that he needed no warrant. Ms. Yen-Eyoum was then taken into police custody for three days.

6. On 11 January 2010, the examining magistrate at the Mfoundi *Tribunal de grande instance* (court of major jurisdiction) in Yaoundé ordered that Ms. Yen-Eyoum should be remanded in custody. She was remanded in custody the same day, at Kondengui Central Prison, in Yaoundé, pursuant to article 221 of the Cameroonian Criminal Procedure Code, charged with complicity and conspiracy to embezzle public funds. On 5 May 2010 the superintendent of Kondengui Central Prison issued a certificate of remand in custody.

7. On 27 May 2010 the President of the Mfoundi court issued Order No. 33/HC denying an application for the immediate release of Ms. Yen-Eyoum.

8. On 5 July 2010 the examining magistrate rejected Ms. Yen-Eyoum's application for bail. On 9 July 2010 the same judge ordered that she should remain remanded in custody until 11 January 2011.

9. The source adds that on 22 September 2010 the President of the Central Court of Appeal in Yaoundé issued Order No. 53/CAB/PCA/YDE, upholding Order No. 33/HC of 27 May 2010, mentioned above.

10. On 6 June 2011 an order was issued denying an application for bail submitted by one of Ms. Yen-Eyoum's lawyers.

11. In July 2011, a committal order was issued before the Mfoundi court.

12. On 18 August 2011 the President of the Mfoundi court issued Order No. 98/HC denying an application for immediate release submitted by Ms. Yen-Eyoum.

13. On 6 September 2011, the Central Court of Appeal in Yaoundé issued judgement No. 42/CI declaring Ms. Yen-Eyoum's appeal against the above-mentioned committal order to be inadmissible.
14. On 15 December 2011 the President of the Central Court of Appeal in Yaoundé issued Order No. 59/CAB/PCAY upholding Order No. 98/HC of 18 August 2011, in which the President of the Mfoundi court denied Ms. Yen-Eyoum's second application for immediate release.
15. On 29 February 2012, the Mfoundi court issued judgement No. 84/ADD/CRIM, rejecting all the interlocutory objections raised by Ms. Yen-Eyoum.
16. On 15 March 2012, the Supreme Court issued judgement No. 40/P, declaring the appeal lodged by Ms. Yen-Eyoum against Order No. 53/CAB/PCA/YDE of 22 September 2010 to be inadmissible, thus denying her second application for immediate release.
17. On 11 October 2012 the Central Court of Appeal in Yaoundé issued judgement No. 21/CRIM upholding the Mfoundi court's judgement No. 84/ADD/CRIM of 29 February 2012.
18. On 29 October 2013 the Specialized Chamber of the Supreme Court issued judgement No. 013/SSP/CS cancelling the Court of Appeal's judgement No. 21/CRIM of 11 October 2012, declaring the appeals lodged by the accused to be inadmissible and referring the case and the parties to the Special Criminal Court so that it could rule on the merits.
19. The source adds that on 26 September 2014 Ms. Yen-Eyoum was sentenced to 25 years' imprisonment by the Yaoundé Special Criminal Court.
20. The source reports that a complaint with a civil claim was filed before a French court on 29 July 2011 against the following persons: the examining magistrate responsible for the complainant's case; the president of the Mfoundi *Tribunal de grande instance* (court of major jurisdiction) in Yaoundé; the State Counsel in Yaoundé; the Procureur General for the coastal appeals court in Douala; the magistrates of the Yaoundé Court of Appeal responsible for verifying the procedure; the president of the Supreme Court of Cameroon, the former Minister of Justice and the President of the Republic.
21. According to the source, on 15 September 2011 the Vice-President of the Paris *Tribunal de grande instance* (court of major jurisdiction) issued an order calling for an investigation of arbitrary detention as from 8 July 2011, as the acts in question were prohibited under article 432-4 of the French Criminal Code. Following an appeal lodged by the public prosecutor's office on 20 September 2011, the investigating chamber decided to nullify the order, concluding that "it is not for French courts to evaluate the validity and merits of decisions handed down by duly established foreign courts".
22. Ms. Yen-Eyoum subsequently lodged an appeal with a court of cassation. The judgement of 19 March 2013 issued by the Criminal Chamber of the Court of Cassation overturned and nullified the judgement of the investigating chamber. According to the Criminal Chamber, the "investigating judge is obliged to consider all the acts invoked under the complaint, with all possible qualifications", and "the principle behind this obligation is not at variance with the immunity of foreign States and their representatives". The Court of Cassation thereupon ordered that the case be returned to the Paris *Tribunal de grande instance* (court of major jurisdiction). The judicial inquiry has thus begun and has been assigned to the Vice-President responsible for investigations at the Paris court of major jurisdiction.

23. The source alleges that Ms. Yen-Eyoum's detention is arbitrary and meets the criteria for Category I cases submitted to the Working Group as defined by the Working Group's methods of work, as it is in breach of article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and article 291 of the Cameroonian Criminal Code. First, Ms. Yen-Eyoum was arrested when police investigations had been carried out, including one in 2006, by a special unit of the gendarmerie under the Secretariat of State for Defence, and another investigating the same acts in 2008. Ms. Yen-Eyoum was arrested and detained with no preliminary investigation (*instruction préalable*). She was not heard by any examining magistrate before she was placed in detention.

24. The source maintains that Ms. Yen-Eyoum was illegally arrested and detained from 8 January 2010 to 26 September 2014. She is still in detention, notwithstanding the fact that the legal time limit for her detention lapsed nearly three years ago. She was remanded in police custody on 8 January 2010. As she was accused of a crime under Cameroonian law, her detention could not exceed 18 months, as article 221, paragraph 1, of the Criminal Procedure Code stipulates that: "The Examining Magistrate shall specify the period of remand in custody in the remand warrant. It shall not exceed 6 months. However, such period may, by reasoned ruling of the Examining Magistrate be extended for at most 12 months in the case of a felony and 2 months in the case of a misdemeanor."

25. Article 221, paragraph 2, of the Criminal Procedure Code stipulates that upon expiry of the period of validity of the warrant, the examining magistrate must order the immediate release on bail of the defendant, unless the person is detained for other reasons.

26. The source states that Ms. Yen-Eyoum's detention also falls under Category III, as defined by the methods of work. The source alleges numerous procedural flaws in violation of articles 7, 8, 9, 10, 11, 12 and 13 of the Universal Declaration of Human Rights and articles 9, paragraphs 1, 2 and 3; 10; 12, paragraph 2; 14, paragraphs 1, 2 and 3; and 26, of the Covenant.

27. According to the source, contrary to article 7 of the Universal Declaration of Human Rights and article 14, paragraph 1, and article 26 of the Covenant, Ms. Yen-Eyoum has not benefited from equal protection before the law and has been a victim of discrimination. The source reports that many people suspected of and even prosecuted for embezzlement of public funds have been heard and sometimes judged without being placed in detention, and others have been placed on bail by the Special Criminal Court. She has been refused such treatment.

28. The source submits that Ms. Yen-Eyoum has been deprived of her right to be heard before an appeals court to apply for immediate release, in violation of article 8 of the Universal Declaration of Human Rights and article 14, paragraph 5, of the Covenant.

29. The source further alleges that in 2011, when an appeal applying for immediate release was brought before the Mfoundi court in Yaoundé, Ms. Yen-Eyoum's case was not given a public or fair hearing, in violation of article 10 of the Universal Declaration of Human Rights and article 14, paragraph 1, of the Covenant. Her case was heard before the Special Criminal Court, which sentenced her to 25 years of prison without parole, in public, but not in a fair trial. According to the source, the Court conducted the trial with a role that was merely that of a "spectator", without any search for the truth, doing nothing to hear witnesses for the defence and taking into account none of the defence's arguments or evidence. The evidence for the defence was in fact removed from the case file before it was sent to the Supreme Court of Cameroon for Ms. Yen-Eyoum's appeal in cassation. As that court issues decisions in

the form of judgements, the second level of jurisdiction was thus eliminated by a special law against the embezzlement of public funds. The court thus lacked impartiality from start to finish; it refused to take into consideration the position of the Ministry of Finance, which according to the prosecution had suffered prejudice, and which was called upon as a civil party. The Ministry had stated that it was not a victim of any offence or prejudice.

30. The source submits that Ms. Yen-Eyoum's guilt, contrary to her innocence, was never clearly established during the trial, in violation of article 11 of the Universal Declaration of Human Rights and article 14, paragraph 2, of the Covenant. The acts for which she was judged, which were clearly defined by the prosecution as relating to honoraria, do not constitute any kind of misdemeanours or crimes subject to criminal penalties. The Court was even unwilling to admit an ethics survey carried out previously by the Cameroonian Bar, where the applicant is a member because of her status as a lawyer, as stipulated by the relevant Cameroonian law.

31. The source adds that, in violation of article 12 of the Universal Declaration of Human Rights and article 17 of the Covenant, Ms. Yen-Eyoum has throughout the detention been a victim of Government interference in her life through public communiqués in the written press, radio and television, accusing her of embezzlement of public funds and using discourse that undermines her dignity and sullies her reputation, in violation of the principle of the presumption of innocence. The source reports that, furthermore, Ms. Yen-Eyoum was deprived, in violation of article 13 of the Universal Declaration of Human Rights and article 12, paragraph 2, of the Covenant, of her freedom of movement and of her right to leave Cameroon to go to France and to return.

#### *Response from the Government*

32. The Working Group regrets the Cameroonian Government's failure to reply to the communication addressed to it on 18 February 2015. As the deadline for a reply has lapsed, the Working Group is now in a position to issue an opinion on the dispute, in accordance with its methods of work.

#### **Discussion**

33. The Working Group should like to once again state that in the absence of a reply from the respondent State, it can consider the alleged facts to be established, provided the source is reliable and the allegations credible. In the case in hand, not only has the source reported the facts; it has also provided a set of evidence confirming them, apart from the judgement on the merits. The Working Group thus considers these facts to be established.

34. On 8 January 2010, Ms. Yen-Eyoum was arrested without receiving any information on the reasons for the arrest. She remained in detention thereafter until 26 September 2014, when she was sentenced to 25 years in prison for embezzling public funds. In the opinion of the Working Group, in accordance with article 9 of the Universal Declaration of Human Rights and article 9, paragraph 2, of the Covenant, arrests carried out without informing the arrested person of the reasons for the arrest are arbitrary. The same is true for pretrial detention prolonged beyond the legal limits, in violation of article 9, paragraph 1, of the Covenant. The arrest and continuous detention exceeding the 18 months established by Cameroonian law as reported by the source are thus arbitrary under Category I, as defined in the methods of work.

35. The source also alleges violations of the right to a fair trial, as arbitrary detention under Category III. In this regard, the source first of all states that Ms. Yen-Eyoum did not benefit from equal treatment, as in other, similar cases, the same Special Criminal

Court reportedly granted bail. In the opinion of the Working Group, the source has not adduced sufficient elements to demonstrate that in those other cases the accused were in situations identical to that of Ms. Yen-Eyoum, which would indicate that there was an undue difference of treatment.

36. The source next states that the Special Criminal Court did not hear witnesses for the defence and did not take evidence for the defence into account. The source did not provide proof of this allegation. Specifically, it did not communicate the judgement issued by the Court. The Working Group thus cannot reach a firm conclusion in this regard. Furthermore, the absence of this judgement generally precludes any conclusion by the Working Group regarding the other elements that the source links with the right to a fair trial.

37. Lastly, the source adds that the State continually interfered in Ms. Yen-Eyoum's private life. However, the source provides no proof of the statements that the State authorities reportedly made in the press. It has thus failed to provide the Working Group with the evidence required to reach a firm conclusion on this point.

### **Disposition**

38. In the light of the above, the Working Group renders the following Opinion:

The arrest and deprivation of liberty of Annette Lydienne Yen-Eyoum are arbitrary insofar as there was no notification of the reasons for the arrest and the pretrial detention exceeded the legal time limit, and they thus correspond to Category I of the criteria applicable to the consideration of cases submitted to the Working Group.

39. Consequent upon the opinion rendered, the Working Group requests the Cameroonian Government to take the necessary steps to remedy the material and moral prejudice that Ms. Yen-Eyoum has suffered by providing full compensation, in accordance with article 9, paragraph 5, of the Covenant.

*[Adopted on 27 April 2015]*

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