

**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. 20/2015 (Guinea)****Communication addressed to the Government on 23 February 2015****Concerning: General Nouhou Thiam, Warrant Officer Mohamed Kaba, Lieutenant Mohamed Condé, Colonel Saadou Diallo and Lieutenant Kémo Condé****The Government has not replied to the communication.****The State is a party to the International Covenant on Civil and Political Rights.¹**

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 in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in 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);

¹ The Republic of Guinea ratified the Covenant on 24 January 1978.



(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. The source refers to five soldiers of Guinean nationality prosecuted for their alleged involvement in the attack on the private residence of the President of the Republic of Guinea on 19 July 2011 at Conakry. He currently remains in detention in the central prison of Conakry. They were identified as follows:

(a) General Nouhou Thiam, born on 4 October 1960. His usual place of residence is in Camp Alpha Yaya Diallo, Cité des officiers (Officers Quarters). According to the source, he was arrested without a warrant on 1 August 2011 in Camp Alpha Yaya Diallo, Cité des officiers, by police officers of mobile squadron No. 3 of Matam (gendarmes) and he has been detained ever since;

(b) Warrant Officer Mohamed Kaba, born in 1982. He was arrested without a warrant on 19 July 2011, in Kakimbo, township of Ratoma, Conakry, by gendarmes, police and soldiers and has been detained since 1 August 2011;

(c) Lieutenant Mohamed Condé, born in 1982. His usual place of residence is Km 36, Kassonia, township of Coyah. He was arrested without a warrant on 19 July 2011, in Kipe, township of Ratoma, Conakry, by Bérêts rouges (Red Berets) — the Presidential Guard — and has been detained since 1 August 2011;

(d) Colonel Saadou Diallo, born in 1968. His usual place of residence is in Camp Alpha Yaya Diallo, Cité des officiers. He was arrested without a warrant on 20 July 2011 in Conakry by gendarmes and placed in detention on 3 August 2011;

(e) Lieutenant Kémo Condé, born in 1980. He was arrested without a warrant on 19 July 2011 in Kakimbo, township of Ratoma, Conakry, by gendarmes, police officers and soldiers. He was placed in detention on 5 August 2011.

4. The source reports that these officers are accused of murder, attempted murder and criminal conspiracy. According to some of them, the charges against them were amended to misdemeanours. According to judgement No. 21 of 14 November 2012 issued by the indictment division of the Court of Appeal of Conakry General Nouhou Thiam is charged with desertion, a punishable offence under article 547, paragraph 1, of the Guinean Criminal Code, which provides: “Any soldier found guilty of desertion within the country in peacetime is punishable by 4 days’ to 2 months’ imprisonment.” As for the four other officers, namely Warrant Officer Mohamed Kaba, Lieutenant Mohamed Condé, Colonel Saadou Diallo and Lieutenant Kémo Condé, the above-mentioned judgement accepts the charge of failure to obey orders, a punishable offence under article 601, paragraph 1, of the Criminal Code, which provides: “Any soldier who fails to obey a general order or an order that he has personally been commissioned to carry out or to have carried out, or who forces an order given on another soldier, is punishable by 2 to 6 months’ imprisonment.

5. The source claims that the detention of the five above-mentioned men is arbitrary and falls within category I of the arbitrary detention categories referred to by

the Working Group when considering cases submitted to it, as the detention constitutes a breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

6. The source maintains in the first place that the indictment division of the Court of Appeal of Conakry accepted the charges brought involving offences for which the appropriate sentences were shorter than the time already spent in detention by each of the five officers at the moment that this Court delivered its judgement on 14 November 2012. In this case, the penalty ranges from 4 days' to 6 months' imprisonment. Furthermore, the source alleges that despite the expiry of any penalties the indictment division of the Court of Appeal of Conakry referred the judgement in this case to the military court. However, there is no record of the existence of this court in Guinea either at the time of the transfer of proceedings or at present.

7. According to the source, no remedy is currently available, whereas the many appeals to the Guinean authorities for the release of the above-mentioned persons have been unsuccessful. A Constitutional Court with jurisdiction over human rights abuses does not yet exist in practice. Its establishment has been postponed indefinitely even though, according to the Constitution of 2010, it should have been put in place six months after the setting up of the National Assembly in January 2014.

8. The source submits that the detention of the above-mentioned five men also falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The source alleges a number of procedural irregularities that constitute violations of articles 8, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

9. The source reports that the length of pretrial detention is limited to 12 months under article 142-2, paragraph 2, of the Code of Criminal Procedure. The source emphasizes that at least 40 months have passed since their imprisonment in August 2011. The source reported that the right of the above-mentioned five persons to a trial by an independent and impartial court within a reasonable time or to release has been violated — a right guaranteed under article 10 of the Universal Declaration of Human Rights and articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights. In addition, the source submits that the five prisoners have been deprived of their right to be heard before an appeals court for their immediate release, in violation of article 8 of the Universal Declaration and article 14, paragraph 5, of the International Covenant.

Response from the Government

10. The communication was addressed to the Government of Guinea on 23 February 2015. To date, the Working Group has not received a reply even though the Human Rights Council requires States to cooperate with the Group. Nevertheless, in accordance with paragraph 15 of the Working Group's methods of work, the Group is in a position to render its opinion now that the 60 days granted to the Government to reply have passed.

Discussion

11. In the absence of a reply from the Government, the Working Group places trust in the source's statements, as they are credible and the source is trustworthy. In this case, the facts are common knowledge and have already been the subject of public statements, of which the Working Group has received copies.

12. The above-mentioned five officers were arrested in August 2011. In the judgment of the Court of Appeal of Conakry, they were allegedly prosecuted for

offences which, if they were convicted, would be punishable by a maximum sentence of 6 months' imprisonment. They were referred for sentencing to the military court, which does not yet exist in Guinea. They have been detained ever since awaiting trial before a future court.

13. In accordance with article 9, paragraph 3, of the International Covenant on Civil and Political Rights, pretrial detention must remain the exception and liberty the rule and, moreover, when pretrial detention is chosen it must be reasonable. In this case, the five officers mentioned above have been detained for more than 44 months, which is very unreasonable, especially since this period of detention will continue so long as the military court is not set up to try them. This serious violation corresponds to category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, mentioned in paragraph 2 above.

14. Furthermore, according to the amendment of the charges, the maximum penalty would be 2 months' imprisonment for General Nouhou Thiam and 6 months for the other four officers. In other words, they have been in detention for at least three extra years each. Their detention therefore lacks a legal basis. This serious violation corresponds to category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, mentioned in paragraph 2 above.

15. Furthermore, the Working Group is particularly concerned that accused persons may be referred to another court that does not yet actually exist, resulting in what amounts to the indefinite extension of the pretrial detention of these persons. The Working Group is also concerned that the Constitutional Court, which is mandated to ensure the protection of human rights in Guinea, is not in place to carry out its mandate, thus depriving all Guinean nationals of their right to an effective remedy for human rights abuses. These are situations that can give rise to constant serious human rights violations. Any State in such a situation would stand to gain from a visit by the Working Group to engage in constructive dialogue that would enable it to undertake the necessary reforms to remedy it.

Disposition

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

The continued deprivation of liberty of General Nouhou Thiam, Warrant Officer Mohamed Kaba, Lieutenant Mohamed Condé, Colonel Saadou Diallo and Lieutenant Kémo Condé is arbitrary, as it lacks a legal basis. The detention is also arbitrary, as the right to a fair trial of the five persons in question was not respected. The detention thus falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

17. The Working Group therefore requests the Government of Guinea to release them without delay and take the necessary steps to remedy the material and moral injury that they have suffered, by providing for full compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

18. It should be recalled that the Human Rights Council has requested all States to cooperate with the Working Group, take account of its views and take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.² The Working Group therefore requests the full cooperation of Guinea in implementing this opinion to provide effective redress for a violation of international law.

[Adopted on 29 April 2015]

² Human Rights Council resolution 24/7, paras. 3, 6 and 9.