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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 31/2012 (Equatorial Guinea)

Communication addressed to the Government on 27 April 2012

Concerning Wenceslao Mansogo

The Government did not reply to the communication

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in 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. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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);

(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. Dr. Wenceslao Mansogo, physician, specialist in gynaecology and obstetrics, owner of the Espoir Clinic in Bata and Secretary for International Relations and Human Rights of the political party Convergencia para la Democracia Social (CPDS), a legal opposition party, was arrested by the police on 9 February 2012 in the city of Bata, capital of the Continental Region.

4. Dr. Mansogo is being detained at the Bata Central Police Station. His detention is related to the death from heart failure on 1 February 2012 of a patient called Isilda during an operation at the Espoir Clinic in Bata.

5. According to the source, Dr. Mansogo handed over the body over of the deceased to the family, who placed it in the funeral home at the Bata Regional Hospital. Two days later, the Bata police summoned Dr. Mansogo to respond to a complaint by Mr. Julián Yekue, husband of the deceased. On 6 February 2012, Dr. Mansogo voluntarily appeared at the Central Police Station, where he was informed that the husband accused him of having mutilated his late wife's body.

6. After making a further statement, Dr. Mansogo demanded, on 9 February, that he should be given the acknowledgment of receipt of the body issued by the Bata Regional Hospital, which clearly certifies that "the body bears no signs of mutilation". Nevertheless, Dr. Mansogo was locked up in a cell pending referral to a judge, without being shown any arrest warrant.

7. According to the source, persons connected to the Government had brought pressure to bear on Mr. Julián Yekue to file a false complaint so that Dr. Mansogo, who has a record of human rights advocacy, could be arrested.

8. The source maintains that Dr. Mansogo's arrest forms part of a pattern of harassment and repression against leaders and activists of the political party Convergencia para la Democracia Social (CPDS). According to Mr. Plácido Micó, a parliamentarian and Secretary-General of CPDS, certain authorities have for some time been looking for any excuse or pretext to put Dr. Mansogo in jail. The deceased woman's husband allegedly submitted his complaint at the instigation of or under pressure from these persons. The individual complaint at the origin of Dr. Mansogo's arrest is said to be an unusual occurrence in Equatorial Guinea hospital practice.

9. The source concludes that Dr. Mansogo's detention is in retaliation for his activities as a human rights advocate and consequently is contrary to domestic and international law and hence arbitrary.

10. The source emphasizes the lack of a prompt and effective judicial remedy for challenging Dr. Mansogo's arbitrary arrest. The source notes the criterion laid down by the Human Rights Committee to the effect that detention must not be prolonged beyond a limit that can be duly justified by a State. There has therefore been a violation of Principle 38 of

the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provides that “A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial”.

11. Dr. Mansogo is being held in police custody in premises not intended to be used for medium or long-term detention alongside convicted prisoners, without any distinction being made in the detention regime. Hence there is also an infringement of Principle 8 of the Set of Principles, which provides that “Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.” Clearly, this puts Dr. Mansogo in a vulnerable situation, since he is not guaranteed differential treatment distinct to that accorded to persons sentenced to deprivation of liberty after being proved guilty.

12. Lastly, the source emphasizes the lack of precautionary measures enabling Dr. Mansogo to be released while awaiting trial and remaining subject to justice.

Government reply

13. By communication dated 27 April 2012, the Working Group requested information from the Government on the allegations received. On 11 July 2012, the Working Group repeated its request. The 60-day time limit established in the Group’s methods of work expired without a reply being received from the Government. Nor did the Government request an extension of the time limit with a view to submitting a reply to the communication, as permitted by the provisions of paragraph 16 of the Working Group’s methods of work.

14. The Working Group considers that it is in a position to render an opinion on the case on the basis of the facts available to it.

Discussion

15. According to the source, the reason for Dr. Mansogo’s arrest and detention is the alleged mutilation of a patient’s body, which Dr. Mansogo handed over to the family after the patient died from heart failure during an operation. The family decided to place the body in the funeral home at the Bata Regional Hospital.

16. The patient died on 1 February 2012. However, Dr. Mansogo voluntarily appeared before the police on 6 February 2012, the complainant not having made any accusation when receiving the body or during the following days. During this time no document was issued attesting to the alleged mutilation of the body.

17. On the latter point, at the time of the police investigation, Dr. Mansogo asked to be given acknowledgment of receipt of the body issued by the Bata Regional Hospital, certifying that “the body bears no signs of mutilation”. The authorities’ response was to lock Dr. Mansogo up in a police station cell pending his referral to a judge.

18. Given the seriousness of these allegations, the Working Group regrets that the Government has not provided it with any information on the reasons for keeping Dr. Mansogo in detention pending trial for more than 6 months – all the more so considering his professional and personal background, not only as a physician but also as a political leader of the opposition and a human rights advocate.

19. In view of the absence of further information and the non-existent or flimsy evidence to support the charges, the source would appear to be correct in maintaining that Dr. Mansogo’s detention is actually motivated by his activities as Secretary for International Relations and Human Rights of the opposition political party *Convergencia por la Democracia Social*, in contravention of the provisions of article 19 of the Universal

Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights.

20. This opinion is also based on the provisions of articles 9, 10 and 11 of the Declaration and 9 and 14 of the Covenant, which guarantee every detainee, inter alia, the right to be brought promptly before a judge; the right to trial within a reasonable time or to release; the right to examine the witnesses against him; and the right to present evidence and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

21. Dr. Mansogo's request that the acknowledgment of receipt of the body issued by the Bata Regional Hospital, attesting to the fact that the patient's body bore no signs of mutilation, should be included in the file was not acted upon. Nor was other evidence adduced by the accused considered. In addition, Dr. Mansogo has been held in detention awaiting trial for more than 6 months in a police cell that ought to be used only for short-term prisoners. This situation constitutes a violation of the aforementioned provisions of international human rights law.

Disposition

22. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mr. Wenceslao Mansogo is arbitrary, being in contravention of articles 7, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and 9, 14 (1), 14 (2), 14 (3), 19 and 22 of the International Covenant on Civil and Political Rights to which the Republic of Equatorial Guinea is party, and falls under categories II and III of the Working Group's methods of work.

23. Consequently, the Working Group calls upon the Government to release Mr. Wenceslao Mansogo immediately and recommends that it should consider granting him appropriate compensation for the harm his detention has caused him.

24. The Working Group also calls upon the Government to be more cooperative with the Group in the future, particularly by replying to its communications in a timely manner, in accordance with the relevant resolutions of the Human Rights Council.

[Adopted on 29 August 2012]