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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 2011

No. 18/2012 (Burundi)

Communication addressed to the Government on 26 April 2012

Concerning: Crispin Mumango

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), 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. Mr. Crispin Mumango Lwingo (hereinafter Mr. Mumango), born in Bujumbura, Burundi, is a citizen of the Democratic Republic of the Congo. Mr. Mumango is a nurse and was a supervisor at the Rehabilitation Centre for Victims of Torture of the NGO Kataliko Action for Africa, in Kamituga, Democratic Republic of the Congo, at the time of the events.

4. Reportedly, Mr. Mumango was arrested on 2 January 2012 on the border at Gatumba, between Bujumbura, Burundi, and Uvira, Democratic Republic of the Congo, as he was entering the Democratic Republic of the Congo. The same day, Mr. Mumango was placed in detention in the premises of the Bujumbura prosecution service, pending his appearance before a law officer (*officier du ministère public*). On 3 January 2012, Mr. Mumango was brought before a law officer (*officier du ministère public*), in the presence of his lawyer. During the hearing, the prosecutor (*Procureur de la République*) ordered Mr. Mumango's imprisonment in the Mbimba central prison on the following grounds: misappropriation of funds belonging to La Sagesse de Bwiza health clinic, which was part of an association of health-care volunteers for which Mr. Mumango was one of the coordinators, and refusal to appear before the prosecutor. Mr. Mumango's lawyer allegedly protested the decision to imprison Mr. Mumango unsuccessfully, arguing that a conflict of interest between Mr. Mumango and one of the members of the association of health-care volunteers lay at the basis for the accusation of misappropriation of funds. Mr. Mumango's counsel also informed the prosecutor that a civil case on that matter was pending before the court of major jurisdiction (*tribunal de grande instance*) of Bujumbura.

5. On 9 March 2012, more than two months after he was imprisoned, Mr. Mumango was brought before the court in chambers, where his request for provisional release was denied. The case was adjourned pending deliberations on the judgement, which has not yet been issued. The source reports that Mr. Mumango is still being held in the Mbimba central prison.

6. The source also maintains that Mr. Mumango's deprivation of liberty is arbitrary, and that it contravenes the provisions of the International Covenant on Civil and Political Rights (the Covenant), to which Burundi is a party. Article 9, paragraph 3, of the Covenant stipulates that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It 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."

7. Moreover, article 14, paragraph 3 (c) of the Covenant specifies that everyone charged with a criminal offence shall be entitled, in full equality, "to be tried without undue delay".

8. According to the source, Mr. Mumango's detention does not comply with the Burundi Code of Criminal Procedure, and in particular article 72, which establishes that persons placed in pretrial detention must be brought before a judge within 15 days of the date of their detention. In the case of Mr. Mumango, the order to place him in pretrial detention was given more than two months before his appearance before the court in chambers, and no judgement has yet been rendered.

Response from the Government

9. In a letter dated 26 April 2012, the Working Group requested the Government to respond to the allegations contained in the communication. After the 60-day time limit allowed for doing so expired, it did not reply, nor did it request an extension of the time limit, as provided for in paragraph 16 of the Working Group's methods of work.

10. In the circumstances, the Working Group is able to render an opinion on the basis of the information submitted to it.

Discussion

11. The Working Group regrets that the Government has not cooperated with it, by offering its observations on the facts.

12. In light of the information brought to the attention of the Working Group, two issues arise:

13. First, the Working Group observes that Mr. Mumango was not brought before a judge until two months after his arrest. Recalling its constant jurisprudence and that of the Human Rights Committee, the Working Group deems that "promptly", within the meaning of article 9, paragraph 3, of the Covenant, refers to the first few days following the deprivation of liberty. Detention prior to a decision should be the exception and release on bail should be granted, except in cases where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party (see, for example, communications No. 526/1993, *Hill v. Spain* (para. 12.3); and No. 1887/2009, *Juan Peirano Basso v. Uruguay* (para. 10.2). The Government of Burundi gave no explanation for the delay of two months before bringing Mr. Mumango before a judge. Nor did it give the reasons why his request for provisional release was denied. The Working Group therefore concludes that Mr. Mumango's detention is not in conformity with the provisions of article 9, paragraph 3, of the Covenant.

14. The second fundamental issue in the present case is that Mr. Mumango, who was arrested on 2 January 2012 and tried on 9 March 2012, is still in prison more than five months after the conclusion of his trial, awaiting a decision, without even knowing the date on which it will be issued.

15. Article 14, paragraph 3 (c), of the Covenant provides that everyone charged with a criminal offence has the right to be tried without undue delay. The observations of the Human Rights Committee in its general comment No. 32 (2007), on that fundamental right to the proper administration of justice, apply not only to the time period within which a person must be tried, but also within which the judgement must be rendered.

16. The time period contemplated in article 14, paragraph 3 (c), of the Covenant must be evaluated in relation to all the circumstances of the case, and in relation to its factual and legal complexity. The Working Group recalls that the right of the accused to be tried without undue delay is indeed designed to avoid keeping persons too long in a state of uncertainty about their fate, and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of

the specific case, but also to serve the interests of justice (see Human Rights Committee general comment No. 32 (2007), para. 35).

17. The guarantee of a trial without undue delay must also hold for all stages of the proceedings, including judgements in first instance and on appeal. An appeal cannot be brought until after a decision is handed down in first instance, which means that the accused needs to know the date of that decision (see Human Rights Committee general comment No. 32 (2007) on article 14, Right to equality before courts and tribunals and to a fair trial (para. 35); see also communications No. 526/1993, *Hill v. Spain* (para. 12.3), No. 1089/2002, *Rouse v. Philippines* (para. 7.4), and No. 1085/2002, *Taright, Touadi, Remli and Yousfi v. Algeria* (para. 8.5)). In the present case, not only has no judgement been rendered more than five months after the trial, but the accused does not even know the date on which it will be rendered, which violates the provisions of article 14, paragraph 3 (c), of the Covenant. Moreover, in no way does the nature of the offence for which Mr. Mumango is charged justify such a delay.

Opinion

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

The detention of Mr. Crispin Mumango Lwingo is arbitrary, in that it contravenes the provisions of article 9, paragraph 3, and article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights. His detention falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

19. Consequent upon the opinion rendered, the Working Group requests the Government to order the immediate release of Mr. Mumango, to provide him compensation for the harm he has suffered as a result of his detention, and to better cooperate with the Working Group in future, as called for in the relevant resolutions of the Human Rights Council.

[Adopted on 27 August 2012]