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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April–1 May 2014

No. 16/2014 (Democratic Republic of the Congo)

Communication addressed to the Government on 10 February 2014

Concerning: **Abedi Ngoy and Gervais Saidi**

The Government has not replied 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. The mandate of the Working Group was clarified and extended by Commission 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 and for a further three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work, 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 any other status and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case below was submitted to the Working Group on Arbitrary Detention in the following terms.

4. Mr. Ngoy and Mr. Saidi are nationals of the Democratic Republic of the Congo. According to the information received, on 2 December 2013, Mr. Ngoy was arrested for “receiving stolen goods” and, on 16 December 2013, Mr. Saidi was arrested for acting as an “accessory to theft”. On the orders of the attorney-general of Kindu, the two above-mentioned persons were transferred to Kasongo Prison, where they are currently held in detention. The two men are accused of having kept at their homes sections of sheet metal which had been awarded to victims by a court decision.

5. The source asserts that, since their arrest, Mr. Ngoy and Mr. Saidi have not once been brought before a magistrate’s court to verify the lawfulness of their detention, in violation of articles 27 and 28 of the Code of Criminal Procedure of the Democratic Republic of the Congo. Under article 28 (3) of the Code, any investigating judge placing a person in pretrial detention must, within not more than five days of the issuance of the provisional arrest warrant, bring that person before a competent magistrate to determine the lawfulness of their pretrial detention.

6. The source alleges that Mr. Ngoy and Mr. Saidi are being detained in what amounts to inhuman and degrading conditions. Cells designed for 10 detainees are being used to hold around 20 persons, without any ventilation or bedding. Detainees have to relieve themselves in the cells and have no access whatsoever to medical care. Furthermore, no food is provided by the prison. Detainees have to pay wardens the sum of US\$ 10 to access food brought by their families.

7. According to the source, Mr. Ngoy and Mr. Saidi were arrested following a legal action brought by the Maniema Peasant Alliance (ALLIPAM) before the magistrate’s court of Kasongo, on 7 October 2013, on behalf of 33 victims whose homes had been burned. Two hundred and seventeen other victims jointly brought a separate legal action to force the Provincial Government to let them have, free of any conditions, the 6,025 sections of sheet metal and nails that had been sent by the Kinshasa Central Government in 2008 as humanitarian aid. According to the information received, that material had been kept in a warehouse for five years, for no valid reason, despite the fact that the victims and their families were without shelter.

8. According to the source, on 25 November 2013, under a ruling by default with respect to the Provincial Government, the court ordered that each of the victims be issued with 25 sections of sheet metal and nails. The court ordered the Province of Maniema to pay the symbolic sum of 100 Congolese francs and declared its ruling to be executory, notwithstanding appeals. On 27 November 2013, after the clerk of the court had notified the parties of the ruling and initiated its implementation, a group of demonstrators claiming to belong to political parties close to the provincial governor appeared at the office of the

president of the magistrate's court, Bamawangay Kanyongolo, where the latter was then held illegally for five hours and subjected to insults.

9. According to the information received, all efforts to obtain the release of Mr. Ngoy and Mr. Saidi have been unsuccessful. According to the source, on more than three occasions the Congolese Association for Access to Justice (ACAJ) contacted the head of the prosecution service and the attorney-general by telephone to request the release of the two men. Both these officials promised to allow the request but later failed to act upon their promise. A lawyer appointed by ACAJ lodged an application for release on bail with the prosecution service on 15 January 2014, which has so far remained unsuccessful. Furthermore, in violation of articles 27 and 28 of the Congolese Code of Criminal Procedure, the payment of bail and other expenses has been demanded in return for the release of the two men.

10. The source reports that the Provincial Government, which was required to issue sections of sheet metal to the victims following the legal action brought by ALLIPAM, made a late appeal to the Kindu *tribunal de grande instance* (court of major jurisdiction), requesting that ALLIPAM be ordered to pay it compensatory damages for "frivolous and vexatious proceedings". Judge Bamawangay Kanyongolo was suspended by his superiors for having failed to consult them prior to handing down his ruling. Alimasi Bushiri, the clerk of the court who implemented the ruling, was also suspended.

11. The source finds the detention of Mr. Ngoy and Mr. Saidi unlawful on the grounds that its sole purpose would appear to be to punish them for their defence of human rights and, more specifically, their support for peasants whose homes had been burned down. The source claims that the deprivation of liberty of Mr. Ngoy and Mr. Saidi contravenes articles 3, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

Government reply

12. The Working Group wrote to the Government on 10 February 2014 to request information regarding the allegations made by the source. Not only did the Government fail to reply within the given time limit, but it did not even request an extended deadline, as authorized by the provisions of paragraph 16 of the methods of work of the Group. In the circumstances, the Working Group considers itself justified in rendering an Opinion on the basis of all the information it has obtained.

Discussion

13. To sum up, the source alleges that, since their arrest on 2 and 16 December 2013 respectively, Mr. Ngoy and Mr. Saidi have not once been brought before a magistrate to verify the lawfulness of their detention, in violation of articles 27 and 28 of the Code of Criminal Procedure, and that the application for release on bail lodged with the prosecution service on 15 January 2014 has remained unanswered.

14. Under the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, anyone arrested or detained on a criminal charge shall be brought promptly before a judge, who shall decide on the lawfulness of his detention.

15. Such a violation of the international norms, established in particular in an instrument to which the Government is a party, falls under category III of the methods of work of the Working Group.

Opinion and recommendations

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

The detention of Abedi Ngoy and Gervais Saidi is arbitrary, falling under category III of the categories applicable to the cases submitted to the Working Group, owing to grave violations of the right to a fair trial, since they have never been brought before a magistrate to verify the lawfulness of their detention, in violation of article 9, paragraphs 3 and 4, of the International Covenant on Civil and Political Rights, to which the Democratic Republic of the Congo is a party.

17. The Working Group requests that the Government order the immediate release of the two persons concerned, consider compensation for the harm caused by their detention and cooperate more fully with the Working Group in the future, in keeping with the resolutions of the Human Rights Council.

[Adopted on 30 April 2014]
