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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. 7/2014 (Plurinational State of Bolivia)

Communication addressed to the Government on 13 September 2013

Concerning Jacob Ostreicher

The Government has not replied to the communication of the Working Group, despite requesting an extension of the deadline for the submission of its reply.

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

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 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 further three-year period by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by its 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 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);

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(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 the 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. Jacob Ostreicher, born in Brooklyn, New York, on 17 February 1959 and married to Miriam Ungar, is a United States citizen resident in Santa Cruz de la Sierra (Plurinational State of Bolivia) and a farmer by profession. On 4 June 2011, he was arrested by police officers in Rehabilitación Palmasola (Santa Cruz de la Sierra).

4. The source reports that Mr. Ostreicher travelled to Bolivia in 2007 intending to invest in various agricultural ventures there, in particular rice and soybean-growing businesses. He has reportedly invested more than US\$ 30 million in Bolivia. On 25 December 2010 he was appointed managing director of Uniagro SRL, a company partly owned by a Swiss lawyer, André Abraham Zolty, to replace Claudia Liliana Rodríguez Espitia.

5. Mr. Ostreicher's arrest occurred when he appeared before the district prosecutor to give evidence regarding his stake in Uniagro SRL. His arrest was ordered by Judge Fernando Orellano at the request of public prosecutors Janneth Velarde Luna and Roberto Acha. Mr. Ostreicher was charged with the laundering of illicit profits and money laundering.

6. During the arraignment hearing, Judge Orellano is reported to have stated that those offences are the only ones where the burden of proof lies with the defendant to demonstrate his innocence. The source asserts that the principle of the presumption of innocence was thus violated from the time that the charges were brought.

7. Mr. Ostreicher was reportedly able to prove the lawful origin of the money invested, most of which belonged to Mr. Zolty. The money had been transferred to the Banco de Crédito in Bolivia from the Swiss bank UBS for investment in Uniagro — represented at that time by Ms. Rodríguez Espitia — and other companies. Specifically, as certified by UBS on 24 May 2011, 69 payments or transfers were made totalling US\$ 23,254,730, 3 payments totalling 270,000 euros and 8 transfers totalling CHF136,748.

8. On 23 September 2011, pursuant to article 239, paragraph 1, of the Code of Criminal Procedure, the President of the Ninth Court of Criminal Investigation in Santa Cruz de la Sierra, Judge Zenón Rodríguez Zeballos, ordered Mr. Ostreicher's pretrial detention to be terminated and his release on bail. Judge Rodríguez Zeballos did not consider Mr. Ostreicher a flight risk given that he had travelled abroad on two occasions and had duly returned to Bolivia, that he had voluntarily presented himself to the authorities to provide information, and that his residence and family were in Bolivia. He further considered that Mr. Ostreicher was lawfully employed in stable work, that his family was legally constituted and that he had not sought to hamper the judicial proceedings at any time.

9. Accordingly, he ordered that Mr. Ostreicher be permitted to leave his residence every day to attend to his work between 7 a.m. and 8 p.m.; that he report to the prosecutor's office twice weekly; that he should not leave Bolivia; that he refrain from commenting on

the proceedings in the press or communicating with the other persons involved in the case; and that he pay the sum of 100,000 bolivianos.

10. Allegedly at the urging of Fernando Rivera Tardío, the then chief legal officer of the Ministry of the Interior, public prosecutors Janneth Velarde Luna and Roberto Acha threatened the judge with criminal prosecution if he failed to revoke the conditional release order immediately. The judge reversed his decision on 29 September 2011, quashing the order and thus rendering it without legal effect. The judge asserted that he had made an error of assessment in respect of the evidence presented by the parties.

11. The source reports that to date the prosecutors have failed to provide any evidence to warrant the charges of money laundering and the laundering of illicit profits brought against Mr. Ostreicher.

12. The source states that only 3 of the 21 hearings called to consider Mr. Ostreicher's release on bail actually took place. The other hearings were postponed with no or very little explanation given, in many instances because officials from the public prosecutor's office failed to attend. During the final hearing to consider Mr. Ostreicher's release on bail, the prosecutor recused the presiding judge, thereby again paralysing the administration of justice.

13. The source asserts that Mr. Ostreicher is the victim of a ring of corrupt officials that allegedly includes judges, prosecutors, public servants and police officers. Twenty-seven members of the ring have already been charged with corruption and extortion; of those, 13 have been remanded to Palamasola prison, 9 are under house arrest and 5 have absconded, their whereabouts unknown.

14. The judge who brought charges against Mr. Ostreicher, Fernando Orellano, has also been imprisoned. Fernando Rivera Tardío, who pressured Judge Rodríguez Zeballos, has been imprisoned and is facing charges of extortion. He has allegedly admitted acting under orders from his superior, a former Government minister. The following are also currently in prison: Janneth Velarde Luna, public prosecutor; Carlos Robles, public prosecutor; Ariel Prado, investigating police officer; José Manuel Antezana Pinaya, an official of the Ministry of the Office of the President; and Dennis Efraín Rodas, an official of the Ministry of the Interior.

15. Twenty thousand metric tons of rice belonging to Mr. Ostreicher were unlawfully confiscated by means of forged documents bearing the letterhead of the Directorate for the Registration, Control and Administration of Seized Assets. Other property belonging to Mr. Ostreicher, such as agricultural property and equipment, was fraudulently confiscated and unlawfully sold. Mr. Ostreicher asserts that he has lost all the money that he invested in Bolivia.

16. Mr. Ostreicher was held for 2 years and 3 months while awaiting trial, in excess of the 18-month limit established by Bolivian legislation. According to the source, this constitutes a violation of article 9 of the Universal Declaration of Human Rights and of article 9, paragraph 3, of the International Covenant on Civil and Political Rights, to which the Plurinational State of Bolivia is a party. It also violates articles 7 and 8 of the American Convention on Human Rights (Pact of San José, Costa Rica).

Response from the Government

17. Despite asking for an extension of the deadline for the submission of the report requested by the Working Group, the Government has failed to respond. The Working Group thus considers that it is in a position to adopt an opinion as to whether or not the deprivation of liberty of Mr. Ostreicher was arbitrary, without needing to hear the complainant.

Deliberations

18. The Working Group has received information indicating that Mr. Ostreicher has escaped from the prison in which he was being held and is no longer deprived of his liberty.

19. Paragraph 17 (a) of the Working Group's methods of work provides that if the person has regained their freedom, for whatever reason, following the reference of the case to the Working Group, the case is filed through an Opinion. Such is the situation in the present case.

Disposition

20. In the light of the foregoing, the Working Group decides as follows:

To file the case of the detention of Mr. Jacob Ostreicher, since he is no longer deprived of his liberty, without deciding whether or not the detention was arbitrary, in accordance with paragraph 17 (a) of its methods of work.

[Adopted on 23 April 2014]
