

OPINION No. 22/1999 (EQUATORIAL GUINEA)

Communication addressed to the Government on 16 November 1998 (previous urgent action of 24 July 1998)

Concerning José Oló Obono

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. 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:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
3. The Working Group regrets the lack of cooperation by the Government, which did not reply to its request for information.
4. In a spirit of cooperation with the special procedures of the Commission on Human Rights, it has taken particular account of the report of the Special Rapporteur on the situation of human rights in the Republic of Equatorial Guinea (E/CN.4/1999/41), paragraphs 30 to 36 of which refer to José Oló Obono and the human rights cases he defended.
5. According to the allegations, José Oló Obono, a respected human rights lawyer in his country, was arrested on 21 July 1998. Following the arrest of over 100 members of the Bubi tribe in January 1998, he defended the case of many of the accused in a military court. Fifteen of the defendants were sentenced to death and others to lengthy prison terms. He also denounced the prison conditions and ill-treatment to which his clients were subjected. On 14 July, one of his clients died and Mr. Oló gave a press conference in which he criticized the prison conditions

to which the client had been subjected. Mr. Oló was tried by the Malabo Appeals Court for the undefined offence of “insults” (“insulting the Government”, according to the Special Rapporteur) and was sentenced to five months’ imprisonment, even though the prosecutor had withdrawn the charges against him.

6. The Government did not reply to the Working Group in connection with the allegations.

7. In the absence of any information from the Government, the Working Group considers that José Oló Obono was arrested for what the Court regarded as “insulting the Government”, i.e. nothing more than strong criticism of the prison conditions in his country to which his clients were subjected during the so-called “macro trial” held summarily in a military court against 116 leaders of the Bubi ethnic group.

8. In the opinion of the Working Group, José Oló Obono has legitimately exercised the human right provided for in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both in the courts and in the press. The Working Group points out that article 9, paragraph 3 (b), of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides for the right “to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments”, while article 9, paragraph 3 (c), recognizes the right “to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”. This is what José Oló Obono did and why he was arrested.

9. The Working Group endorses the above-mentioned Special Rapporteur’s statement that the judgement against Mr. Oló called for him “to be punished for having attempted to perform freely his functions as a lawyer acting for the family of his former client, Martin Puye Topete, which was asking for the return of the latter’s body (principles 16, 17 and 23 of the Basic Principles on the Role of Lawyers)”.

10. The Working Group was informed that Mr. Oló was released on 21 August 1998. In accordance with its methods of work, and since his deprivation of liberty was caused by the exercise of his functions as a lawyer defending persecuted persons, the Working Group has found it necessary to express an opinion on whether or not his arrest was arbitrary.

11. The Working Group’s mandate requires it to investigate cases of deprivation of liberty imposed arbitrarily, provided that no final decision has been taken in such cases by domestic courts in conformity with domestic law, with the relevant international standards set forth in the Universal Declaration of Human Rights and with the relevant international instruments accepted by the States concerned.

12. In the opinion of the Working Group, and as it has maintained in earlier opinions (see Opinion No. 1/1998), if the judgement of a court of last instance in a country is in conformity with national legislation but not with international human rights instruments, it must be regarded as arbitrary under Commission on Human Rights resolution 1997/50.

13. In the light of the foregoing, the Working Group expresses the following opinion:

The deprivation of liberty of José Oló Obono is arbitrary, since it is contrary to article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and falls within category II of the categories applicable in the consideration of the cases submitted to the Working Group.

14. Having given this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To consider the possibility of amending its legislation to bring it into line with the Universal Declaration and the other relevant international standards it has accepted.

Adopted on 16 September 1999