

No. 32/2011 (Cameroon)

Communication addressed to the Government on 26 January 2011

Concerning: Mr. Pierre Roger (alias Lapiro) Lambo Sandjo (alias Mbanga)

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 former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that 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 working methods, 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 their sentence or despite an amnesty law applicable to them) (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. According to the source, Mr. Pierre Roger (alias Lapiro) Lambo Sandjo (alias Mbanga) (hereafter Mr. Lapiro de Mbanga), a Cameroonian national, born on X November XXXX, residing in Mbanga (P.O. 167), Cameroon, is widely known in his country as a singer and songwriter, and as a political activist and a member of the opposition party, the Social Democratic Front.

4. On 9 April 2008, Mr. Lapiro de Mbanga was reportedly arrested by the Mbanga gendarmerie on instructions from the governor of Littoral Province, Cameroon, on the basis of a detention order. The accusations against Mr. Lapiro de Mbanga were based on articles 74, 97, 187, 227, 232, 236 and

316 of Cameroon's Penal Code, which criminalize the following acts: gang looting; destroying public property; obstructing public roads; offences against public property; and unlawful assembly.

5. According to the information received by the Working Group, Mr. Lapiro de Mbanga was first held in Mbanga's central prison and then transferred to Nkongsamba prison to be present for the handing down of the decision in June 2008. Mr. Lapiro de Mbanga was reportedly transferred again in January 2009 and is now being held at New Bell prison in Douala, Cameroon. Mr. Lapiro de Mbanga's health is said to have seriously deteriorated. He is said to suffer from typhoid fever, backaches and chronic respiratory infections.

6. On 24 September 2008, the Mounjo regional court reportedly found Mr. Lapiro de Mbanga guilty of aiding and abetting, through his participation, unlawful assemblies, obstruction of public roads and gang looting. Mr. Lapiro de Mbanga was sentenced to 3 years' imprisonment and fined 280 million CFA francs. On 24 June 2009, the Littoral Region appeals court upheld this sentence and ordered Mr. Lapiro de Mbanga to pay an additional fine of 540,693 CFA francs.

7. In December 2007 President Biya announced his intention to amend the Constitution to extend the president's term of office and prolong presidential immunity. This proposal provoked riots in the streets of Douala, Yaoundé, Bamenda and other cities. In some cases these riots allegedly involved looting and destruction. The Government accused the Social Democratic Front and its leaders of organizing and instigating these riots. A number of people were detained. In May 2008, President Biya granted amnesty to hundreds of people accused of participating in the February 2008 demonstrations and of other crimes. While most of the riot organizers and participants were freed in May 2008, Mr. Lapiro de Mbanga did not benefit from this amnesty because his case had not yet been heard. Mr. Lapiro de Mbanga was later tried and found guilty of aiding and abetting criminal acts. The Independent Commission against Corruption and Discrimination is reported to have requested a presidential pardon for Mr. Lapiro de Mbanga. The latter has always maintained that he is innocent.

8. The rights to freedom of communication, freedom of expression, freedom of the press, freedom of assembly and freedom of association are guaranteed in the preamble to the Constitution of Cameroon. According to the information received by the Working Group, while Mr. Lapiro de Mbanga has been an active member of the Social Democratic Front since 2007, he has always expressed his opposition to the Government of Cameroon in a peaceful manner, through writing and singing. Mr. Lapiro de Mbanga has also received several awards for his political activities, including a Canal d'Or prize on 9 April 2010 and the Freedom to Create Imprisoned Artist Prize on 25 November 2009.

9. According to the source, on 25 February 2008, the day of the demonstrations, Mr. Lapiro de Mbanga was at his home in the town of Mbanga. He left his house to buy fuel and was reportedly stopped by the local authorities, who asked him to intervene to calm the people participating in the riots. Mr. Lapiro de Mbanga is said to have intervened in a diplomatic fashion.

10. The source adds that when Mr. Lapiro de Mbanga was returning home he was contacted by Mr. Makembe, a representative of Société Plantation de Bananeraie Mbanga (SPM), one of the properties attacked by the demonstrators during the riots. Mr. Lapiro de Mbanga intervened again to calm the demonstrators and stop the rioting. Mr. Makembe then asked him to negotiate with the demonstrators on behalf of SPM. As a result, on 25 February 2008, Mr. Lapiro de Mbanga organized a meeting with union leaders. The demonstrators allegedly expressed their desire not to destroy the plantations as a result of information received from Mr. Lapiro de Mbanga. It was also decided that SPM would provide fuel for the taxis of all members of the union.

11. On the evening of 25 February 2008, the deputy police commissioner reportedly congratulated Mr. Lapiro de Mbanga on having put a stop to the rioting and vandalism. On 26 February, after a meeting in the office of the deputy police commissioner, Mr. Lapiro de Mbanga was again approached, this time with a request to intervene at a school that was being looted. While Mr. Lapiro de Mbanga was filming the incident so that the perpetrators could be identified, he was allegedly kidnapped by the demonstrators and taken to Muyuka, where, according to the source, he was threatened and subjected to physical violence. Mr. Lapiro de Mbanga was freed that same day.

12. Before the riots, in December 2007, soon after President Biya's statements about amending the Constitution, Mr. Lapiro de Mbanga had released the song "Constipated Constitution", which quickly became popular.

13. According to the information received by the Working Group, the Government alleged that Mr. Lapiro de Mbanga had used his influence through music to incite the population to commit crimes. On 24 September 2008, the Mounjo regional court found Mr. Lapiro de Mbanga guilty of aiding and abetting gang looting, obstructing public roads and unlawful assembly on public roads. The court sentenced him to 3 years' imprisonment and a fine of 280 million CFA francs (the equivalent of about 600,000 US dollars) for damage caused to SPM and other properties. Mr. Lapiro de Mbanga appealed the decision, presenting proof of his innocence, including by asserting that the police investigation had violated the Code of Criminal Procedure, in particular article 90; article 116, paragraphs 3 and 4; article 117, paragraph 2; and articles 122 and 124, and that the first-instance trial had involved a procedural error.

14. The court of appeal ordered Mr. Lapiro de Mbanga to pay an additional fine of 540,693 CFA francs (approximately 1,100 US dollars). On 15 December 2009, Mr. Lapiro de Mbanga lodged an appeal with the Supreme Court. According to the source, the Supreme Court postponed the hearing several times.

15. On 4 September 2009, Mr. Lapiro de Mbanga petitioned to be released pending trial. According to the information received, the Supreme Court never acted on this request.

16. In the light of the preceding information, the source maintains that Mr. Lapiro de Mbanga's detention is arbitrary. The source refers to article 14, paragraph 1, of the International Covenant on Civil and Political Rights, according to which "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." In particular, article 14, paragraph 3 (e), stipulates that everyone charged with a criminal offence shall be entitled "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

17. According to the information received, Mr. Lapiro de Mbanga was not able to enjoy his right to a fair trial and was found guilty of aiding and abetting riots even though he had not taken part in the said riots. Whereas most of the organizers of the riots were sentenced to 18 months' imprisonment and were later freed, Mr. Lapiro de Mbanga was allegedly sentenced to 3 years' imprisonment.

18. According to the information received, Mr. Lapiro de Mbanga is being held in New Bell prison. The source maintains that Mr. Lapiro de Mbanga's detention is arbitrary because it stems directly from his exercise of his right to express his views and political opinions freely and peacefully and his right of assembly, and that his right to a fair trial has not been respected.

19. The Working Group was notified that Mr. Lapiro de Mbanga had been freed on 8 April 2011, after serving his entire prison sentence, to stave off demonstrations planned by his supporters on his behalf.

Communication from the source

20. In its reply of 19 April 2011, reiterated on 14 July 2011, the Government acknowledges that Mr. Lapiro de Mbanga is a well-known artist and has supported the cause of human rights, which explains the international community's interest in his case. According to the Government, Mr. Lapiro de Mbanga was arrested by agents of the National Gendarmerie because of his involvement in protests linked to a strike by transporters in February 2008 in the town of Mbanga. Acts of violence, vandalism and looting there caused serious damage to agricultural enterprises, breweries and a national highway. Some witnesses stated that the singer was responsible for organizing these activities.

21. The Government also states that one of the affected enterprises filed suit against persons unknown, not against Mr. Lapiro de Mbanga. The detention order resulted from the investigations that were conducted. Mr. Lapiro de Mbanga was not arrested while committing the acts he is accused of, but rather after the authorities had been able to collect tangible proof. The crimes of which he was accused of being an instigator and accomplice included unlawful assembly (gatherings

of at least five people on public roads with the goal of disturbing the peace); unlawful demonstrations; obstructing public roads; an act of arson; the use of violence against public property or property deemed to be in the public domain; destruction of property; and gang looting. His sentence included 3 years' imprisonment and additional financial penalties, all in conformity with the Penal Code. The court of appeal confirmed the prison sentence and increased the amount of fines and costs to be paid (sentence of 24 June 2009).

22. The Government adds that Mr. Lapiro de Mbanga had access to the services of a defence lawyer throughout the proceedings. The other prisoners were freed under a presidential pardon on 20 May 2008, but Mr. Lapiro de Mbanga could not be pardoned because his trial was not yet over. Mr. Lapiro de Mbanga was not tortured or subjected to any cruel, inhuman or degrading treatment. He was not imprisoned for political reasons or because of his opposition to changing the Constitution but because he had committed ordinary crimes.

Communication from the source

23. On 3 May 2011, the Working Group received comments on the Government's reply in which the source confirmed that Mr. Lapiro de Mbanga had been freed. The source informed the Working Group that the courts had demanded the payment of a fine equivalent to more than a half million US dollars. In case of non-payment, Mr. Lapiro de Mbanga would have to spend an additional 5 years in prison. The source adds that Mr. Lapiro de Mbanga continues to receive threats.

Discussion

24. In accordance with paragraph 17 (a) of its working methods, the Working Group reserves the right to render an opinion, on a case-by-case basis, regarding whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.

25. The facts detailed in the preceding paragraphs clearly demonstrate the following:

(a) Mr. Lapiro de Mbanga is a well-known Cameroonian artist, lawyer, human rights defender, activist in the Social Democratic Front party, which is in opposition to President Paul Biya's Government (which has been in power since November 1982), and composer of songs with political content such as "Constipated Constitution", which led a number of people to express their opposition to a constitutional amendment proposed by the Government;

(b) In December 2007 President Biya indeed announced plans to change the Constitution so as to extend his term of office;

(c) That his announcement sparked a wave of demonstrations starting in February 2008, in his region, not only in the town of Mbanga but also in Yaoundé, Douala, Bamenda and other cities. Several of these demonstrations led to disturbances, fires and public disorder. These demonstrations were certainly of a political nature;

(d) The political nature of these demonstrations is confirmed by the fact that very soon afterwards, in May 2008, the President declared an amnesty for all the organizers of these events, who were freed. It is clear that these amnesties were instituted in order to restore social peace when the person in question had been sentenced for political activity;

(e) The political nature of the crime is confirmed by the sentence. The crime of calling for unauthorized demonstrations is punishable by 3 years' detention, but if the demonstration is of a political nature, detention is substituted for imprisonment, according to article 234 of the Penal Code, read in conjunction with article 232;

(f) However, Mr. Lapiro de Mbanga did not benefit from the amnesty because he had not yet been sentenced when the law was promulgated, a circumstance obviously beyond his control;

(g) The Government in its reply acknowledges Mr. Lapiro de Mbanga's role as a defender of human rights: "Lambo Pierre Roger, by virtue of his activity as a musician, falls into the category of human rights defenders";

(h) The Government does not deny the statement by the source that, when the incidents began, several public servants (deputy police commissioner), as well as representatives of firms that reported being harmed by the demonstrators' excesses (a representative of SPM) called on Mr. Lapiro de Mbanga to calm the demonstrators. This fact has been sufficiently corroborated. The source, in comments on the Government's reply, gives references accompanied by evidence that was analysed during the trial. One witness stated: "I confirm that around 7 p.m. I invited the

above-named person to my home, where there were several members of the town leadership, including the commissioner for public security and a gendarme, among others." Other witnesses stated in similar terms that Mr. Lapiro de Mbanga had tried to put a stop to the demonstrations;

(i) According to the source, the witnesses also affirmed that Mr. Lapiro de Mbanga's actions had always been aimed at finding peaceful solutions to conflicts;

(j) The song "Constipated Constitution" was simply a political statement and did not incite anyone to violence, which is consistent with Mr. Lapiro de Mbanga's personal and political history.

26. The Working Group refers to article 9 of the Universal Declaration of Human Rights and to article 9, paragraph 1, of the International Covenant on Civil and Political Rights. According to the latter:

"No one shall be subjected to arbitrary arrest or detention." Also, "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Furthermore, article 6 of the African Charter on Human and People's Rights states: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

27. Mr. Lapiro de Mbanga's deprivation of liberty results directly from his exercise of his right to peacefully express his opinions, a right protected by article 19 of the Universal Declaration of Human Rights and article 19, paragraph 1, of the International Covenant on Civil and Political Rights, which Cameroon has ratified, and his exercise of his right to freedom of association (article 22 of the International Covenant on Civil and Political Rights and article 20, paragraph 1, of the Universal Declaration of Human Rights). The source also states that the deprivation of liberty results from his exercise of the right to have access to public service in his country, which is enshrined in article 21, paragraph 1, of the Universal Declaration of Human Rights and article 25, paragraph 1, of the International Covenant on Civil and Political Rights.

28. On the basis of the information in the preceding paragraphs, it can only be concluded that Mr. Lapiro de Mbanga was imprisoned for the legitimate exercise of his rights under articles 3, 9, 10, 11, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights. His detention is thus arbitrary and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

29. Mr. Lapiro de Mbanga's trial was conducted largely with due respect for the principles of due process; for example, he was detained under an order issued by a competent authority after an investigation was conducted while he remained at liberty. However, the following circumstances indicate that there were serious violations:

(a) Absence of an effective remedy for challenging the legality of the deprivation of liberty stemming from his being found guilty: the Supreme Court indefinitely postponed the handling of his appeal;

(b) The Supreme Court also did not rule, in September 2009, on Mr. Lapiro de Mbanga's request to be released pending trial;

(c) In its submission of 14 July 2011, the Government stresses that Mr. Lapiro de Mbanga called the national food crops development authority (MIDEVIV) to ask for 500,000 CFA francs, which could constitute extortion. However, the court ruling does not use this act as a basis for finding Mr. Lapiro de Mbanga either guilty or innocent of extortion. The Working Group believes that if the act had in fact been committed, this could not be proved. Mr. Lapiro de Mbanga's deprivation of liberty was not motivated by this act.

30. The information in the preceding paragraph indicates that Mr. Lapiro de Mbanga's deprivation of liberty is also arbitrary and falls within category III of the categories used by the Working Group. The absence of a remedy to challenge the legality of the detention constitutes a serious violation of international norms regarding the right to a fair trial. Mr. Lapiro de Mbanga's rights under articles 10 and 11 of the Universal Declaration of Human Rights and article 2, paragraph 3, article 9, paragraphs 3 and 4, and articles 10 and 14 of the International Covenant on Civil and Political Rights were ignored.

Disposition

31. Mr. Lapiro de Mbanga's deprivation of liberty is arbitrary and results from a violation of his rights under articles 3, 5, 7, 8, 9, 10, 11, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, paragraph 3, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories used by the Working Group.

32. Having submitted this opinion, the Working Group calls on the Government of Cameroon to take a decision regarding:

- (a) Reparations for the damage caused by the arbitrary actions described in this opinion;
- (b) An immediate amnesty, pardon or other means of preventing renewed detention for the same acts, given that the imposed fine has not been paid;
- (c) Protective measures to safeguard Mr. Lapiro de Mbanga's right to security.

[Adopted on 1 September 2011]