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Human Rights Council Working Group on Arbitrary Detention

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No. 5/2012 (Philippines)

Communication addressed to the Government on 24 August 2011

Concerning Prince Edward Bilbao Pingol, John Dexter Obmina Catabay, John Winston Cabrera Enriquez, Mark Nombre Buzon, and Marlou Ditallo Picaña

The Government replied to the communication on 10 November 2011.

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 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 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 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, five minors Prince Edward Bilbao Pingol; John Dexter Obmina Catabay; John Winston Cabrera Enriquez; Mark Nombre Buzon and Marlou Ditallo Picaña were taken from their homes on 12 May 2009 by individuals posing as Government agents and/or non-governmental organizations' representatives and restrained, confined, deprived of their liberty and held incommunicado in the Nayon ng Kabataan, Department of Social Welfare and Development (DSWD), Welfareville Compound, Acacia Lane, Mandaluyong City.

4. It was reported that when the children were taken into custody, the Chief of DSWD, Ms. Lawas, informed their parents that their children had been taken only for questioning, after which, they would be returned to their respective families. However, the five minors were held deprived of their liberty and the parents deprived of the effective and lawful custody of their children.

5. According to the source, the five minors filed, through the Philippine National Police Criminal Investigation and Detection Group, complaints against Dr. Marcus Dalton Hodge, an Australian national actually being held at Makati City Prison in Manila, for violation of Child Abuse Law (RA 7610) and Anti-Trafficking of Persons Act of 2003 (RA 9208).

6. On 14 July 2009, at the first hearing on the preliminary investigation of Dr. Hodge's case, the five minors were not present.

7. The source further reports that, at a later stage, the five minors confessed having been paid for submitting complaints and testifying against Dr. Hodge. They further declared their will to return home to live with their families.

8. A writ of habeas corpus was submitted on 9 October 2009 by the children's parents to the Regional Trial Court of Pasay City, Branch No. 109. The writ of habeas corpus was ratified to the above-mentioned Court on 12 October 2009. On 12 November 2009, the Court found the petition for habeas corpus to be defective in form and substance and ordered that it be dismissed. According to the Regional Trial Court, the above-mentioned petition did involve a civil issue of custody of minors and not an issue of deprivation of liberty. If the parents wanted to take custody of their children, they should appear before the Mandaluyong Court, which was the proper forum to ventilate this issue.

9. According to the source, the five children have been deprived of their liberty without any formal charge or judicial warrant. They did not commit any offence or crime for which they may be detained. Their confinement is not in their best or superior interest. On the contrary, it is detrimental to their physical and mental development.

10. The source concludes that the children have been deprived of their liberty during more than two years and six months without any cogent reason or lawful order from any court of competent jurisdiction. No formal complaint or accusation for any specific offence

has been filed against the confined minors nor has any judicial writ or order for their commitment at any time, been issued by any judicial authority.

11. The source alleges that the five minors' deprivation of liberty is arbitrary, being contrary to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Response from the Government

12. In its reply, the Government provided the Working Group with the following information:

13. The minors Prince Edward Bilbao Pingol; John Dexter Obmina Catabay; John Winston Cabrera Enriquez; Mark Nombre Buzon and Marlou Ditallo Picaña were admitted to DSWD Nayon ng Kabataan after being rescued on separate occasions from Australian Dr. Marcus Dalton Hodge in Rockwell, Makati City, by agents of the Philippine National Police Women and Children's Desk, together with representatives of DSWD, members of the International Justice Mission (a non-governmental organization) and GMA 7's "Imbestigador" team (an investigative news programme of a national television network).

14. Criminal complaints have been filed against Dr. Hodge for violations of Child Abuse Law (RA 7610) and Anti-Trafficking of Persons Act (RA 9208), and the cases are still ongoing.

15. The children are in DSWD Nayon ng Kabataan pursuant to the State's exercise of the power of *parens patriae* (i.e. DSWD court petition for involuntary commitment for protective custody). DSWD has deemed it necessary to intervene for the children's welfare since they have been exposed to an abusive environment and have been neglected by their parents. Nonetheless, the parents have been entitled to visit their children and allowed to participate in the intervention/support process, without any objection from the parents.

16. The children and their families have received monetary assistance from the International Labour Organization and DSWD to support their livelihood.

17. According to the response, the intervention and custody of DSWD of the children has so far achieved positive results.

Further comments from the source

18. The response from the Government was transmitted to the source. In its comments, the source reiterates that, according to article 37 (b), of the Convention on the Rights of the Child, the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. In the source's view, this principle is being violated taking into account the amount of time that the five minors have been held in the detention centre (DSWD) and that no official court order for their detention has been issued.

19. The source maintains that the physical and mental condition of the five minors is deteriorating. Moreover, these five minors could be facing violations of other basic rights that are essential for their development, such as their basic fundamental right to education.

20. Regarding the allegations of the Government that "the DSWD has deemed it necessary to intervene for the children's welfare since they have been exposed to an abusive environment and have been neglected by their parents ...", the source notes the following:

(a) According to article 3, paragraph 1, of the Convention on the Rights of the Child, in all actions concerning children, whether undertaken by public or private social

welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;

(b) The source opines that the principle of best interest of the child is not being respected for these five minors, who have declared their will to go back home with their families and for which no official court decision has been issued;

(c) According to article 9, paragraph 1, of the Convention States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

21. The source maintains that, in the case of the five minors, there was never a court decision by a competent authority to bring these five minors to DSWD. Therefore, their detention is contravening the Convention on the Rights of the Child and, moreover, it should have never taken place. The five minors have declared their will to go back with their parents and their parents have manifested their will to get their children back.

22. In addition, the source expressed concern that, owing to the situation of vulnerability and poor conditions that these detained children are facing, they may be obliged to make false testimonies or declarations on the circumstances that brought them to DSWD.

23. According to the source, the parents of the five minors live in remote areas and lack of financial means to initiate all necessary efforts to seek for their children. No contact with their children has been facilitated by the competent authorities. However, they have declared that they would like to get them back and bring them home.

24. The source maintains that the parents of the children have not been informed of their whereabouts. According to the source, the information that the Government has submitted to the Working Group is not true. The parents have expressed their will to get their children back but they lack of necessary resources and information to get them.

25. Regarding the allegations of the Government that “the five minors had been rescued on separate occasions from Dr. Marcus Hodge”, the source notes that the five minors were brought to DSWD after Dr. Marcus Hodge had already been put in detention in Makati City Jail for one year. The source alleges that the five minors stated having received payment for their complaints against Dr. Hodge.

26. Regarding the dates that the five minors were supposedly together with Dr. Hodge, they did always coincide with duty travel or home leave of Dr. Hodge. This made it impossible for him to be with them at the times they mentioned. In addition, none of the minors were able to identify Dr. Marcus Hodge.

27. These five minors are being deprived of their liberty due to their vulnerability and lack of financial resources.

28. For some unknown reason, the Prosecutor failed to give any value to the fact that complainants failed to identify Dr. Marcus Hodge as the person they were complaining of, when confronted face to face, as well as to the fact that Dr. Marcus Hodge was not physically in the Philippines during the time the minors alleged the accusations.

29. The original habeas corpus action submitted on their behalf was taken to the wrong court by Atty Pormento and the court's recommendation was not followed up. The case is still open and can be pursued in the Mandalyong Court. The source notes that the reason that their previous habeas corpus case failed was that Atty Pormento did not do his due

diligence and the case was submitted to and heard in the wrong court (RCT Branch 109, Pasay).

30. The source concludes that the detention of the five minors is arbitrary and contrary to articles 9 and 10 of the Universal Declaration of Human Rights; articles 9 and 14 of the International Covenant on Civil and Political Rights and articles 3, paragraph 1; 9, paragraphs 1–4, and 37 of the Convention on the Rights of the Child.

Discussion

31. The Working Group recalls that, pursuant to article 9, paragraph 1, of the Convention on the Rights of the Child, a child may be separated from his or her parents against their will, when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination, in particular, may be necessary in the cases involving abuse or neglect of the child by the parents.

32. The source does not contest the Government's submission that the minors have been placed in Nasyon ng Kabataan (residential facility for abused, neglected and exploited children) on the basis of the Department of Social Welfare and Development court petition.

33. The Working Group notes that, although the Regional Trial Court had ruled that an application for the return of the minors to their parents could be submitted to the competent court to consider the matters of custody of minors, a proper request has never been submitted to that court by or on behalf of the children's parents.

34. The Working Group further notes that the source submitted the communication on the protective custody of the minors in connection with the cases against a person who was arrested for the alleged violations of the Child Abuse Law (RA 7610) and the Anti-Trafficking of Persons Act (RA 9208) in regard to these minors.

35. The Working Group considers that the case under consideration involves a civil issue of custody of minors and not an issue of deprivation of liberty. If the parents want to take custody of their children, they are to raise the issue before the proper court.

36. As to the matters related to the assessment of the evidence of the minors in the cases against the person arrested for the alleged violation of the Child Abuse Law and the Anti-Trafficking of Persons Act, they are supposed to be considered in the domestic court adjudicating those cases.

Disposition

37. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The separation of the minors Prince Edward Bilbao Pingol, John Dexter Obmina Catabay, John Winston Cabrera Enriquez, Mark Nombre Buzon and Marlou Ditallo Picaña from their parents does not constitute a case of arbitrary deprivation of liberty.

[Adopted on 2 May 2012]