



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. 15/2014 (Canada)****Communication addressed to the Government on 13 February 2014****concerning Michael Mvogo****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, which extended and clarified the Working Group's mandate in its 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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), 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 State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

GE.14-09342 (E)



* 1 4 0 9 3 4 2 *

Please recycle



(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); and

(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 aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Michael Mvogo is a Cameroonian national born in 1967 and has been detained in various detention facilities under the authority of the Canada Border Services Agency (CBSA) for over seven years since September 2006.

5. On 10 September 2006, Mr. Mvogo was arrested by the Toronto Police on charges of cocaine possession. At the time of his arrest, he identified himself as a United States citizen named Andrea Jerome Walker.

6. On 19 September 2006, he was convicted of cocaine possession and sentenced to a one-day imprisonment in addition to the 10 days of pre-sentence custody. Upon his release on 20 September 2006, he was seized by the CBSA on the ground that he had an irregular status in Canada. Following his apprehension, he was detained at the Toronto West Detention Centre.

7. On 22 September 2006, Mr. Mvogo had the first review of his detention by the Immigration and Refugee Board. The Board ordered his continued detention for the purpose of removing him from Canada.

8. On 27 September 2006, the Minister of Citizenship and Immigration issued a deportation order against Mr. Mvogo to remove him from Canada to the United States. However, the United States authorities interviewed Mr. Mvogo and allegedly questioned the veracity of his claim that he was an American citizen. On the basis of the information provided by Mr. Mvogo, they determined that Andrea Jerome Walker was not Mr. Mvogo's true identity and consequently refused to accept his deportation to the United States.

9. While seeking to ascertain Mr. Mvogo's identity, the CBSA reportedly located a record in the United States of a Haitian national named Michael Gee Hearn who was arrested in 1993 in New York City for drug possession and whose alias was Andrea Jerome Walker. The Ministry of Citizenship and Immigration exchanged information with the consulate of the United States in Toronto concerning Mr. Mvogo and received from them photos of Michael Gee, which matched Mr. Mvogo. Therefore, the CBSA allegedly decided that Mr. Mvogo was Michael Gee from Haiti and began approaching the Haitian authorities to confirm his identity. However, a Haitian lawyer retained by the Ministry interviewed Mr. Mvogo and reportedly expressed serious doubts that Mr. Mvogo was Haitian.

10. The CBSA continued its efforts to verify Mr. Mvogo's identity until 21 January 2011, when Mr. Mvogo revealed that his true name is Michael Mvogo and that he is from Cameroon. He provided names of people that the CBSA could contact to confirm his identity, including a former Peace Corps teacher in Cameroon. On 5 October 2011, the CBSA interviewed the teacher by phone and he reportedly stated that although he did not

remember Mr. Mvogo, it was very likely that he had been his student in Cameroon, as Mr. Mvogo had provided certain accurate pieces of information about him and the college where he taught.

11. In the meantime, Mr. Mvogo applied for a Cameroonian travel document at the consulate of Cameroon on 23 January 2011. However, the consulate allegedly refused to issue a travel document to Mr. Mvogo. According to the source, the Cameroonian authorities do not issue travel documents to people detained by the CBSA.

12. On 15 December 2011, the CBSA allegedly attempted to send Mr. Mvogo to Guinea. The source claims that the CBSA obtained a fraudulent Guinean passport for Mr. Mvogo from a journalist who had close contacts with the Government of Guinea. Upon arrival in Guinea, Mr. Mvogo and the two officers of the CBSA who had accompanied him were arrested by the Guinean authorities, as Mr. Mvogo's travel document was not genuine. On the same day, the Guinean authorities sent Mr. Mvogo and the two officers back to Canada. Upon his return to Canada, Mr. Mvogo was allegedly detained in isolation at the Toronto Immigration Holding Centre.

13. On 14 January 2012, the President of the Alliance of Cameroonians met with Mr. Mvogo and stated that he believed Mr. Mvogo's story. He undertook a business trip to Cameroon and obtained a birth certificate for Mr. Mvogo, which he submitted to the CBSA in February 2012.

14. The source reports that the CBSA continues to detain Mr. Mvogo to date while seeking to confirm his identity and to remove him from Canada. Since September 2006, Mr. Mvogo's detention has been reviewed every 30 days by the Immigration and Refugee Board. Mr. Mvogo has been detained for the entire period, as the Board considers that Mr. Mvogo is unlikely to appear for removal. Mr. Mvogo is currently detained in the Central East Correctional Centre in Lindsay, Ontario, where he has been since the summer of 2013.

15. The source argues that the detention of Mr. Mvogo is arbitrary, as he has been detained for over seven years purely for the purpose of removing him from Canada. In the source's view, Mr. Mvogo's detention has become almost indefinite, given the absence of domestic legislation prescribing the maximum period of time for which the CBSA may hold irregular migrants in detention pending their removal. The source stresses that the consulate of Cameroon does not issue travel documents to people who are detained by the CBSA, which often leads to extremely prolonged detention of those people.

16. Furthermore, the source argues that Mr. Mvogo has not been afforded an opportunity to call witnesses to present his case to the Immigration and Refugee Board, in violation of his right to a fair trial guaranteed under article 14 of the International Covenant on Civil and Political Rights. According to the source, the Board considers that Mr. Mvogo lacks credibility and his lawyer's requests to summon witnesses to support Mr. Mvogo's case have been rejected.

17. In support of its claims, the source submitted to the Working Group a copy of the application to the Federal Court for leave and judicial review in *The Matter of Michael Mvogo a.k.a. Andrea Jerome Walker a.k.a. Michael Gee v. The Minister of Citizenship and Immigration of Canada* (Court File No.: IMM-393-13).

Communication to the Government

18. The Working Group addressed a communication to the Government of Canada on 13 February 2014, requesting detailed information about the current situation of Mr. Mvogo and clarification of the legal provisions justifying his continued detention. The Government has not responded to this request. The Working Group would have appreciated it if the Government of Canada had responded.

Discussion

19. Despite the absence of any information from the Government, the Working Group is in the position to render its opinion on the detention of Mr. Mvogo in conformity with paragraph 16 of its methods of work.

20. Based on the information received and the documentation on the court and administrative review decisions that has been submitted by the source, the Working Group finds that Mr. Mvogo is held in detention while the authorities seek to confirm his identity and to remove him from Canada. The Working Group notes that since September 2006, Mr. Mvogo's detention has been reviewed every 30 days by the Immigration and Refugee Board. The source has argued that the detention of Mr. Mvogo is arbitrary, as he has been detained for over seven years for the purpose of removing him from Canada. In the source's view, Mr. Mvogo's detention has become almost indefinite, pointing out that domestic legislation does not set a maximum period of time for holding irregular migrants in detention pending their removal.

21. The source has also argued that Mr. Mvogo's procedural rights have been violated, in particular as he has not been afforded an opportunity to call witnesses to present his case to the Immigration and Refugee Board.

22. The Working Group recalls that its mandate was clarified and extended by the Commission on Human Rights in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and migrants. The Working Group has had occasions to set out international law relating to detention of migrants in an irregular situation in several of its annual reports, including in its 1999 report (E/CN.4/1999/63) and its 2008 report (A/HRC/10/21). In the latter report it stated:

detention shall be the last resort and permissible only for the shortest period of time and ... alternatives to detention should be sought whenever possible. Grounds for detention must be clearly and exhaustively defined and the legality of detention must be open for challenge before a court and regular review within fixed time limits. Established time limits for judicial review must even stand in "emergency situations" when an exceptionally large number of undocumented immigrants enter the territory of a State. Provisions should always be made to render detention unlawful if the obstacle for identifying immigrants in an irregular situation or carrying out removal from the territory does not lie within their sphere, for example, when the consular representation of the country of origin does not cooperate or legal considerations – such as the principle of non-refoulement barring removal if there is a risk of torture or arbitrary detention in the country of destination – or factual obstacles – such as the unavailability of means of transportation – render expulsion impossible.

23. It is also clearly established by other international bodies that the inability of a State party to carry out the expulsion of an individual does not justify detention beyond the shortest period of time or where there are alternatives to detention, and under no circumstances indefinite detention.¹ This is also continually confirmed in the jurisprudence of the Working Group.²

¹ See the report of the Special Rapporteur on the human rights of migrants, François Crépeau (A/HRC/20/24) and the concluding observations of the Human Rights Committee on the United States (A/50/40), paras. 283 and 298, the United Kingdom (CCPR/CO/73/UK), para. 16 and Bosnia and Herzegovina (CCPR/C/BIH/CO/2), para. 14.

² See, e.g., opinions Nos. 56/2011 (Lebanon) and 4/2011 (Switzerland).

24. In the present case, the Working Group finds that Mr. Mvogo has been detained for over seven years, primarily due to the difficulties for the authorities in confirming his identity and the lack of cooperation by the consular representation of his country of origin. In the Working Group's view, these factors, even if they could have been attributed to Mr. Mvogo himself in any way, provide insufficient justification for his continued detention. In light of the absence of the Government's response, the authorities have failed to demonstrate that Mr. Mvogo's detention is necessary and proportionate, and that alternatives to detention have been adequately considered and exhausted.

Disposition

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

The detention of Mr. Mvogo constitutes violations of article 9 of the Universal Declaration of Human Rights and articles 9 and 12 of the International Covenant on Civil and Political Rights. It falls within category IV of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

26. Consequent upon the opinion rendered, the Working Group requests the Government of Canada to take the necessary steps to remedy the situation of Mr. Mvogo and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

27. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Mvogo and to provide him with adequate reparations. The duty to provide Mr. Mvogo with compensation for the violations of his rights rests upon the State and should be enforceable before the national courts.

[Adopted on 30 April 2014]
