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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, 25–29 August 2014

No. 33/2014 (Burundi)

Communication addressed to the Government on 26 June 2014

Concerning: Pierre-Claver Mbonimpa

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 further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, 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 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. Pierre-Claver Mbonimpa, a 66-year-old Burundian national, a surveyor by training, is a former member of the air and border police, former official in the Ministry of the Economy and President of the Association for the Protection of Human Rights and Detained Persons (Association pour la Protection des Droits Humains et des Personnes Détenues, APRODH). According to the source, he is one of the most famous human rights defenders in Burundi and has already gained recognition for his work from the international community and civil society, having been awarded, inter alia, the Henry Dunant Prize in 2011 and the Martin Ennals Award for Human Rights Defenders in 2007. His work led to him to being subjected to threats, intimidation and arbitrary imprisonment in 1994 and 1996, after which he decided to found APRODH.

4. As part of his activities within APRODH and on the basis of his own investigations, Mr. Mbonimpa, speaking on Radio Publique Africaine's Kabizi programme on 6 May 2014, denounced the suspected distribution of weapons to members of the ruling party's youth wing, and the paramilitary training of young Burundian nationals in the east of the Democratic Republic of the Congo, known as the Imbonerakure. These accusations, deemed "unfounded" by the authorities, sparked serious unrest between civil society organizations and the Burundian authorities.

5. On the following day, and on 12 May 2014, Mr. Mbonimpa was summoned by the criminal investigation police and asked to provide more detailed information; he cooperated throughout the proceedings, which eventually led to a national intelligence service officer being implicated in the coordination of the weapons distribution and paramilitary training. Subsequently, on 14 May 2014, Mr. Mbonimpa was summoned to a hearing, which was eventually postponed until 19 May 2014.

6. On the night of 15 May 2014, Mr. Mbonimpa was arrested at Bujumbura Airport as he prepared to board a flight to Kenya. He spent the night in custody. The grounds for arrest were debatable, given that Mr. Mbonimpa had not refused to appear at the hearing scheduled for 19 May. Moreover, the arrest warrant violated articles 67 and 78 of the Code of Criminal Procedure, insofar as it was issued without the police having even referred the case to the public prosecutor's office.

7. After a long interrogation by the public prosecutor on 16 May 2014, Mr. Mbonimpa was charged with a breach of article 602 of the Criminal Code, which criminalizes inciting civil disobedience and wilfully spreading "false rumours likely to alarm members of the public or set them against the Government", and article 579, which punishes acts hostile to the internal and external security of the State. That same day, he was taken to Mpimba central prison in Bujumbura.

8. On 20 May 2014, Mr. Mbonimpa was again interrogated at length by the prosecutor as part of further investigations. According to the source, Mr. Mbonimpa, if convicted, faces up to 8 years' imprisonment and a fine of 300,000 Burundi francs (US\$ 194).

9. On 5 June 2014, Mr. Mbonimpa appeared before the council chamber of Bujumbura court of appeal.

10. The source adds that there are many reasons to believe that the detention is arbitrary and considers the charges against Mr. Mbonimpa to be unfounded, in the sense that, as a human rights defender, his primary goal is precisely to denounce suspected violations, which he does on the basis of extensive research and inquiries, the results of which he communicated to the police in full at their request. In that sense, the allegation of an intent to harm the interests of Burundi that underlies the charges is groundless, according to the source. In addition, the purpose of disseminating information was to alert the competent authorities so that they could undertake an effective, in-depth investigation. To date, however, the matter has not been investigated and no one has been questioned, even though the accusations have been corroborated by other local sources.

11. The source concludes that the charges against Mr. Mbonimpa are baseless and implausible in the light of the facts, and that the case against him does not exist.

12. The source considers that the detention of this person falls under category II of the criteria applicable to the consideration of cases submitted to the Working Group, since it arises 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 articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights. The source also notes the positive obligation to protect human rights defenders as advocates of the promotion and protection of fundamental freedoms.

13. The source considers that, since the charges do not relate to a credible criminal offence, Mr. Mbonimpa should be freed immediately, as was done in the case of other civil society actors.

14. The source adds that this arrest took place in the context of a marked deterioration in the rule of law in Burundi. In this climate of hostility towards human rights, other figures have been subjected to sanctions, including the President of the Bujumbura Bar Association, Isidore Ruyikiri.

15. The source requests that all violations of Mr. Mbonimpa's dignity and integrity be prevented, insofar as his detention leaves him without protection for his security and exposes him to other serious human rights violations, such as the use of torture and ill-treatment, against which the State is obliged to take concrete steps pursuant to general comment No. 2 (2007) of the Committee against Torture.

16. Moreover, in its July 2011 report, the Burundi Association for the Defence of Prisoners' Rights produced recommendations on the need to reform Mpimba prison, which is alarmingly overcrowded (4,000 inmates for a capacity of 800 places) and marked by the prisoners' lack of hygiene and constant promiscuity, which is conducive to the spread of diseases and to inter-prisoner violence. In view of Mr. Mbonimpa's age, such conditions merely increase the possible risk of violations of his dignity and physical and mental integrity.

17. The source calls for the immediate and unconditional release of Mr. Mbonimpa in the interests of his integrity and dignity.

Response from the Government

18. On 26 June 2014, the Working Group transmitted the information from the source to the Government of Burundi, which was requested to provide, by return mail, all available information on the current situation of Mr. Mbonimpa, and to clarify the legal grounds for his detention. The Working Group finds it regrettable that the Government has not provided the requested information.

Discussion

19. Having considered the communication from the source, and in view of the importance of protecting human rights defenders and the urgency of the matter, the Working Group considers that it is in a position to render an opinion on the case, on the basis of the observations made and pursuant to paragraph 16 of its revised methods of work.

20. In the present case, the Government has chosen not to refute the prima facie allegations submitted by the source. In its jurisprudence, the Working Group has established the manner in which it deals with questions of evidence. If the source reports a prima facie case involving a violation of international requirements amounting to arbitrary detention, the burden of proof must rest on the Government if it wishes to refute the allegations. In the case at hand, the Working Group has based its opinion on the prima facie allegations from the source.

21. Indeed, in cases such as this, in which there is reliable prima facie information to the effect that a known human rights defender has been deprived of his liberty on questionable charges, where the conviction is not based on trustworthy evidence and where, in fact, the person has been punished for exercising his fundamental rights, it is the Government's responsibility to provide the Working Group with specific evidence justifying the conviction.

22. The Working Group notes with concern that Mr. Mbonimpa's arrest took place in violation, *inter alia*, of article 9, paragraph 2, of the International Covenant on Civil and Political Rights, which stipulates that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Yet it was not until after a long interrogation conducted by the prosecution that Mr. Mbonimpa was notified of the charges against him, on 16 May 2014.

23. In view of the fact that Mr. Mbonimpa cooperated fully with the authorities, the Working Group considers that the irregularities that occurred during his arrest further complicated and aggravated the situation where human rights are concerned.

24. The Working Group believes that the accusations against Mr. Mbonimpa arise from his activities as a human rights defender. In the opinion of the Working Group, some of those activities consist in denouncing suspected human rights violations related to the distribution of weapons to members of the ruling party's youth wing. His mission as a human rights defender also includes warning and protecting the public against the suspected paramilitary training of young Burundian nationals in the Democratic Republic of the Congo. Moreover, the Working Group understands that Mr. Mbonimpa's sole intention was to shed light on some particularly serious occurrences.

25. It is with great concern that the Working Group views Mr. Mbonimpa's arrest as a serious challenge for the protection of human rights defenders, whose security and dignity are violated ever more frequently. Mr. Mbonimpa, who has received honours such as the Henry Dunant Prize in 2011 and the Martin Ennals Award for Human Rights Defenders in 2007, is a renowned human rights activist in the region. As a result of his activities, he was detained in 1994 and again in 1996, after which he decided to establish APRODH.

26. In addition, the Working Group wishes to stress that an arbitrary interpretation or application of legal provisions such as article 602 of the Criminal Code, which criminalizes inciting civil disobedience and wilfully spreading false rumours likely to alarm members of the public or set them against the Government, or article 579 of the Code, which punishes acts considered hostile to the internal and external security of the State, can lead dangerously to an unfair denial of the enjoyment of the fundamental rights and freedoms

enshrined in the Universal Declaration of Human Rights and the Covenant, as Mr. Mbonimpa's case exemplifies.

Disposition

27. In light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Pierre-Claver Mbonimpa is arbitrary and constitutes a violation of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights, articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights and articles 6 and 16 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. Consequently, it falls under category II of the criteria applicable to the consideration of cases submitted to the Working Group.

28. The Working Group therefore requests the Government to take the necessary steps to remedy the situation of Mr. Mbonimpa without delay. Given the circumstances of the case, the Working Group considers that adequate reparation would consist in releasing Mr. Mbonimpa immediately and granting him compensation for the harm suffered during his arbitrary detention.

[Adopted on 28 August 2014]
