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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fifth session, 12–16 August 2019

#### Opinion No. 49/2019 concerning Mathias Echène (Indonesia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 20 May 2019, the Working Group transmitted to the Government of Indonesia a communication concerning Mathias Echène. The Government replied to the communication on 31 May 2019. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## Submissions

### *Communication from the source*

4. Mathias Echène, born in March 1970, is a French citizen who has lived in Bali, Indonesia, with his family since November 2006. He operated a company working in the field of land acquisition and construction, as well as the sale of villas.

#### (a) Proceedings in Hong Kong, China

5. The source states that, on 18 April 2012, four investors filed complaints with the Commercial Crime Bureau of Hong Kong, China, against Mr. Echène, his spouse and his company, alleging fraudulent overbilling. The complaints were in relation to real estate transactions conducted six years earlier.

6. On that basis, on 1 June 2012, Mr. Echène and his spouse were arrested at airport of Hong Kong, China, and four charges of fraud were brought against them. On 4 June 2012, they were released on bail.

7. The source further reports that, owing to the lack of evidence to support the claim, on 7 November 2012, the initial charges were abandoned in favour of one charge involving allegations relating to property known or believed to represent proceeds of an indictable offence.

8. The source states that, although Mr. Echène and his spouse, unable to appear at the trial, justified their absence and asked for adjournments, on 10 October 2013, the authorities of Hong Kong, China, issued two international arrest warrants. In that context, on 16 September 2014, the sub-bureau of the International Criminal Police Organization (INTERPOL) National Central Bureau in China delivered an INTERPOL Red Notice against Mr. Echène.

9. The source submits that, at the same time as the criminal proceedings were opened, the same investors filed a civil complaint against Mr. Echène before the High Court of Hong Kong, China, concerning the same facts. In March 2015, the High Court awarded damages to the investors on the basis of two default judgments dated 19 March 2015.

10. On 12 June 2017, the request for enforcement of those judgments was rejected by the Paris Court of First Instance on the grounds that they did not respect the adversarial principle, violated the defendant's right to a fair trial and therefore ran counter to the French concept of international public policy. On 26 March 2019, the Paris Court of Appeal confirmed the two judgments of the Court of Hong Kong, China, irrevocably refusing to order enforcement in France of the decisions of the Hong Kong court.

#### (b) Proceedings in Indonesia

11. The source further states that, in parallel to the cases in Hong Kong, China, two of the investors initiated civil proceedings before the District Court of Denpasar in Bali. On 12 February 2015, the District Court rendered a judgment for damages against Mr. Echène. The decision was upheld by the Supreme Court of Indonesia on 30 March 2017, thus exhausting Mr. Echène's domestic remedies. Reportedly, he was not given the opportunity to defend himself before the Supreme Court of Indonesia.

12. The source submits that, on 29 July 2017, Mr. Echène was arrested at Bali airport on the basis of the international arrest warrant of 10 October 2013, delivered by Hong Kong, China, and the INTERPOL Red Notice dated 16 September 2014, without either the arrest warrant or the Red Notice being presented to Mr. Echène at the time of the arrest. Subsequently, on 14 September 2017, the Government of Hong Kong, China, issued a request for surrender to Indonesia. The source specifies that the request was not supported by any formal request for detention, in violation of the provisions of national legislation.

13. The source states that, since his arrest, Mr. Echène has been detained in conditions that may be qualified as constituting inhuman and degrading treatment. Having been first incarcerated on the premises of the Bali regional police for seven months, he was then

transferred to Kerobokan State Penitentiary in Badung Regency on 28 February 2018, where he remains to date.

14. According to the source, the defence counsel of Mr. Echène sent letters to the Attorney General of Jakarta on two instances. The first letter was sent on 27 February 2018, after the dismissal of Mr. Echène's request for release. The territorial incompetence of the courts of Hong Kong, China, the civil nature of the case and the health conditions of Mr. Echène were mentioned in the letter. The second letter was sent on 26 April 2018, in view of the deterioration of Mr. Echène's health owing to the conditions of his detention and the lack of access to appropriate medical treatment.

15. On 9 May 2018, following a brief hearing, the District Court of Denpasar approved Mr. Echène's extradition to Hong Kong, China. After his local legal counsel informed him that the decision was not eligible for appeal, he chose to change his lawyers.

16. On 13 July 2018, Mr. Echène's new lawyers sent letters to the President of Indonesia, who has the last say on extradition matters, as well as to four Indonesian authorities that have to be consulted in extradition procedures, requesting dismissal of the request for surrender against Mr. Echène, on the following grounds:

- the non-compliance of the request for surrender with both Indonesian law and the agreement between Indonesia and Hong Kong, China, concerning extradition
- the civil, rather than the criminal, basis of the extradition request, which is thus baseless
- the illegality of Mr. Echène's prolonged detention
- the violation of humanitarian standards, in view of the deterioration of Mr. Echène's health and of the lack of access, in detention, to medical treatment in accordance with international norms

17. Furthermore, on 16 November 2018, Mr Echène's new lawyers filed two appeals:

- a substantive action against the extradition decision before the Supreme Court of Indonesia on the basis of its illegality
- a request for suspension of detention before the District Court of Denpasar, on the dual grounds of the arbitrary nature of Mr. Echène's detention and the deterioration of his health, leading to a high risk of sudden death

18. The source states that, despite the substantive action contesting the legality of the extradition decision issued by the District Court of Denpasar on 9 May 2018, the extradition process continues.

19. It was for this reason that letters were reportedly sent by the lawyers of Mr. Echène to the Indonesian authorities, aimed at drawing their attention to the irregular proceedings and arbitrariness of the detention. As such, between 19 and 21 December 2018, letters were sent to the Ministry of Justice, the National Human Rights Commission of Indonesia and the Ombudsman of Indonesia.

20. Subsequently, the National Human Rights Commission requested clarification as to the legality of Mr. Echène's detention and regarding his access to treatment from the Director of Kerobokan State Penitentiary, where he is being detained. Furthermore, it is reported that the Ombudsman has written to the Chair of the District Court of Denpasar, the Ministry of Justice and the Public Prosecutor of Bali requesting clarification of the result of the request for suspension filed in November 2018, the follow-up to the extradition process, the grounds justifying Mr. Echène's prolonged detention and the impediments to extradition.

21. The source states that, because the application for release introduced on 16 November 2018 was never examined, on 27 February 2019, Mr. Echène's lawyers submitted a request to the President of Indonesia for the dismissal of the decision regarding extradition on the basis of the illegality of the extradition request and the fact that legal recourse against the approval of the extradition on 9 May 2018 was still pending before the Supreme Court of Indonesia.

## (c) Procedure before INTERPOL

22. The source states that, on 17 April 2018, Mr. Echène's lawyers submitted a petition to INTERPOL to obtain withdrawal of the Red Notice dated 16 September 2014. It was argued in the petition that the Red Notice should be withdrawn since it was based on incorrect data concerning Mr. Echène contained in INTERPOL files. On 4 July 2018, the Commission for the Control of INTERPOL's files rejected the petition.

23. The source further states that, on 7 March 2019, Mr. Echène's defence filed an application for judicial review of the decision before the Commission for the Control of INTERPOL's files, on the basis of new elements, namely the substantive action against the extradition decision still pending before the Supreme Court of Indonesia and the request for suspension of the detention.

24. On 3 April 2019, the Commission for the Control of INTERPOL's files informed Mr. Echène's defence that the application for judicial review was under review and that the defence had one month to transmit new elements.

25. On 12 April 2019, the defence reportedly sent to the Commission for the Control of INTERPOL's files the two decisions issued by the Paris Court of Appeal on 26 March 2019, in which the dismissal of the civil judgments of Hong Kong, China, in view of non-compliance with the right to a fair trial was confirmed.

## (d) Legal analysis

26. The source submits that Mr. Echène's detention falls under categories I and III of the Working Group.

27. In relation to category I, the source argues that the authorities have violated article 9 (1) of the Covenant, as well as article 34 of Law No. 39 of 1999 of Indonesia on human rights, which provides guarantees against arbitrary arrest, detention, torture or exile. The source specifies that such violations arose from the fact that the authorities of Hong Kong, China, did not send any request for detention, that the duration of detention is not limited by any legal delay and that some periods of detention proceeded without detention warrants.

28. In support of the above, the source states that the initial detention of Mr. Echène proceeded even though no request for detention had been sent by the Government of Hong Kong, China, in breach of Indonesian law. The source cites articles 18.1 and 19.1 of Law No. 1 of 1979 of Indonesia on extradition and articles 14.1 and 14.3 of Law No. 1 of 2001 of Indonesia on the ratification of an agreement between the Government of Indonesia and the Government of Hong Kong, China, for the surrender of fugitive offenders. Accordingly, to effect a temporary detention of a person for whom extradition is requested, a formal application must be made by the requesting State.

29. The source submits that the detention of Mr. Echène is based only on the international arrest warrant, accompanied by an INTERPOL Red Notice, not on a request for detention. It states that Mr. Echène's detention is arbitrary because it has been carried out in violation of the national provisions governing the detention of persons whose extradition is requested.

30. The source further states that Mr. Echène has been detained since 29 July 2017, without any possibility of determining the foreseeable date of his release. It adds that Mr. Echène has been detained not on the basis of a duly renewed order of detention, but on the overlapping of different kinds of legal documents (four warrants, 13 orders and four minutes of the judicial decree), two of which are allegedly forgeries formalized a posteriori by the Indonesian authorities.

31. Consequently, the source highlights that the absence of legal provisions, under Indonesian law, stipulating the maximum duration of detention applicable to persons whose extradition is requested constitutes a violation of the fundamental rights of the person concerned. It argues that the uncertainty about the duration of the detention of Mr. Echène constitutes a violation of his fundamental rights and breaches the terms of article 34 of the

law on human rights, according to which arbitrary detention is specifically prohibited, as well as a violation of international covenants to which Indonesia is a State party.

32. Furthermore, also in relation to category I, the source argues that there is a lack of valid detention orders in support of an indefinite detention. According to article 34.b of the law on extradition, detention must be limited to 30 days, except when the period is extended by a court on the basis of a request from the Public Prosecutor. According to article 35.1 of the law on extradition, any subsequent extension is limited to 30 additional days.

33. Despite those provisions, the source argues that the detention of Mr. Echène from 4 August to 2 October 2018 is devoid of any legal basis as it was not justified by any legal document. It specifies that two orders for the extension of detention concerning both the period from 4 August to 2 September 2018 and the period from 3 September to 2 October 2018 were eventually added to the case file. However, those orders were presented to Mr. Echène and signed by him only on 28 March 2019.

34. Furthermore, the source notes that the minutes of orders for the extension of detention do not mention specific dates for the five periods of detention, making it impossible to check how regular they were.

35. The source concludes that, beyond the violations of national legislation noted above, Mr. Echène's detention is arbitrary, in violation of article 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 32, 36, 37 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

36. In relation to category III of the Working Group, the source makes reference to articles 9 and 10 of the Universal Declaration of Human Rights, articles 9, 10, 11 and 14 of the Covenant, articles 12 and 20 of the Human Rights Declaration of the Association of Southeast Asian Nations and principles 2, 11, 24, 25, 32, 36, 37, 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source argues that the authorities have repeatedly failed to observe the principles established by the documents noted above, in violation of the international commitments of Indonesia.

37. More specifically, the source points out the violation of Mr. Echène's right to be tried without undue delay. It states that none of the pleas filed on 16 November 2018 have been examined, whereas Indonesian legislation provides for a non-imperative delay of 250 days to examine the appeal in cassation.

38. The source states that the order for extradition issued by the Government of Hong Kong, China, has not been subject to any definitive decision of the Indonesian courts, and the closing of the procedure remains uncertain, in view of the absence of any delay provided under Indonesian law to examine the legal recourse made against decisions authorizing extradition. It concludes that the national procedure thus disregards the right to be tried without undue delay, in violation of articles 9 (3), 9 (4), and 14 (3) of the Covenant and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, in particular principle 38.

39. The source further adds that the lack of a maximum duration of detention in the context of extradition proceedings in Indonesia is in violation of the principle of the presumption of innocence and runs contrary to article 14 (2) of the Covenant.

40. Finally, in support of a category III violation, the source submits that Mr. Echène's right to be treated humanely and with respect for the inherent dignity of the human person has not been observed while he has been in detention in Indonesia. The source states that Mr. Echène suffers from a chronic heart condition, putting him at risk of sudden death from cardiac arrest. Potentially life-saving treatment is reportedly not possible while Mr. Echène remains in detention. The French authorities in Indonesia have reportedly sent several letters to the Indonesian authorities expressing concern for Mr. Echène's lack of access to regular and appropriate medical treatment.

41. The source adds that, to protest against the inertia of the procedure, on 2 April 2019, Mr. Echène began a hunger strike, which may lead to an irreversible deterioration of his state of health.

*Response from the Government*

42. On 20 May 2019, the Working Group transmitted the allegations from the source to the Government of Indonesia under its regular communications procedure. The Working Group requested the Government to provide, by 19 July 2019, detailed information about Mr. Echène's current situation and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Indonesia under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Echène's physical and mental integrity.

43. On 31 May 2019, the Government submitted its response, in which it argued that several crucial pieces of information about the offences committed by Mr. Echène, such as the nature of the offences (both civil and criminal), the object of indictment and the location in which the offences had taken place (*locus delicti*) had been omitted from the source's submission. For example, Mr. Echène's tendency to abscond from one place to another was not mentioned in the communication even after two courts had issued a binding verdict, which then led to the issuance of an international arrest warrant and an INTERPOL Red Notice by the authorities of Hong Kong, China.

44. The Government further argues that the communication is convoluted and randomly written with a non-chronological timeline. Important facts relevant to the case are diluted, and gaps are created in the legal and logical reasoning behind the decisions made by each court, namely the courts of Hong Kong, China, the French courts and the Indonesian courts, which ultimately led to the deprivation of Mr. Echène's liberty. The Government submits that the communication has been written solely to support the case for arbitrary detention.

45. The Government argues that Law No. 1 of 2001 on the ratification of the extradition agreement between Indonesia and Hong Kong, China, contains articles in which 'the authority of Indonesia to detain Mr. Echène for his offences is acknowledged on the basis of the INTERPOL Red Notice. The legality of Mr. Echène's detention has even been ascertained by the decision of the Supreme Court of Indonesia dated 4 October 2017, and strengthened by Mr. Echène's own track record, which speaks for itself, as he seems to be continually on the run from Hong Kong, China, and from France, and finally fled to Indonesia.

46. Furthermore, the Government contends that the accuracy and comprehensiveness of the facts presented in the communication need to be questioned seriously, as the decisions of each court must be read thoroughly instead of partially and should be incorporated into the narration of the case mentioned in the communication. Consequently, similar communication must also be sent to the Government of China (Hong Kong Special Administrative Region of China) and the Government of France, and their responses as well as their court decisions must be included as annexes in the narration of the case in order for all parties to have a clear and comprehensive understanding.

47. Therefore, the Government submits that, as it stands now, one cannot help but acknowledge that Mr. Echène and his lawyers are trying to divert attention from his crimes to matters concerning the illegality of the detention, the humanitarian aspects linked to condition of detention and the process of extradition. Mr. Echène himself seems to be very hesitant to be extradited to Hong Kong, China, despite the decision of the Indonesian court, which approved his extradition.

48. In conclusion, the Government submits that Indonesia attaches great importance to the transparency of legal proceedings and legal guarantee. This is part of the law reforms of Indonesia, as part of which court decisions up to and including the courts of cassation can be accessed publicly through the court websites. Moreover, the Indonesian judiciary system guarantees all of Mr. Echène's legal rights, and they have been fulfilled. The system also enables him to use all available legal services provided to him, such as legal counselling and translation, and allows him the possibility of exhausting all domestic remedies, namely

the highest appeal to the Supreme Court, judicial review and even the sending of letters to the President of Indonesia for consideration.

*Further comments from the source*

49. The Government's response was transmitted to the source on 6 June 2019 for further comments, which the source provided on 19 June 2019. In its further comments, the source rejects the arguments presented by the Government of Indonesia and maintains that the detention of Mr. Echène is arbitrary under categories I and III.

**Discussion**

50. The Working Group thanks the source and the Government for their submissions and appreciates the cooperation and engagement of both parties in this matter.

51. As a preliminary matter, the Working Group wishes to address the argument raised by the Government of Indonesia that the communication concerning Mr. Echène should be sent to the Governments of China and France for their comments so as to provide the Working Group with full details of Mr. Echène's case.

52. While it is true that the current detention of Mr. Echène is preceded by interventions of the judiciaries of the three countries noted by the Government, the Working Group wishes to highlight that its mandate is limited to the circumstances of alleged instances of arbitrary deprivation of liberty.

53. The Working Group notes that the allegations concern the current detention of Mr. Echène in Indonesia. Indeed, the Government has not contested the fact that Mr. Echène is currently in the custody of Indonesian authorities. The Working Group therefore observes that the Indonesian authorities are solely responsible for ensuring that his detention remains legal in accordance with international human rights law. No other country can interfere in this sovereign domain of Indonesia and exercise control over the deprivation of liberty of Mr. Echène. The Working Group therefore considers that it does not need to hear from the Government of China or from the Government of France because, whereas the judiciary of those countries has had dealings with Mr. Echène that are relevant to the case, the authorities of neither of those States have custody of Mr. Echène and therefore would not be able to furnish any explanations concerning the deprivation of his liberty in Indonesia.

54. The source has argued that the detention of Mr. Echène was arbitrary under categories I and III. While not addressing the categories specifically, the Government dismisses those allegations. The Working Group shall proceed to examine the allegations under each of the categories separately.

55. The Working Group recalls that it considers detention to be arbitrary and falling under category I if it lacks a legal basis. In the present case, the Working Group must therefore examine the circumstances of Mr. Echène's detention. In that regard, the Working Group notes that the source has argued that Mr. Echène was arrested on 29 July 2017 at Bali airport on the basis of the international arrest warrant issued by INTERPOL. The source has argued that he was not shown any documents at the time of the arrest and that the request for the surrender of Mr. Echène issued by Hong Kong, China, to Indonesia was not accompanied by a formal request for detention, as required by national legislation.

56. The Working Group's initial observation is that the case has its inception five years prior to the actual arrest of Mr. Echène and involves the authorities and judiciaries of three different countries (Hong Kong, China; France; and Indonesia) as well as an international organization, INTERPOL. The mandate of the Working Group is limited to the issues pertinent to situations of alleged arbitrary deprivation of liberty, and therefore it will examine the facts from the moment of Mr Echène's arrest on 29 July 2017.

57. Nevertheless, the Working Group considers that Mr. Echène was fully cognizant of the proceedings prior to his arrest on 29 July 2017 and that he was fully aware that a valid international arrest warrant had been issued against him on 10 October 2013. Since the date of its issuance, he had the opportunity to contest it but chose not to do so. The Working Group therefore cannot accept that the actions of the Indonesian law enforcement agents on

29 July 2017 violated Mr. Echène's rights under article 9 of the Covenant because they executed a duly issued and fully valid international arrest warrant.

58. The Working Group notes the source's argument that the execution of the international arrest warrant did not comply with the provisions of the domestic legislation of Indonesia. Nevertheless, the Working Group is unable to make any pronouncements on the matter as it is not the mandate of the Working Group to determine whether the stipulations of the national legislation have been complied with. The Working Group notes that both the source and the Government have reported that the detention was reviewed by judicial authorities in Indonesia. The Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.<sup>1</sup>

59. However, the source has argued that, since the arrest of Mr. Echène on 29 July 2017, his continued detention has not been duly reviewed at set intervals and, in fact, on a number of occasions, the renewals of the detention orders have been issued a posteriori. The source also argued that Mr. Echène was presented with documents authorizing the extension of his detention for periods that had already passed on at least two occasions (see para. 33 above). The Working Group observes that the Government has chosen not to respond to these specific allegations made by the source.

60. The Working Group wishes to highlight that, even if the arrest of an individual has been carried out in accordance with the provisions of article 9 of the Covenant, it does not automatically mean that the continued deprivation of liberty also complies with that provision. In other words, it is not only the initial fact of detention that must be in accordance with article 9 of the Covenant, but it is also the duty of the authorities to ensure that the continued detention respects that provision. In the present case, the detention of Mr. Echène was extended post factum on a number of occasions. This means that, at least on those occasions, Mr. Echène was effectively deprived of his right to challenge the legality of the detention extension orders. The Working Group views that this constitutes a breach of Mr. Echène's rights under article 9 (4) of the Covenant.

61. As the Working Group has consistently argued,<sup>2</sup> in order to establish that a detention is indeed legal, any detainee has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>3</sup> That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty<sup>4</sup> and to:

all situations of deprivation of liberty, including not only detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and the detention of children for educational purposes.<sup>5</sup>

62. The Working Group further considers that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>6</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Echène was not able to challenge his continued detention, his

<sup>1</sup> Opinions Nos. 40/2005, 15/2017, 16/2017 and 30/2017.

<sup>2</sup> See, for example, opinions Nos. 1/2017, 6/2017, 8/2017, 30/2017, 2/2018, 4/2018, 42/2018, 43/2018 and 79/2018.

<sup>3</sup> A/HRC/30/37, paras. 2 and 3.

<sup>4</sup> *Ibid.*, para. 11.

<sup>5</sup> *Ibid.*, annex, para. 47 (a).

<sup>6</sup> A/HRC/30/37, para. 3.



right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

63. The Working Group therefore concludes that the continued detention of Mr. Echène violates articles 2 (3) and 9 (4) of the Covenant and therefore lacks legal basis, falling under category I of the Working Group.

64. The source has also argued that the detention of Mr. Echène falls under category III owing to the violations of his right to be tried without undue delay, in violation of articles 14 (2) and (3) (c) of the Covenant. The Government dismisses those allegations, noting that the Indonesian judiciary has always respected Mr. Echène's right to a fair trial.

65. The Working Group observes that Mr. Echène was arrested two years ago, on 29 July 2017. The basis for his arrest was the international arrest warrant, and neither the source nor the Government has disputed the fact that the extradition of Mr. Echène is sought by the authorities of Hong Kong, China. To date, he remains in detention without any clear prospect of when he would be extradited or released or of obtaining knowledge of any other resolution of his case.

66. The Working Group also observes that the source has alleged that, on 16 November 2018, Mr. Echène's lawyers filed two appeals against the extradition proceedings but that neither of those applications has been heard. The Working Group is mindful of the failure of the Government to respond to that allegation.

67. The Working Group recalls that the right of the accused to be tried without undue delay, provided for by article 14 (3) (c) of the Covenant, is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.<sup>7</sup> However, what is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.

68. The Government has chosen not to provide any explanation for the continued delays in the extradition proceedings of Mr. Echène, noting only that he "seems to be very hesitant to be extradited to Hong Kong, China, despite the decision of the Indonesian court, which approved his extradition" (see para. 47 above). Mr. Echène remains in detention, and the Government has not given any indication as to when his case might be resolved, through either extradition to Hong Kong, China, or release.

69. Equally, the Government has provided no explanation as to why the two appeals brought by Mr. Echène's lawyers have not yet been heard or why they have not even been given an indicative date as to when they might be heard. The Working Group also has not been presented with any evidence that the behaviour of Mr. Echène has contributed to the delay in considering the appeals brought by his lawyers.

70. The Working Group therefore concludes that there has been a breach of article 14 (3) (c) of the Covenant in the case of Mr. Echène. The Working Group also regards that the breach of Mr. Echène's right to a fair trial has been of such gravity as to render his continued detention arbitrary, falling under category III.

71. The Working Group wishes to express serious concern about the source's allegations concerning the health and well-being of Mr. Echène, which have not been addressed by the Government although it had the opportunity to do so.

72. The Working Group observes that initially, following his arrest, Mr. Echène was held in a police station for seven months. Police stations are places for temporary deprivation of liberty, normally equipped to hold individuals for a matter of days, and those held for longer periods should be held in facilities appropriate for longer periods.<sup>8</sup> The

<sup>7</sup> General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32, para. 35).

<sup>8</sup> A/HRC/39/45/Add.1, paras. 40 and 83 (g).

Working Group recalls that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.

73. Furthermore, the source has reported very serious health conditions that Mr. Echène suffers from, as well as the fact that he has gone on a hunger strike to protest against his continued detention. Once again, the Working Group reminds the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 24, 25, 27 and 30.

#### **Disposition**

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

The deprivation of liberty of Mathias Echène, being in contravention of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2 (3), 9 (4) and 14 (3) (c) of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

75. The Working Group requests the Government of Indonesia to take the steps necessary to remedy the situation of Mathias Echène without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

76. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mathias Echène pending the outcome of the extradition proceedings and accord him an enforceable right to compensation and other reparations, in accordance with international law.

77. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mathias Echène and to take appropriate measures against those responsible for the violation of his rights.

78. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

79. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Echène has been released pending the outcome of the extradition proceedings and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Echène;

(c) Whether an investigation has been conducted into the violation of Mr. Echène's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Indonesia with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

80. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

81. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion.

However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

82. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>9</sup>

*[Adopted on 15 August 2019]*

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<sup>9</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.