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Working Group on Arbitrary Detention

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No. 21/2012 (Philippines)

Communication addressed to the Government on 6 July 2011

Concerning Marcus Haldon Hodge

The Government replied to the communication on 10 November 2011.

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. In accordance with its methods of work (A/HRC/16/47, annex, and Corr. 1), 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. Marcus Haldon Hodge is a 49-year-old Australian citizen, holds a Bachelor of Medicine and a Bachelor of Surgery from the University of Sidney, and is a former Program and Development Operations Officer at the Western Pacific Regional Office in Manila of the World Health Organization. He was arrested on 8 May 2009 at 8 p.m. in the basement car park of the Amorsolo Building of Rockwell Condominium, an apartment building located in Manila's Makati City business district. The arrest was carried out by agents of the Women and Children Protection Division of the Criminal Investigation and Detention Group. Many journalists and cameramen were present at the moment of Mr. Hodge's apprehension. According to the source, they were previously notified of the operation by the police and were waiting in place for the arrest to be made.

4. The agents who carried out the arrest showed no order, decision or warrant issued by a judicial or public authority. In violation of articles 9 and 14, paragraph 3, of the International Covenant on Civil and Political Rights, they did not inform Mr. Hodge of the grounds for his arrest.

5. Mr. Hodge's arrest was described as follows: Mr. Hodge parked his car in his allocated slot when a van drove in and blocked the exit. A plainclothes agent approached his car and suddenly the car was surrounded by people. It was unclear to him whether they were policemen or reporters.

6. Immediately after his arrest, Mr. Hodge was handcuffed by the agents and driven, in his own car, to Camp Crame detention centre. The agents crashed the car into the boom gate of the car park when leaving the building. When he was admitted to the detention centre, media crews with television cameras and other equipment were already in place. During the following days, the news of his arrest was widely disseminated in newspapers, news bulletins and television broadcasts. The source considers that the arrest itself and the transfer to the detention centre were carefully planned as a "media spectacle" and presented in order to show police effectiveness in fighting paedophilia.

7. Mr. Hodge suffers from type 1 diabetes mellitus. He is insulin dependent, and immediately informed his captors about this medical condition. However, he was refused access to insulin during the first 24 hours subsequent to his arrest. Only then was he provided with a syringe and long-acting insulin. One of the police officers harassed him because of his diabetes and accused him of using it as an excuse to receive better treatment. Mr. Hodge was not able to test his blood sugar and became sick. This affected his physical and mental state during the following days.

8. In a state of shock and deeply traumatized, Mr. Hodge was interrogated by police agents with the participation of journalists and cameras. A reporter from the GMA 7 Network was among those present during the interrogation, which was conducted by Colonel Tereseta Cid. During the police interrogation, the GMA 7 Network reporter made derogatory comments regarding Mr. Hodge, implying he had no respect for human rights.

9. During the first 10 days of his arrest, Mr. Hodge was obliged to buy his own food and water at very inflated prices, and also to buy that of the police officers guarding him.

During police interrogations, he did not know if questions were posed by police agents or by journalists. One of the questions was whether he was “a gay”.

10. For several days, Mr. Hodge was refused his right to call the consular representative of his country. When this was finally authorized, he was not able to speak under conditions of confidentiality; his phone conversation with the Australian consular representative was tape-recorded and filmed.

11. The Makati City Prosecutor’s Office recommended the indictment of Mr. Hodges for violating Act No. 7610 (Special Protection of Children against Abuse, Exploitation and Discrimination Act) and Act No. 9208 (Anti-Trafficking in Persons Act of 2003).

12. On 19 May 2009, Mr. Hodges was arraigned in the first set of cases. Criminal case Nos. 09-458 and 09-1969, involving child abuse and the use of trafficked persons, arose from complaints filed by Darwin Marcelino. They have been consolidated and are pending before the Makati Regional Trial Court Branch 144. Mr. Hodges did not enter a plea to the charges, thus the court entered a plea of “not guilty” for him. In criminal case Nos. 09-459 and 09-1968 (involving the use of trafficked of persons), while considering himself totally innocent, Mr. Hodges followed his lawyers’ advice and entered a plea of “guilty”. On 10 May 2011, following receipt of the position papers and replies of each party, the court pronounced the judgement, establishing a 12-month imprisonment period. Mr. Hodges has already been held for 25 months.

13. Concerning the second set of cases (criminal case Nos. 10-2295 to 2304, involving child abuse, child trafficking and trafficking in persons on a large scale), Mr. Hodge stated and demonstrated that he was not in the country at the moment of the facts. In addition, the child complainants were not able to identify him. According to the source, the Prosecutor has faced serious difficulty in gathering accusatory evidence against Mr. Hodge. Mr. Hodge had to insist on the complainants’ presence in a hearing. During one of the hearings, the child complainants failed to respond when asked what and who the subjects of their complaints were. They were not able to identify Mr. Hodge as the person against whom they were making the complaint. The Prosecutor reprimanded the children for seemingly treating the entire judicial proceeding as a joke.

14. After Mr. Hodges’s arrest, the five children were placed into the custody of the Department of Social Welfare and Development without a judicial order authorizing this measure. They did declare that they had been paid to file a complaint against Mr. Hodge. In his concluding remarks, the Prosecutor failed to give due value to the fact that the complainants had failed to identify Mr. Hodge and to the fact that Mr. Hodge was not in the country during the time that the alleged facts took place.

15. Despite the fact that Mr. Hodge maintains his innocence, his lawyers have notified him that a plea bargain approach would result in a sentence of five years’ imprisonment, instead of life.

16. Mr. Hodges has been deprived of his liberty for more than two years, without any decision being taken on his legal status. The right to be tried within a reasonable period of time or be released, proclaimed in article 9, paragraph 3, of the International Covenant on Civil and Political Rights; and the right to be tried without undue delay, recognized in article 14, paragraph 3, of the Covenant, have been violated. Since Mr. Hodge’s detention, the principle of presumption of innocence, enshrined in article 11 of the Universal Declaration of Human Rights and article 14, paragraph 2, of the International Covenant on Civil and Political Rights, has never been recognized.

17. Hearings have been postponed without any justification. The judicial process for the first set of cases has been under four different judges. The last hearing, scheduled for 31 May 2011, was postponed as Judge Soriano failed to appear. The presiding judges have been absent on seven occasions.

18. The severe emotional strain and the exhaustive legal costs caused by protracted court action are having devastating effects on Mr. Hodge's physical and mental well-being, which has been deteriorating seriously since he was transferred to Makati City Jail. He has tried to end his life twice. In addition, as a foreigner he is continuously a victim of extortion attempts and has constantly been harassed and threatened by guards and prisoners who demand money or food from him.

19. According to the source, Mr. Hodge's case has been a source of income for various actors involved and many people from different sectors are interested in maintaining him in detention. Each time Mr. Hodge has denounced having been a victim of robbery or other offences in the prison, he has been punished by the authorities as a troublemaker.

20. The source adds that Maliki City Jail is an overcrowded prison with deplorable conditions affecting health, and very poor food, inappropriate for insulin-dependent diabetics, and without adequate drinking water. There are only 10 cells for a population of 450 prisoners. The ability of Mr. Hodges to communicate with his lawyers is seriously limited: there is only one telephone in the whole prison and he is obliged to pay 20 pesos (about US$ 0.48) per phone call he receives. Therefore, he is not even informed of the preparation of hearings and may meet his lawyers only a few minutes before the hearings.

Response from the Government

21. The Government replied to the communication on 10 November 2011. On 19 June 2012, the Working Group, in accordance with paragraph 17 (c) of its methods of work, requested the Government to provide the Working Group with further information.

22. In its response of 10 November 2011, the Government provided the Working Group with the following information: Marcus Haldon Hodge, an Australian citizen, was arrested by Philippine law-enforcement agents in Makati City on 8 May 2009. Criminal complaints were filed against Mr. Hodge for violations of Act No. 7610 (Special Protection of Children against Abuse, Exploitation and Discrimination Act) and Act No. 9208 (Anti-Trafficking in Persons Act). The cases are still ongoing. The instant case is therefore sub judice. Mr. Hodge has been able to establish contact with the consular representative of his country, and has access to legal counsel. For these reasons, the Government is of the opinion that the communication submitted to the Working Group should be dismissed.

23. The Working Group asked the Government to clarify the legal provisions justifying Mr. Hodge's continued pretrial detention of more than three years and requested the source to provide updated information about Mr. Hodge's situation.

Discussion

24. From the outset, the Working Group wishes to address the Government's claim that the communication should be dismissed by the Working Group because the case is sub judice, i.e., still under judicial consideration. In that regard, it would suffice to note that the Working Group is not bound by the sub judice rule, which in domestic jurisdictions imposes restrictions on out-of-court comments and statements regarding cases which are under judicial consideration. Otherwise, the Working Group would never be able to consider cases, as provided for in its mandate, where the right of the accused to be tried within a reasonable time or to be released is being manifestly violated.

25. Indeed, as emphasized by the Human Rights Committee in paragraph 35 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the right of the accused to be tried without undue delay, provided for by article 14, paragraph 3, of the International Covenant on Civil and Political Rights, 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. Furthermore, the Committee reiterated that in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.

26. Similarly, in paragraph 3 of its general comment No. 8 (1982) on the right to liberty and security of persons, the Human Rights Committee recalled the entitlement "to trial within a reasonable time or to release" under article 9, paragraph 3. Pretrial detention should be an exception and as short as possible.

27. In the case under consideration, Mr. Hodge has been detained since 8 May 2009, i.e., for more than three years. Only in July 2011, more than two years after his arrest, was Mr. Hodge convicted on some of the charges, after he had pleaded guilty on those charges following his lawyers' advice. He was sentenced to six months of community service in case No. 09-1968 and one year of imprisonment in case No. 09-1968. At the time of his conviction for those offences, Mr. Hodge had already been in detention longer than the prison term imposed on him.

28. However, Mr. Hodge is still detained in Makati City Jail on the charges to which he pleaded not guilty as long ago as May 2009. Since then, these two cases against him (Nos. 09-458 and 09-1969) are still pending before the regional trial court.

29. The Working Group considers that this extremely long – exceeding three years – pretrial detention, given the circumstances of the case, constitutes a grave violation of articles 9 and 14, paragraph 3, of the International Covenant on Civil and Political Rights and articles 9, 10 and 11 of the Universal Declaration of Human Rights. Thus, the deprivation of liberty of Mr. Hodge falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

Disposition

30. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

> The deprivation of liberty of Marcus Haldon Hodge is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights as well as articles 9, 10 and 11 of the Universal Declaration of Human Rights; it falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

31. Consequent upon the opinion rendered, the Working Group requests the Government of the Philippines to remedy the situation of Mr. Hodge, in accordance with the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

32. The Working Group considers that, given the circumstances of the case and bearing in mind the prolonged period of time for which Mr. Hodge has been deprived of liberty, the appropriate remedies would be:

(a) The immediate release of Mr. Hodge; or, alternatively;

(b) The conducting of his trial as expeditiously as possible.

33. The Working Group further requests the Government to take all necessary steps to provide Mr. Hodge, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights, compensation for the harm he has suffered during the period of his prolonged arbitrary detention.

[Adopted on 28 August 2012]