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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

Opinion No. 65/2018 concerning Ahmed Abdallah Mohamed Sambi (Comoros)

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 15 August 2018, the Working Group transmitted to the Government of the Comoros a communication concerning Ahmed Abdallah Mohamed Sambi. The Government has not replied to the communication. The State is not 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. Mr. Sambi was born in 1958 in Moutsamoudou, in the Comoros. Mr. Sambi was President of the Comoros from 2006 to 2011.

(a) Political context

5. The source reports that the first national dialogue (*assises nationales*) was held in Moroni between 5 and 12 February 2018. The purpose of this dialogue was to set the major policy lines for the country through consultation with the various segments of Comorian society. However, the dialogue was boycotted by the opposition parties, which labelled it “partisan”. The recommendations drafted following this consultation included the possibility of extending the presidential term limit. On 28 April 2018, in a radio and television broadcast, the current President announced that a constitutional referendum would be held in July 2018 with a view to modifying the organization of government, most likely to be followed by an early presidential election in 2019, in which the current President planned to stand.

6. According to the source, the President of the Comoros also mentioned a transfer of powers from the Constitutional Court to the Supreme Court, which in fact had taken place two days earlier.

7. Also according to the source, in a press release on the implementation of the constitutional reform based on the recommendations adopted during the national dialogue, the Secretary-General of the United Nations urged all stakeholders to do their utmost to respect the rule of law, human rights and individual freedoms.¹

8. The source reports that Mr. Sambi publicly criticized the President’s decision to suspend the Constitutional Court and hold a referendum on amending the Constitution.

(b) House arrest

9. The source reports that, on 18 May 2018, Mr. Sambi attended Friday prayers at the Moroni mosque. After the service, supporters of the former President gathered around him, chanting slogans against the incumbent President. The following day, in the wake of this rally, Mr. Sambi was placed under house arrest.

10. According to the source, in a circular note dated 19 May 2018, addressed to officials responsible for public security and order, the Ministry of the Interior ordered Mr. Sambi to be placed under house arrest for his actions of the previous days on the grounds that this measure was necessary to maintain public order and security. This decision was based on an order issued the previous day, which strictly prohibited any impromptu preaching in the mosques of Moroni as a religious security measure.

11. The source also reports that, on 22 May 2018, the Office of the President issued a press release regarding the administrative status of the former President, which gave contradictory explanations about the reasons and legal basis for his deprivation of liberty. This document explained that, on the one hand, Mr. Sambi was being investigated for misappropriation of public funds and was not subject to any restriction on his liberty or to house arrest and that, on the other hand, the breach of the peace caused by his actions had made it necessary for him to be placed under house arrest, in order to maintain public order.

¹ United Nations, Daily Press Briefing by the Office of the Spokesperson for the Secretary-General: 22 May 2018. Available from <https://www.un.org/press/en/2018/db180522.doc.htm>.

(c) Arbitrary nature of Mr. Sambi's house arrest

12. The source first notes that the Working Group has previously considered that, without prejudging the arbitrary character or otherwise of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave (E/CN.4/1993/24, para. 20). The Human Rights Committee has also stated, in its general comment No. 35 (2014) on liberty and security of person, that house arrest is a form of deprivation of liberty.

13. The source argues that the legal basis for Mr. Sambi's detention was an administrative measure taken by the Ministry of the Interior, made public and communicated to Mr. Sambi through the circular note of 19 May 2018. The Human Rights Committee, in its general comment No. 35, has stated that security detention, such as administrative detention, presents severe risks of arbitrary deprivation of liberty and that such detention normally amounts to arbitrary detention, as other effective measures of addressing the threat, including the criminal justice system, would be available.² The Committee also stated the following:

If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 [of the Covenant] in all cases. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision to detain him or her has been taken.³

14. In the present case, the source alleges that the measure depriving Mr. Sambi of his liberty was a unilateral decision by the executive, which did not include any mention of his rights, especially his right to challenge the legality of his house arrest. It is important to note in that connection that all published documents on Mr. Sambi's deprivation of liberty originated either from the Ministry of the Interior (the decision to place him in detention) or from the Office of the President, which demonstrates that the decision to detain him was a unilateral decision by the executive and was politically motivated.

15. Finally, according to the source, the Ministry of the Interior did not explain how depriving Mr. Sambi of his liberty would help to achieve the goal stated in its circular notes of ensuring respect for public order and security. Furthermore, the authorities provided no tangible evidence to show that there were substantial grounds for believing that Mr. Sambi's actions constituted a threat to public order and security. The source therefore argues that the aim of the decision to deprive Mr. Sambi of his liberty was first and foremost to punish a leader of the political opposition to the current President and not to maintain public order, as claimed by the authorities.

(d) Deprivation of liberty resulting from the exercise of fundamental rights and freedoms

16. The source adds that Mr. Sambi was deprived of his liberty as a direct result of exercising rights and freedoms guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant. The measure aimed to prevent him from exercising his right to freedom of opinion and expression and his right to freedom of peaceful assembly and association following his criticisms of the institutional reforms announced by the executive, in particular on the occasion of his public appearance on 18 May 2018. Speaking to the press on the matter, the Minister of the Interior accused Mr. Sambi of acting like an incumbent president, adding that he should have known that he

² General comment No. 35 (2014) on liberty and security of person, para. 15.

³ Ibid.

was not the only one to have supporters and that no action likely to cause a public disturbance would be tolerated.

Response from the Government

17. On 15 August 2018, a communication relating to the allegations set out above was sent to the Government of the Comoros. The Working Group, in accordance with its methods of work, set 15 October as the deadline for the Government's response. On 14 November, the Working Group received a communication from the Government in which it referred to a request for an extension of the deadline, dated 18 October. Unfortunately, the Working Group finds no trace of such a request. Even if the request had been received, however, it would have arrived after the established time limit had expired, so it would not have been possible to extend the deadline. In line with well-established practice, and in the absence of exceptional circumstances, the Working Group therefore considers that the Government's response is inadmissible.

Discussion

18. The Working Group notes that the Government indicated in its response that the house arrest had ended. The Working Group has the option of filing the case or rendering an opinion as to the arbitrariness of the detention, in conformity with paragraph 17 (a) of its methods of work. In the present case, in the light of the circumstances, and despite the lack of a timely response from the Government, the Working Group has decided to render this opinion, in accordance with paragraphs 15 and 16 of its methods of work.

19. In determining whether Mr. Sambu's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

20. The first question for the Working Group is to determine whether house arrest amounts to deprivation of liberty. Since its deliberation on the subject in 1993, the Working Group has considered that house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave (E/CN.4/1993/24, para. 20). This deliberation has been consistently followed in the practice of the Working Group.⁴ The Working Group notes that the comparison applies in this case and that it can therefore proceed to an analysis of whether the detention was arbitrary.

21. The source states that on 18 May 2018, after a service at the Moroni mosque, supporters gathered around Mr. Sambu, former President of the Comoros and now a member of the political opposition, and chanted slogans against the incumbent President. It was following this event, on 19 May 2018, that Mr. Sambu was placed under house arrest. The house arrest was ordered on the basis of a decision dated 18 May, which stipulated that, for reasons of religious security, any impromptu preaching in Moroni mosques was strictly prohibited. Reasons of public order and security were cited as justification for the order. In its belated response, the Government confirmed this, stating that the measure was justified by the risk of public disorder that it believed to exist and welcoming the fact that the measure had achieved its objectives.

22. The Working Group notes that the source reports a simple gathering of supporters around Mr. Sambu and that it is not certain that house arrest was a necessary and proportionate measure. The arrest was an administrative measure not subject to any judicial oversight, in violation of article 9 of the Universal Declaration of Human Rights.

23. Moreover, in the absence of any other substantive explanation by the Government, the Working Group considers that there is no tangible evidence justifying the house arrest,

⁴ See decisions No. 21/1992 and 41/1993 and opinions No. 4/2001; 11/2001; 11/2005; 18/2005; 47/2006; 13/2007, para. 24; 12/2010; 30/2012; 39/2013; and 37/2018, para. 25.

given that the Government cannot find fault with Mr. Sambi merely for being present when his supporters gathered in front of the mosque. Mr. Sambi's house arrest is therefore contrary to article 9 of the Universal Declaration of Human Rights, which provides that no one shall be subjected to arbitrary arrest.

24. Furthermore, Mr. Sambi was reportedly not brought before a judge and given the opportunity to challenge the legality of his deprivation of liberty, in violation of article 10 of the Universal Declaration of Human Rights.

25. For these reasons, the deprivation of liberty in the present case lacks a legal basis and is arbitrary under category I.

26. The Working Group notes that the holding of opinions, including those that are critical of official government policy, is protected under international human rights law. By depriving Mr. Sambi of his liberty in an attempt to prevent him from expressing a critical political opinion, the Government of the Comoros violated his right to freedom of opinion, expression and peaceful association, thereby violating articles 19 and 20 of the Universal Declaration of Human Rights.

27. The Working Group notes that none of the limitations on the right to freedom of expression provided for in article 29 (2) of the Universal Declaration of Human Rights apply in this case. The Working Group considers that in the absence of any justification in accordance with this provision, the house arrest of Mr. Sambi is arbitrary under category II.

Disposition

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

The deprivation of liberty of Ahmed Abdallah Mohamed Sambi, being in contravention of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and II as defined in the Working Group's methods of work.

29. The Working Group requests the Government of the Comoros to take the necessary steps to remedy the situation of Mr. Sambi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights; the Working Group also encourages the Comoros to ratify the Covenant.

30. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Sambi an enforceable right to reparation, including compensation and a guarantee of non-repetition.

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

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

Follow-up procedure

33. 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 compensation or other reparations have been made to Mr. Sambi;
- (b) Whether an investigation has been conducted into the violation of Mr. Sambi's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Comoros with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

34. 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.

35. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

36. 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.⁵

[Adopted on 19 November 2018]

⁵ See Human Rights Council resolution 33/30, paras. 3 and 7.