



General Assembly

Distr.: General
28 November 2018
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-second session, 20–24 August 2018

Opinion No. 57/2018 concerning Jean-Simon Ngwang (Cameroon)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. 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 17 May 2018 the Working Group transmitted to the Government of Cameroon a communication concerning Jean-Simon Ngwang. The Government has not replied to the communication. 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. Jean-Simon Ngwang is a Cameroonian citizen. Mr. Ngwang occupied the post from 2007 of Finance and Accounting Manager of a semi-public company called “Chantier naval et industriel du Cameroun”, where he had been employed since 1996, including as Head of the Administrative and Financial Department.

(a) *Context*

5. According to the source, legal proceedings were instituted against Chantier naval et industriel du Cameroun following a four-month audit conducted in the company from February to May 2006. A 700-page report on the audit led to the elaboration of a preliminary case file. Mr. Ngwang’s name does not appear in the file.

6. The source reports that the acting General Manager of Chantier naval et industriel du Cameroun subsequently signed a complaint of alleged financial misconduct involving the issuance of 12 cheques. These facts led to the production of a second case file. The total value of the 12 cheques was 206,699,111 CFA francs (CFAF). They had all been signed by the former General Manager and seven of the cheques bore Mr. Ngwang’s signature. According to the source, the second case file is the result of a targeted search by a colleague of Mr. Ngwang and the acting General Manager as part of a “manhunt”.

(b) *Deprivation of liberty*

7. The source reports that Mr. Ngwang was summoned on 1 June 2009 by the Judicial Police Department of the Littoral Region in Douala, Cameroon. He has been deprived of his liberty ever since.

8. According to the source, the prosecution was motivated by the fact that the cheques in question were issued to fictitious suppliers and that there was no documentary evidence. The source indicates that Chantier naval et industriel du Cameroun has no list of approved suppliers. At the time of Mr. Ngwang’s hearing at the Judicial Police Department of the Littoral Region, the annual statement listed more than 500 suppliers.

9. According to the source, Mr. Ngwang does not deny having signed the cheques, but he claims to have signed them in good faith. The source explains that Mr. Ngwang systematically verified, on the one hand, the authenticity and lawfulness of the documents and, on the other, the accuracy of the figures. However, the General Manager is the officer who authorizes expenditure and assumes commitments on behalf of the enterprise.

(c) *Conviction*

10. In October 2010, the Wouri Regional Court ruled on the first case. It acquitted one of the accused and imposed prison sentences of up to 15 years on the accused persons who had fled the country instead of appearing in court.

11. On 20 July 2012, the Wouri Regional Court ruled on the second case concerning, among others, Mr. Ngwang. The Court sentenced all of the accused to life imprisonment. The source indicates in this case that Mr. Ngwang was sentenced to life imprisonment for having co-signed seven cheques. However, the Court’s ruling failed to address the fact that it had been acknowledged, on the date of Mr. Ngwang’s hearing, that the charge against him was based on a lie. The source alleges that it was therefore attributable to a settling of scores and harassment of Mr. Ngwang. Consequently, the source considers that the conviction was gratuitous and unfounded and constituted arbitrary and abusive detention.

(d) *Legal analysis*

12. The source presents the following analysis to demonstrate that the statutory time limits, as prescribed by Act No. 2011/28 of 14 December 2011 establishing the Special Criminal Court, and the right to be tried within a reasonable period of time were not respected.

(e) Violation of the statutory time limits prescribed by national law

13. The source reports that Mr. Ngwang was taken into police custody on 1 June 2009 and referred to the Public Prosecutor's Office of Wouri Regional Court on 11 June 2009. He was therefore held in police custody for 240 hours instead of the period of 144 hours prescribed by article 199 of the Code of Criminal Procedure. In other words, he was held wrongfully in police custody for 96 hours (four days).

14. According to the source, Mr. Ngwang was referred to an investigating judge who placed him in pretrial detention despite guarantees of appearance in court.

15. The source reports that Mr. Ngwang had his first hearing before the investigating judge on 1 April 2010, that is to say 10 months after his deprivation of liberty. The judicial investigation was closed on 8 December 2010 with an order of referral to a criminal chamber. Mr. Ngwang was charged, as a joint principal, with embezzlement of public funds to the detriment of Chantier naval et industriel du Cameroun.

16. On 20 July 2012, Mr. Ngwang was sentenced to life imprisonment. Mr. Ngwang's lawyer lodged an appeal with the Supreme Court on 23 July 2012, pursuant to article 12 (1) of Act No. 2011/028. Mr. Ngwang was notified of the appeal on the same date. In June 2013, the Supreme Court sent him a summons to appear on 9 July 2013. According to the source, this constitutes a flagrant breach of articles 12 and 13 of Act No. 2011/028.

17. The source also reports that the Supreme Court failed to issue a warrant of transfer, which was mandatory for the transfer of Mr. Ngwang from Douala prison to Yaoundé. Mr. Ngwang's lawyer attended the hearing to draw attention to the lack of a warrant of transfer, and the Court then returned the case to the general list in response to an instruction from the Advocate General, according to which the State lacked the means to escort Mr. Ngwang from Douala Prison to Yaoundé. The source concludes that this constituted a denial of justice. More than five years after his trial, Mr. Ngwang is still unable to appear before the Supreme Court.

(f) Violation of the right to be tried within a reasonable period of time

18. The source indicates that the Supreme Court has already ruled on other cases of embezzlement of public funds although they were referred to it at a later date than his case. The first case was settled although it was four times greater in terms of scale than that concerning Mr. Ngwang.

19. The source also provides an analysis of what would constitute a reasonable period of time in this case. First, with regard to the complexity of the case, the source notes that the flight of Mr. Ngwang's three co-defendants was determined in August and September 2009, that is to say before the case was referred to the Supreme Court, and that he and another person were the only remaining defendants. The source also notes that Mr. Ngwang's signature on the cheques was of a merely technical nature and that its purpose was to indicate that audits of the regularity of the expenditure, internal audits of the supplier and delivery, and audits of the accuracy of the cheque and available funds had been conducted. The source therefore claims that Mr. Ngwang acted in accordance with the tasks assigned to him at his level of responsibility. The source also states that the issue of difficulty of proof does not arise. The charge actually relates to the lack of justification for the payments in question. However, Mr. Ngwang declared at the first hearing that all signed cheques had been accompanied by regular and authentic credentials, and that statement was endorsed by the Head of the Accounting Department. The charge filed against him is therefore unsubstantiated and he should have been released on 10 June 2009. With regard to the scale of the case, the source alleges that it is confined to the company. The source reports that the judiciary also investigated Mr. Ngwang's assets pursuant to a formal letter of request. In conclusion, the source points out that the case does not involve multiple proceedings, since it is a criminal trial without technical dimensions. However, there have been no developments in the case.

20. The source also draws attention to the action taken by Mr. Ngwang who, as a detainee, is entirely at the State's disposal. Mr. Ngwang's deprivation of liberty was thus allegedly the goal of his persecution. Mr. Ngwang sent correspondence to the Principal

State Prosecutor at the Supreme Court on 31 August 2015 and to the Minister of Justice on 22 March 2016. He also wrote a letter to the President of the Republic on 3 April 2016. According to the source, Mr. Ngwang has received no response to his correspondence. The source therefore concludes that the State's silence constitutes a denial of justice and a denial of rights.

21. The source also alleges that the legal proceedings against Mr. Ngwang are based on tribal and family grounds. The employee of the company who allegedly initiated the case against him was rewarded by being assigned to Mr. Ngwang's post for six months and was then replaced by the brother-in-law of the acting General Manager. Accordingly, the General Manager and the Financial Manager come from the same family in a semi-public corporation.

22. The source reports, in addition, that the State of Cameroon established, by Act No. 2011/028, the Special Criminal Court. As its jurisdiction has not been specified, the Court is politicized. The source bases this allegation on the following grounds: its headquarters is in Yaoundé, the political capital of Cameroon; the right to two-tier proceedings is violated by the Court's establishment; and the defendant's grounds of defence are limited inasmuch as article 11 stipulates that the Public Prosecution Service can appeal both on the facts and on points of law, whereas the defendant can appeal only on points of law. According to the source, this violates the principles enshrined, *inter alia*, in the Universal Declaration of Human Rights. Furthermore, article 13 of the Act stipulates that the proceedings must be completed within six months.

23. The source alleges, in conclusion, that Mr. Ngwang's rights have been violated ever since his placement in police custody. The statutory time limits have been breached and the principle of a reasonable period of time has been disregarded.

Response from the Government

24. On 17 May 2018, the Working Group transmitted a communication concerning Mr. Ngwang to the Cameroonian Government, in accordance with its methods of work (A/HRC/36/38), and requested a response by 16 July 2018.

25. On 8 June 2018, the Government requested an extension of the deadline by one month, arguing that it had only received the communication on 7 June 2018. However, the Government failed to account for the delay.

26. On 18 June 2018, the Working Group granted an extension of 15 days. The Government was therefore expected to submit its response by 1 August 2018 at the latest. The Government had not, however, responded by the opening date of the eighty-second session.

Discussion

27. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

28. The Working Group has established in its jurisprudence the rules governing evidentiary issues. Where the source has established a *prima facie* case for a breach of international requirements constituting arbitrary detention, the burden of proof lies with the Government if it decides to challenge the allegations (see A/HRC/19/57, para. 68). The Government decided in this case to refrain from challenging the *prima facie* credible allegations made by the source, notwithstanding the extension of the deadline.

29. According to the source, Mr. Ngwang's situation constitutes arbitrary detention and falls within categories I and III.

30. With regard to category I, the source submits that the time limits for pretrial detention were exceeded.

31. The source reports that Mr. Ngwang was taken into police custody on 1 June 2009 and referred to the Public Prosecutor's Office of Wouri Regional Court on 11 June 2009. He was therefore held in police custody for 240 hours (10 days) instead of the period of 144 hours (6 days) prescribed by article 199 of the Code of Criminal Procedure. As the

Government failed to respond to the request, it has not rebutted these facts and the Working Group has no reason to doubt the chronology.

32. International law stipulates that any arrested person should be brought promptly before a judge (art. 9 (3) of the Covenant). The Human Rights Committee considers that a delay of 48 hours is ordinarily sufficient and should be exceeded only in exceptional cases.¹ Domestic law apparently imposes a time limit for police custody of 48 hours, with the possibility of extension in exceptional cases. In the present case, however, the Government presented no circumstantial evidence that would have justified such an extension. Accordingly, Mr. Ngwang's custody lasted for 10 days instead of 2 and he was thus detained without any legal basis after 48 hours. His detention is therefore arbitrary under category I.

33. The source claims, in addition, that pretrial detention was unfounded in this case, especially since the defendant reportedly provided the requisite legal guarantees for his release. The Government chose not to rebut this allegation, although the burden of proof lay with it (principle 13 of 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 chain of events, as reported by the source, namely the detention of Mr. Ngwang immediately after his voluntary response to a summons for questioning, prompts the Working Group to give weight to the allegation, even though the source failed to back it up with evidence. Pursuant to article 9 (3) of the Covenant, pretrial detention should remain an exceptional measure in criminal justice, and should be justified by specific circumstances to be taken into account by the court, including any possible alternative measure.² In the absence of such justification, pretrial detention is unfounded. The detention is therefore arbitrary under category I.

34. With regard to category III, the source contends that the procedural delays are unreasonable. The source reports, on the one hand, that Mr. Ngwang had his first hearing before the investigating judge 10 months after his deprivation of liberty, i.e. on 1 April 2010. It then took eight months, i.e. until 8 December 2010, for the judicial investigation to be closed by an order of referral to a criminal chamber. Mr. Ngwang was then charged, as a joint principal, with embezzlement of public funds to the detriment of Chantier naval et industriel du Cameroun.

35. The source further reports that an appeal in cassation was lodged in 2012 with the Supreme Court, which has still not ruled on the case. The source also notes that the Supreme Court scheduled a hearing in 2013 that the defendant was unable to attend because the Court failed to issue the warrant of transfer, which is mandatory for his transfer from Douala prison to Yaoundé, the seat of the Court. At the hearing, which was attended by Mr. Ngwang's lawyer, the Advocate General reportedly argued that the State lacked the means to escort the defendant to the hearing, and the Court adjourned the hearing of the case *sine die*.

36. In the absence of a rebuttal by the Government, the Working Group is satisfied with the consistency of the facts presented by the source, together with the documents accompanying the complaint. It is also convinced that the delays are unreasonable, especially with respect to the appeal in cassation before the Supreme Court. The appeal has been pending since 2012, a delay that constitutes a denial of the right of appeal enshrined in article 14 (5) of the Covenant.

37. Furthermore, the Working Group is particularly concerned about the alleged disappearance of evidence, namely documents from the company's archives that Mr. Ngwang had taken into account when signing the cheques. Such a situation deprives the accused of the means to defend himself, and renders the proceedings particularly unfair by violating the principle of equality of arms between the parties.

¹ See general comment No. 35 (2014) of the Human Rights Committee concerning article 9 (Liberty and security of person), para. 33; see also opinion No. 14/2015, para. 29.

² See general comment No. 35, para. 38; see also opinions No. 27/2017 and No. 62/2017.

38. These combined violations (unfounded pretrial detention, unreasonable delays, denial of the right of appeal, and breach of the principle of equality of arms between the parties) are so substantial that the right to a fair trial has effectively been flouted. The ongoing detention of Mr. Ngwang is therefore arbitrary under category III.

39. Lastly, the source alleges that Mr. Ngwang has been subjected to discrimination at various levels.

40. The source contends, to begin with, that the indictment stems from a conspiracy against Mr. Ngwang initiated by the acting Manager with the dual aim of replacing employees in strategic positions in order to facilitate the takeover of the company. This ambition was allegedly served by a manipulated justice system.

41. The source states, in support of his argument, that the accused does not dispute, in this case, that he signed the cheques, but insists that his responsibility is very limited on account of the forged documents which were allegedly presented to him at the time and which have since disappeared from the company's archives. The source notes, in addition, that the principal defendant, the Manager who signed all the cheques, is on the run and has never cooperated with the justice system. Yet Mr. Ngwang, notwithstanding his limited responsibility and his cooperation, was sentenced to life imprisonment, while the persons charged with financial misconduct in the main trial were sentenced in absentia to a maximum penalty of 15 years.

42. Lastly, the source undertakes a comparative analysis of the case concerning Mr. Ngwang and other corruption cases in Cameroon in support of his argument that the Supreme Court has been more expeditious in the other cases despite their complexity, so that there has also been an unfounded difference of treatment in this case.

43. The discrimination must, however, be attributable to the State apparatus and this is not the case for the allegation concerning the acting Manager. It is difficult to draw any conclusion regarding the alleged difference in treatment compared with other cases without undertaking a complex and detailed analysis for which the source has not provided sufficient evidence. The Working Group cannot therefore uphold the source's allegation regarding discrimination.

Disposition

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

The deprivation of liberty of Jean-Simon Ngwang, being in contravention of articles 9 and 14 (3) (c) and (5) of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

45. The Working Group requests the Government of Cameroon to take the steps necessary to remedy the situation of Mr. Ngwang without delay and bring it into conformity with the relevant international norms, including those set out in the International Covenant on Civil and Political Rights.

46. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ngwang immediately and accord him an enforceable right to reparations, in accordance with international law.

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

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

Follow-up procedure

49. 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. Ngwang has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ngwang;
- (c) Whether an investigation has been conducted into the violation of Mr. Ngwang'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 Cameroon with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

50. 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.

51. The Working Group requests the source and the Government to provide the above 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.

52. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.³

[Adopted on 23 August 2018]

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