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Human Rights Council
Working Group on Arbitrary Detention

**Opinions adopted by the Working Group on Arbitrary
Detention at its sixty-third session, 30 April–4 May 2012**

No. 2/2012 (Panama)

Communication addressed to the Government on 30 November 2011

Concerning: Ángel de la Cruz Soto

The Government did not respond to the allegations transmitted to it within the deadline set by the Working Group.

The State has been a party to the International Covenant on Civil and Political Rights since 8 August 1986.

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 that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010.
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).

Submission

Communication from the source

3. Mr. Ángel Ariel de la Cruz Soto is a Panamanian citizen and director of the Medicom Commercial Group. Between 1993 and 2006, he imported and sold raw materials for the manufacture of medication and products for human consumption. Police officers arrested Mr. de la Cruz Soto on 17 November 2006 in Los Abanicos, San Miguelito, Panama City.
4. The Office of Senior Prosecutor No. 4 charged him with crimes against collective safety and public health following the death of 43 patients of the Social Security Fund (CSS) from acute renal failure caused by poisoning from diethylene glycol, a toxic substance that is not suitable for human consumption. Following his arrest, Mr. de la Cruz Soto made a statement before the Office of Senior Prosecutor No. 4. He was accused of having supplied the CSS with the toxic substance, which it used in its laboratories to manufacture medication, primarily sugar-free cough mixtures for diabetics and persons with high blood pressure. The medication was consumed by at least 6,000 people.
5. According to the source, the diethylene glycol originated in the People's Republic of China, from where it was exported as part of an order from the Spanish company Rasfer Internacional SA, which, in turn, exported it to Medicom. In 2003, the CSS ordered pure glycerine from Medicom in order to manufacture medication. Medicom ordered the product from Rasfer Internacional SA, which, in turn, ordered it from the Chinese company Fortuna

Way Company, which subsequently ordered it from another Chinese company, Taixing Glycerine Factory.

6. However, the relevant control procedures were not followed and, instead of the pure glycerine it had ordered, the CSS received diethylene glycol, which is used in car radiators. The falsified captions on the drums read “pure glycerine”. The product was allegedly used in the CSS laboratories to manufacture two types of cough mixture and two types of ointment, some 400,000 bottles of which were subsequently distributed throughout the country.

7. More than four years later, on 21 December 2010, the Panamanian Attorney-General’s Office brought charges against Mr. de la Cruz Soto and 22 others. However, only Mr. de la Cruz Soto was kept in custody. Among the defendants are former directors of the CSS, who had been at the head of the institution when the medication was bought and manufactured. The requisitory of the prosecutor, together with the case files, was submitted to the Supreme Court of Justice in order to conclude that stage of the judicial investigation.

8. In December 2010, the Attorney-General’s Office determined that 153 people had died from consuming medication manufactured with the aforementioned substance. The health of an additional 137 people had also been affected. The state of health of another 1,400 individuals who took medication manufactured with that substance is being evaluated by the Institute of Legal Medicine and Forensic Science (IMEL) of the Public Prosecution Service.

9. In Spain, judicial proceedings instituted against the Spanish pharmaceutical company Rasfer Internacional SA were dismissed by the Spanish National Court, which thus terminated the inquiry into that company. The Court found that no legal responsibility could be attributed to Rasfer Internacional SA.

10. According to Mr. de la Cruz Soto, the medication did not undergo the appropriate checks because the funds earmarked for that procedure were being used for other purposes.

11. In 2003, Medicom submitted a public tender to the CSS, which is a State-run company, for 9,000 litres of glycerine to manufacture medication. On winning the contract, Medicom ordered 9,000 litres of pharmaceutical-grade glycerine from Rasfer Internacional SA, a company based in Barcelona (Spain) which, in turn, ordered the product from a Chinese company. Mr. de la Cruz Soto was unaware of the fact that the Spanish company was buying the product from a Chinese company.

12. The source adds that the Spanish company shipped the products to Panama with its own certificate of analysis, guaranteeing that the product was glycerine for human consumption. Medicom received 46 drums containing 9,000 litres of the substance along with the relevant documentation and trademarks. According to Mr. de la Cruz Soto, Medicom was not responsible for verifying the product. In fact, it was the responsibility of its client, the CSS. However, the product was never verified because an ex-director of the CSS had dispensed with the control procedures applicable to the manufacture of medication.

13. Mr. de la Cruz Soto submitted two applications for habeas corpus and two requests for interim measures other than pretrial detention, but without success. His requests to be released on bail were also denied.

14. Mr. de la Cruz Soto has been held in Tinajitas prison for almost five and a half years. He has no access to an examining judge with a view to securing an interim measure, nor has he been brought to trial.

15. The source concludes that the pretrial detention of Mr. de la Cruz Soto is arbitrary. Of the 23 defendants, he is the only one to have been kept in custody. This would appear to be tantamount to discriminatory treatment in relation to the other defendants.

16. In the light of all these facts, the source concludes that the detention of Mr. de la Cruz Soto runs counter to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Panama is a party.

Response from the Government

17. In the absence of a response from the Government to the communication transmitted to it, the Working Group must adopt an opinion on the detention of Mr. Ángel de la Cruz Soto. It adopts this opinion in the realization that the judicial proceedings against him are not straightforward, they require the collaboration of other States in which the imported merchandise was allegedly altered and the events described by the source produced a large number of victims.

Discussion

18. From the source's account, the Working Group gathers that, in this case, no ruling has in fact been handed down that satisfies the requirements set out in article 9, paragraph 3 of the International Covenant on Civil and Political Rights. Indeed, Mr. de la Cruz Soto was arrested more than five years ago on 17 November 2006, which is incompatible with the concept of "reasonable" established in the aforementioned norm. Moreover, the defendant's right to be tried while at liberty has not been granted, which is without prejudice to furnishing sufficient guarantees to ensure that he appears for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

19. The lack of a timely response from the Government prevents the Working Group from evaluating other facts that could influence its decision on whether or not the deprivation of liberty which is the subject of this complaint is arbitrary.

20. The Working Group considers that the non-observance of the rights referred to in paragraph 18 of this opinion constitutes a violation of the rules of due process of law that is serious enough to give the deprivation of this person's liberty an arbitrary character, in accordance with category III of the criteria established by the Working Group.

Decision

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

The deprivation of liberty of Mr. Ángel de la Cruz Soto, who has spent more than five years in custody without being brought to trial, is arbitrary.

22. The Working Group accordingly recommends that the Government of Panama:

(a) Adopt, without delay, the measures necessary for a trial to begin promptly; arrange for the provisional release of this person, which, if necessary, would be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and for the execution of an enforceable judgement;

(b) Take the appropriate measures to ensure that the trial is concluded as soon as possible, given the time that has elapsed since the defendant, Mr. Ángel de la Cruz Soto, was first deprived of his liberty.

[Adopted on 1 May 2012]