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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 to 4 May 2012

No. 13/2012 (Cuba)

Communication addressed to the Government on 23 March 2011

Concerning: José Daniel Ferrer García

The Government replied to the communication on 29 March 2012.

The State has signed the International Covenant on Civil and Political Rights but is not a party to it.

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 Working Group's 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 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 status; political or other opinion; gender; sexual orientation; 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. Mr. José Daniel Ferrer García, general coordinator of the organization known as the Unión Patriótica de Cuba, was arrested by police officers in Havana on 21 February 2012 at around 6 p.m. His detention was apparently not acknowledged by the authorities.

4. According to the source, Mr. Ferrer García was arrested because of his opposition activities in Oriente Province.

5. The source reports that Mr. Ferrer García was one of 75 political dissidents arrested in March 2003. He was sentenced to 25 years' imprisonment for offences against the national independence and economy of Cuba. He was allegedly offered the possibility of release provided that he agreed to take up residence in a European country but rejected the offer on the grounds that he preferred prison to exile. Nevertheless, he was released in 2011. After his release he is reported to have founded the organization known as Unión Patriótica de Cuba and organized various political rallies in the municipalities of Baracoa, Cobre, Guantánamo and Holguín and in the provincial capital, Santiago de Cuba. He is alleged to have gone on a hunger strike on a number of occasions.

6. After his arrest, Mr. Ferrer García was allegedly transferred first to the Operations Unit in Camagüey and from there to the Versalles Police Unit in Santiago de Cuba, where he was detained.

7. According to the source, Mr. Ferrer García's detention constitutes a violation of his right to personal liberty and not to be arbitrarily detained; his right to personal security; his right to freedom of thought, opinion and expression, freedom of association and freedom of movement within his country; and his right to participate in political life.

8. The source concludes that Mr. Ferrer García's detention is arbitrary.

Response from the Government

9. The Government responded to the communication on 29 March 2012, and the Working Group is grateful for its prompt reply. In its response, the Government affirms that each and every one of the allegations made by the source of the communication is false. It adds that the person on whose behalf the complaint was brought has engaged in activities that are clearly provocative, disrespectful and in violation of the constitutional order established by the people of Cuba, acting on and in compliance with instructions from and under the funding of the United States secret service and the anti-Cuban mafia in Miami, in the run-up to the visit of Pope Benedict XVI to Cuba.

10. It adds that Mr. Ferrer García was not detained on the date indicated and "is not in detention on the day on which I am writing this notification".

11. The Government also maintains that he is a person whose social behaviour is extremely poor — it includes acts of violence against women — and who has a long record of action in the service of Cuba's enemies for which he was sentenced in 2003. It maintains that Mr. Ferrer García "is not a human rights defender" and that he "is actively involved in implementing the regime change policy that the United States seeks to impose upon Cuba, in clear violation of the Cuban people's right to self-determination".

Comments from the source

12. In its reply to the information provided by the Government dated 27 April 2012, the source indicates that Mr. Ferrer García was detained on 21 February 2012 in order to prevent him from taking part in the peaceful demonstrations planned to commemorate the second anniversary of the death of Orlando Zapata Tamayo. He was held incommunicado, without charge. He was released on 24 February 2012, i.e. three days after his arrest, which supports the Government's assertion that on 29 March 2012 — the date of the Government's response — he was not in detention.

13. The source adds, however, that after his release, Mr. Ferrer García was again detained on 2 April 2012 and that as of the date of the aforementioned reply he was being held in the State Security detention centre in Santiago de Cuba.

Discussion

14. In accordance with paragraph 17 (a) of its working methods, the Working Group files cases that have been referred to it if the person concerned has since been released.

15. However, the Working Group cannot ignore the fact that the person concerned has been arrested again on different, albeit similar, grounds and must therefore request fresh information from the Government concerning the alleged new detention.

Disposition

16. In the light of the foregoing, the Working Group:

(a) Decides, pursuant to paragraph 17 (a) of its working methods, to file the case of the detention of Mr. José Daniel Ferrer García, since he was released after three days' deprivation of liberty;

(b) Decides to transmit a new letter to the Government setting out the new allegations received concerning the current detention of the same individual, allegedly by State officials, on 2 April 2012.

[Adopted on 4 May 2012]
