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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 31/2013 (Paraguay)

Communication addressed to the Government on 26 November 2012

Concerning Lucía Agüero Romero, Felipe Nery Urbina Gamarra, Luis Olmedo Paredes, Arnaldo Quintana, Alcides Ramírez Paniagua, Juan Carlos Tillería, Richard Ariel Barrios Cardozo (a minor aged 15), Felipe Benítez Balmori, Adalberto Castro, Néstor Castro, María Fanny Olmedo, Dolores López Peralta and Arnaldo Quintana

The Government replied to the communication on 25 January 2013.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights by its resolution 1991/42. The mandate of the Working Group was then clarified and extended by the Commission by its resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102 and extended it for a three-year period by its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by resolution 24/7 of 26 September 2013. Acting in accordance with its methods of work (A/HRC/16/47, annex), 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. The communication refers to the following persons, all of Paraguayan nationality:

(a) Lucía Agüero Romero, aged 27, a widow, mother of two minor children, campesina and student, residing in Asunción (Central department);

(b) Felipe Nery Urbina Gamarra, aged 50, residing in the Yvy Pyta settlement, Curuguaty district (Canindeyú department);

(c) Luis Olmedo Paredes, aged 21, residing in Ybycu'í (Paraguarí department);

(d) Arnaldo Quintana, aged 18, residing in Curuguaty district;

(e) Alcides Ramírez Paniagua, aged 18, residing in Curuguaty district;

(f) Juan Carlos Tillería, aged 39, a campesino, residing in Ybycu'í district;

(g) Richard Ariel Barrios Cardozo, a minor aged 15;

(h) Felipe Benítez Balmori, aged 57, a campesino, residing in the Yvy Pyta settlement;

(i) Adalberto Castro, aged 24, residing in the Yvy Pyta settlement;

(j) Néstor Castro, of full age, residing in the Yvy Pyta settlement, detained in La Esperanza prison in Asunción;

(k) María Fanny Olmedo, aged 19, residing in Curuguaty district;

(l) Dolores López Peralta, aged 22, originally from Curuguaty district;

(m) Arnaldo Quintana, aged 18, residing in Curuguaty district.

4. According to the source, the above-mentioned persons were detained in connection with a police search and eviction operation carried out in Marina Cué, Curuguaty district, on 15 June 2012.

5. According to the source, ownership of the Marina Cué estate is the subject of litigation. While an action for annulment concerning the company Campos Morumbí SA Comercial y Agropecuaria was pending before the Supreme Court, a judge, at the request of the prosecutor's office, issued — irregularly and illegally — a search and eviction warrant against those occupying the estate, who contend that the company in question has no title to the lands.

6. More than 400 police officers, 20 patrol and mounted officers and riot police, supported by helicopters, are said to have participated in the operation, which took place in the early hours of 15 June 2012. Clashes left 11 campesinos and 6 police officers dead and 80 others wounded, including Ms. Agüero Romero, who suffered a bullet wound to her leg.
7. The above-mentioned persons and 41 other campesinos were reportedly charged with the following offences: intentional homicide, attempted intentional homicide, causing serious injury, criminal association, grave coercion, coercion and invasion of property.
8. According to the source, these individuals were beaten and subjected to ill-treatment following their arrest. Some were even tortured.
9. During these events, the minor Richard Ariel Barrios Cardozo was also allegedly arrested and severely beaten. He is being detained in the Villarrica Juvenile Detention Centre. He is said to have filed a habeas corpus petition, which was allegedly not heard.
10. On 25 September 2012, Messrs. Urbina Gamarra, Olmedo Paredes, Quintana, Ramírez Paniagua and Tillería and Ms. Agüero Romero began a hunger strike in protest at the slowness of the investigation and irregularities in the legal proceedings. They took only water for 59 days. Ms. Agüero Romero is reported to have lost 14 kilograms and to be suffering from low blood pressure.
11. In view of the deterioration in their state of health, the persons concerned were transferred from Coronel Oviedo Prison to Itaguá National Hospital.
12. The source states that the pretrial detention order, A.J.N. No. 292, issued by the Curuguaty Criminal Guarantees Court on 16 June 2012 lacks any legal or factual basis whatsoever, even though under Paraguayan legislation judges are required to substantiate their decisions and to ensure their compliance with national and international law and due process requirements. The judge supervising the proceedings took no action whatsoever to remedy this grave omission.
13. The Attorney General's Office has reportedly presented no evidence whatsoever against these persons. The judge has failed to take into account any of the exonerating evidence in their favour that would clear several of the defendants in the case and thus allow them to be released. The source states that some of the accused were not even present at the scene of the events on the day in question and that they were arrested merely because their names appeared in an old population census.
14. The proceedings are reported to have been marked by serious omissions and inconsistencies. The prosecutor in the case is said to have social ties with the Riquelme family, who have interests in the estate in question. The criminal proceedings against these persons are not progressing; furthermore, many concerns are reported to have been raised about the lack of impartiality and effectiveness of the investigation.
15. According to the source, the events at Marina Cué are part of a bitter conflict over agricultural land in the south-eastern region of Paraguay between Brazilian soya producers, with ties to local authorities, and members of the indigenous Axe people, whose forest habitat and lands have been deforested and occupied by agricultural export companies.
16. Members of the Axe people are reported to have complained on various occasions, without success, about this situation and the losses they have suffered. According to the complaints, Axe children are suffering from health problems caused by pesticides and chemical contaminants used by the agricultural export companies.
17. The source further reports that, in the early hours of 24 November 2012, riot police violently removed groups of demonstrators who were camped outside the premises of the Attorney General's Office in Asunción. The demonstrators were protesting the detention of the campesinos and the failure to investigate the complaints of those claiming to be the

owners or tenants of the lands in question. A police officer allegedly sprayed gas in the face of one of the demonstrators. The expulsion took place without a member of the Attorney General's Office being present, in violation of Paraguayan law. Fourteen demonstrators sustained injuries from rubber bullets, while others were left beaten and bruised, some with fractures.

18. The Working Group was further informed that on 10 October 2012 the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent a letter of allegation to the Government of Paraguay concerning the events that occurred on 15 June in Curuguaty; to date, no reply has been received.

19. The source considers that these persons, some of whom were not present at the scene of the events, were detained on the basis of their campesino origin and that their detention should be seen in the context of the struggle of the Axe people for their rights. The order to search and clear the Marina Cué estate was issued irregularly while an action for annulment was pending before the Supreme Court. The court ruling of 16 June 2012 ordering pretrial detention has no legal or factual basis; it thus violates Paraguayan legislation, which requires that judges substantiate their decisions and ensure their compliance with the law.

20. The source reiterates that the judge hearing the case has failed to take into account any evidence in the defendants' favour and that the Attorney General's Office has failed to submit any evidence against them. The proceedings have allegedly been marked by serious omissions and inconsistencies and have come to a virtual standstill; furthermore, many concerns are reported to have been raised about the lack of impartiality and effectiveness of the investigation. In the meantime, these persons remain arbitrarily detained awaiting trial.

21. According to the source, the detention of these persons is arbitrary.

Response from the Government

22. In its reply, for which the Working Group is grateful, the Government first asserts that the investigations have not been marked by slowness or delays, since the time limit established by the Guarantees Court — which set a deadline of 16 December 2012 for completion of the investigations — was met. It adds that no evidence has been dismissed; however, the evidence submitted by the defence “was not sufficient to modify or revoke the detention orders made against defendants Barrios, Benítez, Castro, Castro, Olmedo, Peralta and Quintana”. It maintains that all the persons referred to in the communication “were arrested on the property where the events occurred, a fact which invalidates entirely the claim that there was no evidence”. In support of these assertions, it states that those persons who were arrested by order of the first prosecutor elsewhere than at the site of the incidents — specifically, outside Curuguaty hospital — have had the initial charges against them dropped. Similarly, the Government maintains that the accusations against a public prosecutor were not proven by those making them.

23. The Government further maintains that formal charges were made against only 14 detainees; no charges were laid against 3 others for lack of evidence of involvement in the alleged incidents. It states that the defendants' preliminary hearing was scheduled for 14 February 2013.

24. In its reply the Government adds that it ordered financial compensation for the family of each campesino who died during the incidents reported by the source. It further adds that the detainees Lucía Agüero, Felipe Nery Urbina, Luis Olmedo, Arnaldo Quintana, Alcides Ramírez and Juan Carlos Tillería were placed under house arrest following the hunger strike they staged.

25. The Government also states that the authorities closely monitored prison conditions during the hunger strike and that those persons who, according to medical reports, were in danger of death were transferred to hospital facilities, where they refused treatment. Subsequently, those who were most reluctant to give up the strike were transferred to a public hospital and were later placed under house arrest.

26. According to the Government, there is no basis for the allegation that arrest warrants were not issued. On 13 June 2012, the Curuguaty prosecutor requested a warrant to search the estate where the events occurred. A warrant was granted by the competent judge to check for the presence of unauthorized persons on the estate, identify them and seize any weapons they might have. The Government states that the order given to the senior police officer in charge of the operation was “first mediate with the occupants”. Notwithstanding these instructions, the police officers were “shot at with firearms, the first casualty being the officer in charge of the operation, who was fatally wounded; this led to an exchange of fire”, which left 17 people dead (11 civilians and 6 police officers) and a further 19 injured.

27. The following offences are being investigated: intentional homicide, attempted intentional homicide, causing serious injury, criminal association, grave coercion, coercion and invasion of property. A total of 45 persons have been charged.

Comments from the source

28. In its comments on the Government’s reply, the source does not deny the very important fact that, two days before the events, the competent judge granted the prosecutor’s request for a warrant to check for the presence of unauthorized persons on the estate; hence, it cannot be claimed that the police operation was undertaken in the absence of a court order. Nor does the source deny that the police officers were attacked by the persons who had entered the estate. Furthermore, it does not deny that the first officer to be killed by gunfire was the officer in charge of the operation.

29. It repeats the assertion that “not all the persons who were deprived of their liberty were arrested at the scene of the events” and that “these persons were arrested without a warrant from a competent authority and that therefore their arrests were arbitrary”. Such assertions are of no help to the Working Group in its task of assessing whether the deprivation of liberty was arbitrary or not, since there is no indication as to who was allegedly arrested at the scene of the incidents and who was not.

30. The source subsequently refers to Miguel Ángel Correa Franco and Marcelo Trinidad Paredes and to their deprivation of liberty and release. This information also is of no relevance to the Working Group’s inquiry, since neither of these persons was referred to in the complaint that gave rise to this case.

Discussion

31. The source states that the proceedings “have been marked by serious omissions and inconsistencies and have come to a virtual standstill; furthermore, many concerns are reported to have been raised about the lack of impartiality and effectiveness of the investigation. In the meantime, these persons remain arbitrarily detained awaiting trial.” In the absence of information about “the serious omissions and inconsistencies” or the “many concerns ... reported to have been raised about the lack of impartiality and effectiveness of the investigation”, the Working Group is unable to render an opinion on whether the detentions were arbitrary or not.

32. This lack of detail is also evident in the source’s original communication, in which, for example, it is asserted that the prosecutor in the case has “social ties with the Riquelme family”, who have interests in the estate at issue, without any information being provided as

to the nature of the social ties in question or the impact of those ties on the investigations or any ensuing convictions.

33. According to the communication from the source, on 25 September 2012 the detainees began a hunger strike in protest at the slowness of the investigation and irregularities in the legal proceedings. In such a complex case, involving a large number of deaths, it is not valid to claim, only three months after the events, that the pace of the proceedings is slow. In determining whether the right to be tried without undue delay has been violated, consideration must be given to, among other factors, the nature of the offence, its seriousness and the complexity of the investigation.

34. The source states that the minor Barrios Cardozo filed a habeas corpus petition, which was allegedly not heard, but fails to provide any further information in that regard or to explain why the petition was not heard.

35. Both the Working Group and its secretariat have done their utmost to obtain from the source more accurate, detailed and up-to-date information about the events and the legal proceedings, but without success. Only during the current session, at which this Opinion has been adopted, has it been possible to ascertain the current situation of the persons referred to in the initial communication. However, it has not been possible to establish when the defendants were released or when their pretrial detention was replaced with less restrictive measures. Their current situations are as follows:

(a) Lucía Agüero Romero, Luis Olmedo Paredes, Alcides Ramírez Paniagua, Juan Carlos Tillería, Felipe Benítez Balmori, María Fanny Olmedo and Dolores López Peralta have been placed under house arrest;

(b) The 15-year-old minor, Richard Ariel Barrios Cardozo, was convicted in summary proceedings that were requested by him at a preliminary hearing held on 14 February 2013; however, there is no indication as to the offence he was convicted of, the punishment or the grounds on which a 15-year-old child was convicted;

(c) Felipe Nery Urbina Gamarra has been granted alternative measures to detention;

(d) Néstor Castro and Adalberto Castro are in pretrial detention;

(e) As regards Arnaldo Quintana, the information is contradictory: he is first said to be under house arrest, but later said to be in pretrial detention in Coronel Oviedo Prison.

Disposition

36. In the light of the foregoing and in accordance with paragraph 17 (c) of its methods of work, the Working Group considers it necessary to request further information from both the Government and the source; in the meantime, it decides to keep the case pending until such information is received.

[Adopted on 30 August 2013]