



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its 65th session (14–23 November 2012)****No. 46/2012 (Guatemala)****Communication addressed to the Government on 3 September 2012**

Concerning: Armando Pedro Miguel, Andrés León Andrés Juan, Antonio Rogelio Velásquez López, Diego Juan Sebastián, Joel Gaspar Mateo, Marcos Mateo Miguel, Pedro Vicente Núñez Bautista, Saúl Aurelio Méndez Muñoz and Juan Ventura

The State is 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. Its mandate was clarified and extended by the Commission in its resolution 1997/50. The Human Rights Council took over the mandate by its decision 2006/102 and extended it for a further three years by its resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work (A/HRC/16/47, annex), the Working Group addressed the above-mentioned communication to the Government.

2. The Working Group considers the deprivation of liberty to be 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 the existence of an applicable amnesty law) (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 or 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 or 27 of the International Covenant on Civil and Political Rights (Category II);

(c) When the total or partial non-observance of the international standards relating to the right to a fair trial that are 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; 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 regards the detention of the following persons, all of whom are Guatemalans residing in the Municipality of Santa Cruz Barillas (Huehuetenango Department):

- (a) Mr. Andrés León Andrés Juan, age 20;
- (b) Mr. Joel Gaspar Mateo, age 35, farmer;
- (c) Mr. Diego Juan Sebastián, age 25, farmer;
- (d) Mr. Marcos Mateo Miguel, age 38, farmer;
- (e) Mr. Saúl Aurelio Méndez Muñoz, age 38, farmer;
- (f) Mr. Pedro Vicente Núñez Bautista, age 39, farmer;
- (g) Mr. Armando Pedro Miguel, age 31, farmer;
- (h) Mr. Antonio Rogelio Velásquez López, age 42;
- (i) Mr. Juan Ventura, age 28, farmer.

4. According to the submission, there has been a dispute going on in the Municipality of Santa Cruz Barillas since 2007 because the residents and the Municipal Council object to the operations of Hidro Santa Cruz S.A., which is owned by the Spanish company Ecoener-Hidralia Energía.

5. On 1 May 2012, two workers employed by that company are alleged to have murdered Mr. Andrés Francisco Miguel. This event is said to have triggered major disturbances in the downtown area, during which property was damaged and people broke into an army barracks. The major in charge of that military unit and another two members of the army were wounded during the assault.

6. On that same day, a state of siege was declared in the municipality. The corresponding measures were put into effect on 2 May 2012. The right to personal liberty, freedom of assembly, the right to strike and the right to bear arms were suspended. Governmental Decree No. 1-2012, which declared the state of siege in the Municipality of Santa Cruz Barillas, was published on 4 May in the *Diario de Centroamérica*, the official gazette of the Government of Guatemala.

7. The above-mentioned persons were arrested on 2 May 2012. Between 8 and 9 a.m., Andrés Juan, Gaspar Mateo, Juan Sebastián and Juan Ventura were detained by unidentified members of the Reyes family, who then handed them over to agents of the National Civil Police Force.

8. Messrs. Méndez Muñoz, Núñez Bautista and Velásquez López were also detained on 2 May 2012 in front of the Zone 6 military detachment by unidentified members of the Reyes family, who then took them to that military facility.
9. Messrs. Mateo Miguel and Pedro Miguel were arrested at 1 p.m. that same day by agents of the National Civil Police Force with the aid of unidentified private citizens.
10. These arrests were reportedly made without a valid warrant. They are characterized as being illegal because of the lack of a warrant and because the arrests were made by private citizens who have not been fully identified. These private individuals also accompanied police officers and security personnel when they brought the detainees before the justice of the peace of the Municipality of Santa Cruz Barillas. The justice of the peace did not take their statements, however, thereby violating their rights to be heard by a judge, to a defence and to due process.
11. During the afternoon of 2 May 2012, the detainees were transferred to the Zone 18 Pretrial Detention Centre for Men in Guatemala City. During the transfer, and before they had been informed of the reasons for their arrest, they were presented to members of the media, who photographed them. On 3 May, their photographs were published in Guatemala City newspapers, which would vitiate their subsequent identification by witnesses. That same day (3 May), the detainees were brought before the duty magistrate in Guatemala City.
12. Between 18 and 23 May 2012, the detainees' statements were taken for the first time in the Seventh District Court of Guatemala City. They were charged with the following offences: kidnapping or abduction; aggravated breaking and entering; coercion; false imprisonment; aggravated robbery; terrorism; aggravated assault; incitement to commit a crime and disorderly conduct. Mr. Velásquez López was also charged with the offence of unlawful association.
13. The judge ordered that they be held in pretrial detention and set 17 August 2012 as the deadline for filing charges and 30 August 2012 as the hearing date for the presentation of the case for the prosecution.
14. On 18 May 2012, the attorneys for the defence claimed that their clients were being unlawfully detained. The judge presiding over the Seventh District Court of Guatemala City determined that, in accordance with the principle of the "natural judge", he was not competent to rule on the legality of their detention. On 2 June 2012, the defence filed an application for *amparo* with the Constitutional Court. A decision regarding that application has not yet been handed down.
15. The source states that the justice of the peace of the Municipality of Santa Cruz Barillas denied these persons the right to be heard by a judge, thereby violating their right to due process and to a defence. They were not heard by a judge or allowed to make their first statement before a judge until between 17 and 22 days after their arrest.
16. These persons were denied access to their natural judge, who is the judge having jurisdiction in Huehuetenango. The transfer of the proceedings and, consequently, of the detainees to the capital city has no legal basis whatsoever. There has thus been a violation of the principle of *nullum proceso sine lege*, of procedural safeguards and of the principle of non-derogability, as well as the principle of the natural judge (principles set forth in articles 2, 3 and 7 of the Code of Criminal Procedure).
17. The source states that, on 3 May 2012, the President of Guatemala described the detainees as having been responsible for the events of 1 May 2012 in the Municipality of Santa Cruz Barillas, thereby potentially influencing subsequent decisions of the court. This act and the publication of the detainees' pictures in the press before they had been informed

of the reasons for their arrest violate the principle of the presumption of innocence set forth in articles 13 and 14 of the Constitution.

18. According to the source, the detention of these persons is arbitrary. The source therefore requests that the rights of these nine persons be fully restored and that they be released immediately.

Response from the Government

19. The Working Group informed the Government of the allegations provided to it on 3 September 2012. At that time the Government was also told that, in accordance with the Working Group's operating procedures, it would be given 60 days to respond to the account of events provided by the source and that it could request that the deadline be pushed back if it had well-founded reasons for doing so. In a letter dated 26 October 2012 from Her Excellency the Permanent Representative of Guatemala to the United Nations Office in Geneva, the Government requested an extension, underscoring the need to consult with institutions in the judicial system. The Working Group considers that granting such a postponement would mean that it could not examine the case until its next session, which is not scheduled to take place until late April 2013. Given the serious position in which the nine detainees find themselves and the urgency of the matter, the Working Group is of the view that it would be unwise to grant the requested extension of the 60-day period provided to the Government for the preparation of its response and further considers that it is in a position to issue an opinion as to whether or not the deprivation of these nine persons' liberty is arbitrary or not on the basis of the information currently at its disposal.

Discussion

20. The murder on 1 May 2012 of a resident of the Municipality of Santa Cruz Barillas by persons presumed to be employees of a company that has been involved in an ongoing dispute with residents of that municipality since 2007 touched off disturbances that resulted in some property damage and a break-in into a military barracks. The Government reacted by declaring a state of siege in the municipality, but the corresponding administrative decree was not published in the official gazette until 4 May 2012. By virtue of the declaration of this state of siege, the rights to freedom of action and freedom from arbitrary arrest, the right of assembly and the rights to demonstrate, strike and bear arms were suspended.

21. On 2 May 2012, the persons named in paragraph 3 were arrested; seven of these persons were arrested by private citizens who then handed them over to the police, in some cases, and to military officers, in others. Only two people were arrested by police officers, although those officers were assisted by civilians. The authorities have not claimed that the civilian personnel arrested any of these people because they were caught in the act of committing an offence. In addition, the measures corresponding to a state of siege should not have been applied in any of these cases because the state of siege was not yet in effect, since the declaratory decree had not yet been published in the official gazette. The Working Group notes that all of these arrests were made without a valid warrant.

22. When the detainees were brought before a justice of the peace, he did not take their statements. The detainees were then taken to Guatemala City. Before being brought before the criminal court judge, they were photographed by members of the press and were then tried for different offences.

23. The judge ordered that the defendants be held in pretrial detention but declined to rule on the lawfulness of their detention on the grounds that to do so would not be in keeping with the principle of the natural judge. If that were the case, then he should not have put them on trial or have ordered that they be held in pretrial detention.

24. The Government has not cited any constitutional or legal statute providing for the transfer to the capital city of a trial concerning events that occurred during a protest about the murder of a member of a group to which the detainees belong.

25. The state of siege and the attendant restrictions on personal freedoms were not in force at the time that these persons were arrested. What is more, the declaration of that state of siege does not appear to be in accordance with article 4 of the International Covenant on Civil and Political Rights. A public demonstration, even one that results in some property damage (and the Government has not reported any other consequences) and forced entry into a barracks, can in no way be characterized as an emergency situation that threatens the life of the nation. The fact that persons have been held in pretrial detention for over six months in a location far away from their area of residence, which hinders family members from visiting and assisting them on a regular basis, is even less so.

26. Nor has the Government indicated that the Secretary-General of the United Nations was notified of its declaration of a state of exception, as provided for in the Covenant, much less that the declaration constituted a measure that was limited “to the extent strictly required by the exigencies of the situation”.

27. The application for *amparo*, which is provided for in the Constitution, filed by the defence attorneys on 2 June 2012 has not yet been ruled upon. This constitutes a denial of the human right to *amparo* (protection) and to legal remedies.

28. Under these circumstances, the Working Group considers that the detention of the nine persons in question was arbitrary in the sense defined in Category I of the Working Group’s methods of work from the time of their actual arrest until the point in time when a judge ordered them to be held in pretrial detention, since, in the absence of a legal detention order, it was obviously impossible to cite any legal basis that would justify their detention.

29. The detainees were arrested because of their supposed participation in a spontaneous public demonstration. That demonstration had been triggered by people’s emotional reaction to the murder of a resident by employees of a foreign company which has been involved in a dispute with residents that has been going on for over five years. This public demonstration was an instance of the legitimate exercise of the human right of peaceful assembly, as set forth in article 20 of the Universal Declaration of Human Rights, and article 21 of the International Covenant on Civil and Political Rights. The deprivation of liberty in the case of these nine persons is therefore also arbitrary in the sense defined in Category II of the Group’s methods of work.

30. The Working Group considers that the detention of these nine persons is arbitrary. The reason for their detention was their participation in a spontaneous public demonstration. The arrests were made without a warrant, without any prior investigation and, in seven of the cases, by private citizens who have not been fully identified. The arrests cannot be justified under the provisions pertaining to offences committed in flagrante delicto because they were carried out the day after the events in question and did not take place in the course of a pursuit.

31. The actions described above constitute a denial of the human rights set forth in article 8 (human right to an effective remedy), article 9 (prohibition of arbitrary arrest or detention), article 10 (right to a fair and public hearing for the determination of a person’s rights and obligations and of any criminal charges against him or her) and article 11 (presumption of innocence) of the Universal Declaration of Human Rights and of those set forth in articles 2, paragraph 3 (a) and (b); 9; and 14, paragraphs 1, 2 and 3; of the International Covenant on Civil and Political Rights. This denial of rights is of sufficient seriousness to constitute arbitrary detention in the sense defined in Category III of the Working Group’s methods of work.

Disposition

32. In the light of the foregoing, the Working Group renders the following Opinion:

(a) The deprivation of liberty to which Messrs. Armando Pedro Miguel, Andrés León Andrés Juan, Antonio Rogelio Velásquez López, Diego Juan Sebastián, Joel Gaspar Mateo, Marcos Mateo Miguel, Pedro Vicente Núñez Bautista, Saúl Aurelio Méndez Muñoz and Juan Ventura have been subjected is arbitrary in the senses outlined in Categories I, II and III of the Working Group's methods of work;

(b) The Working Group therefore recommends that the Government release these persons forthwith;

(c) The Working Group also recommends that the State provide fair compensation that is commensurate with the injury suffered by each of the persons concerned.

[Adopted on 15 November 2012]
