

OPINION No. 1/1998 (CUBA)

Communication addressed to the Government on 11 December 1997

Concerning: Félix A. Bonne Carcasés; René Gómez Manzano;
Vladimiro Roca Antunes; and María Beatriz Roque Cabello

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having promptly forwarded the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (Category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights;
- (iii) When the complete or partial non-observance of international standards relating to the right to a fair trial, as set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to confer on the deprivation of liberty, of whatever kind, a arbitrary character (Category III).

4. Guided by a spirit of cooperation and coordination, the Working Group has also taken account of the report prepared by the Special Rapporteur in accordance with Commission on Human Rights resolution 1997/62 (E/CN.4/1998/69).

5. In the light of the allegations made, the Working Group welcomes with satisfaction the Government's full and timely cooperation. The Working Group has transmitted the Government's reply to the source of the information and has received its comments. The Working Group believes that it is in a position to give an opinion on the facts and circumstances of the case, bearing in mind the allegations made and the Government's reply thereto, as well as the comments by the source.

6. According to the source, Félix A. Bonne Carcasés, René Gómez Manzano, Vladimiro Roca Antunes and María Beatriz Roque Cabello were arrested by the State Security Police in Havana on 16 July 1997. From the time of their arrest, they were held in the Villa Marista detention centre. The charges are

that they committed acts of political opposition, such as the preparation of reports criticizing the social, political and economic situation, and that they incited the population to abstain in an election. They also wrote a document entitled "The country belongs to everyone", which challenges the official document intended for the Fifth Communist Party Congress held in October 1997.

7. In its full and detailed reply, the Government states that the four detainees' activities began prior to July 1997 and that they are "regarded as unlawful, according to the provisions of the national legislation in force". The activities were designed to disrupt the election that was under way; and to promote support by various means for the blockade by the Government of the United States against Cuba. The detainees threatened foreign investors with reprisals and waged campaigns to influence Cuban émigrés to put conditions on the financial support they send to their families. In addition, "they used false or distorted data and information about the political situation in the country and the current economic situation and prospects for the future in order to discourage persons taking part in efforts to maintain economic independence and political sovereignty and paint a chaotic picture of the country to discredit it politically at the international level".

8. Since they ignored the warnings, they were arrested on the date indicated, tried for "rebellion, enemy propaganda and other offences" and placed in pre-trial detention.

9. The Government also states that the Attorney-General's Office completed the indictment proceedings and brought the case before the competent court for a decision on the charges. It says that the detainees have defence counsel of their choosing (if they had not appointed counsel, one would have been made available by the court); that they have the right to produce evidence in their defence; that they have received visits; that those who are ill have received medical care; and that, for all these reasons, the detention is not arbitrary.

10. The Working Group considers that there is no difference of opinion between the source and the Government as far as the facts are concerned. Both agree on the date of the arrest; that the accused are on trial; and that they are being held in pre-trial detention in Villa Marista. It is also pointed out that, in its reply, the Government does not say that any of the persons on trial resorted to violence of any kind.

11. The grounds for the arrest are: producing political reports; inciting people to abstain in elections; and preparing documents which are alternatives to official documents. The Government adds others, such as supporting the foreign blockade and threatening investors with reprisals; using false or distorted data and information about the political situation, etc.

12. In the Working Group's opinion, such activities are no more than the lawful exercise of the human rights to freedom of expression, opinion and political participation, as provided for in articles 19 and 23 of the Universal Declaration of Human Rights. They are not being accused of any act of violence, but only of preparing documents and stating opinions. Even what the source calls "inciting people to abstain in elections" and what the Government calls "disrupting the electoral process" (the offence is closer to the latter) is no more than a personal option expressed peacefully and called for by the detainees.

13. The Government maintains that these offences are punishable under Cuban internal law. In this connection, the Working Group has two comments to make:

(a) The first is that the criminal offence of "enemy propaganda", is extremely vague and may cover conduct which is lawful according to international human rights standards, as in the case of the preparation of documents clearly calling a political system into question. The Working Group has already made a statement to this effect in its reports (E/CN.4/1994/27 and E/CN.4/1993/24, paragraph 32) and, in the light of the consideration of the present case, it repeats its views;

(b) The second comment is that, although Cuban internal law penalizes acts of political opposition, the Working Group must, in accordance with its terms of reference, also be guided, as provided in Commission on Human Rights resolutions 1997/50 and 1998/41, by the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international legal instruments accepted by the States concerned. Thus, although the detention may be regarded as being in conformity with national legislation, it is not in keeping with the relevant standards set forth in the Universal Declaration of Human Rights.

14. On the basis of the foregoing, it must be concluded that the deprivation of liberty of the above-mentioned persons may be regarded as being in conformity with national legislation. However, the Working Group is of the opinion that the legislation is contrary to the provisions of articles 19 and 23 of the Universal Declaration of Human Rights.

15. In the light of the foregoing, the Working Group expresses the following opinion:

The deprivation of liberty of Félix A. Bonne Carcasés, René Gómez Manzano, Vladimiro Rocas Antunes and María Beatriz Roque Cabello is arbitrary, since it is contrary to articles 19 and 23 of the Universal Declaration of Human Rights and falls within category II of the categories applicable in the consideration of the cases submitted to the Working Group.

16. Having stated this opinion, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights;

(b) To take appropriate initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights; and

(c) To consider the possibility of amending its legislation to bring it into line with the Universal Declaration and the other relevant international standards which it accepts.

Adopted on 15 May 1998.