

No. 36/2011 (Mexico)

Communication addressed to the Government on 29 March 2011

Concerning: **Basilia Ucan Nah**

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a further three-year period in Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, 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 sentence or despite an amnesty law applicable to him) (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; 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. Basilia Ucan Nah, a Mexican national, is a woman of indigenous Maya origin of 43 years of age, who only speaks Maya and is illiterate in Spanish. She belongs to the Yoactún community (Municipality of Felipe Carrillo Puerto, State of Quintana Roo). She is the mother of seven children. She was arrested on 18 March 2008 by officials of the criminal investigation police of the State of Quintana Roo, while she was at home looking after her granddaughter. She is detained in the municipal prison of Felipe Carrillo Puerto (Quintana Roo), together with 86 other persons, of whom 85 are men. All these persons have been arrested on charges of committing common offences.

4. According to the source, on 6 February 2007 an anonymous complaint was received by telephone concerning the alleged commission of the offences of procuring and trafficking in persons

perpetrated against two adolescent girls, who were said to be sexually exploited by a man of some 70 years' old. On 7 March 2007, the police accused Ambrosio Granados Mohedano - deceased during the trial - and Mary May, of being the likely perpetrators. May allegedly stated that she worked for Granados Mohedano, exploiting two underage girls. She said that "two months earlier a stout, dark-haired, tall lady, who wore her hair long half way down her back, aged around 40, was looking for youngsters to take them to the house of Ambrosio Granados". Allegedly the woman took her as well. Granados, on the other hand, reportedly stated that all he did was to rent out the rooms, that he did not know the women's names and that he asked whoever used the facilities not to bring in any minors or to cause a scandal. He also allegedly said that he did not want to mention the names of the persons who rented the rooms because they worked in Felipe Carrillo Puerto either for the Government or for the police.

5. On 10 April 2007, the criminal investigation police submitted their investigation report containing the results of the questioning of the two minors, of the sister of one of them, of the accused, and a person who was said to have entertained a relationship with one of the alleged victims but who later denied the facts.

6. On 26 July 2007, Raquel Gómez Hernández and Basilia Ucan Nah were arrested at the entrance of Felipe Carrillo Puerto town hall by officials of the criminal investigation police, who took them to make a statement before the public prosecutor. Gómez Hernández declared that he had seen Ucan Nah accompanying one of the minors. Ucan Nah made a statement without the help of an interpreter or defence counsel. A law enforcement official later declared before the trial judge that, although he had not been present at the time the statement had been made, he agreed to sign the record as a "trusted friend" of Ucan Nah, at the express request of the public prosecutor.

7. In an additional statement, one of the adolescent girls said that she had met Ucan Nah two years earlier, when the latter had come up to her in the market place saying that a man would pay her to have sexual intercourse in the house of Granados Mohedano.

8. On 10 September 2007, the public prosecutor requested the judge to issue an arrest warrant against Ucan Nah and Granados Mohedano, on charges of perpetrating the offences of procuring, trafficking in persons and corruption of minors to the detriment of the two adolescents and public morality. On 11 March 2008, the Criminal Court of first instance of the Judicial District of Felipe Carrillo Puerto issued a warrant for the arrest of Ucan Nah, who was apprehended on 18 March 2008 by officials of the Quintana Roo criminal investigation police. She was not shown a court order or told the reasons for her arrest. On 19 March 2008, she handed in her preliminary statement, in which she maintained that she did not know the injured minors and that the police officials had intimidated her by telling her that they were watching her and giving her the names of women - whom she did not know - who would be appearing to give statements, which they never did.

9. On 24 March 2008, a detention order was issued against Ucan Nah, on charges of perpetrating the offences of corruption of minors and procuring. The proceedings continued mainly with the statements of witnesses and of the two minors. On 16 September 2008, Ucan Nah's counsel lodged an *amparo* appeal against the detention order, which was dismissed on 13 November 2008.

10. On 16 July 2008, one of the allegedly injured adolescents added to her statement, stating that she did not know Ucan Nah and that she consequently had nothing to say against her. She also said that she had never been obliged to have sexual intercourse. She declared that the records of her earlier testimonies did not reflect what she had stated and that she had been forced to sign them under threat of being taken before the Juvenile Court. With regard to the statements signed by her mother, she said that a lawyer had been to her house with officials of the criminal investigation police, who allegedly took her mother away to sign. As she was incapable of signing, the policemen apparently stamped her fingerprints on the document.

11. The father of the other victim made a statement on the same date, affirming that his daughter was subjected to pressure when she made her statement of 8 March 2007 by officials of the criminal investigation police, who intimidated her and threatened her, forcing her to say things that she did not agree with. He added that his daughter, who suffered a nervous breakdown, had never lodged complaints against anyone.

12. On 19 September 2008, Mary May, one of the first declarants, in a further addition to her statement, said that the content of her previous statement was false and that she had never made such a testimony. Then she said that she had signed the record because she was afraid and she was subjected to pressure.

13. In February 2009, Gómez Hernández added to his original statement, saying that he was not sure that he had seen Ucan Nah with one of the minors, as appeared in his first statement. He said that he had agreed to sign out of fear and because he wanted to keep out of trouble.

14. According to the source, the features of the woman who had reportedly induced the alleged victims do not correspond with the appearance of the person on the photographs taken of Ucan Nah for her police record.

15. On 23 March 2009, the public prosecutor submitted his indictment. On 8 April 2009, Ucan Nah submitted the arguments for her defence. The judge deemed these to be out of time.

16. On 28 April 2009, Ucan Nah was convicted in first instance of the offences of aggravated procuring and corruption of minors, and she was sentenced to 12 years and 3 months' imprisonment and the payment of a fine of 10,577.20 pesos.

17. On 27 August 2009, a review of the proceedings was ordered owing to the fact that many formalities and notifications were conducted without the assistance of an interpreter. A new sentence was handed down declaring Ucan Nah not guilty of the offence of procuring and corruption of minors with respect to one of the adolescents, but the conviction was maintained with respect to the other minor (who had initially accused Ucan Nah but had retracted in her second court statement, when she had declared that she did not know her), and the sentence was maintained at 12 years and 3 months of imprisonment and payment of the fine.

18. In this case, according to the source, there is a clear absence of evidence and a fabrication of offences. The judge upheld the judgement and in order to pass sentence used the evidence submitted by the public prosecutor which had been collected illegally. The alleged injured parties retracted their initial statements, maintaining that they had been forced to sign statements of which they were not even aware. Ucan Nah never admitted her alleged guilt or recognized any act constituting an offence and denied knowing the minors. At present the case is under appeal at the Criminal Division of the High Court of Justice of the State of Quintana Roo (criminal case file No. 458/2010).

19. Ucan Nah's spouse, Félix Chi Cahuil, declared in the course of a press conference that, prior to the conviction, some individuals he had been unable to identify had asked him for the sum of 60,000 pesos to free his spouse, a sum which he had been unable to pay for lack of resources.

20. The source adds that the Assistant Attorney of the Maya Area, María de Jesús Loeza Cachón, accompanied by two judicial assistants, went to a shop situated in Felipe Carrillo Puerto where a woman from the Yoactún community was working to coerce her into bearing witness against Ucan Nah.

21. The source concludes that the irregularities detected in the proceedings brought against Ucan Nah, such as the lack of interpretation, the lack of defence counsel at crucial phases of the proceedings, and the way the public prosecutor had collected evidence, tend to show that her detention was arbitrary. Added to which is the fact that she was detained in the municipal jail, which does not have separate quarters for women.

22. The source considers that Ucan Nah's detention is contrary to both Mexican and international legislation. The court officials, on the grounds of procedural urgency, dismissed the retraction of the declarants' statements, even when the latter expressly complained about the coercion, intimidation and threats to which they had been subjected. She further considers that requiring them to produce concrete evidence of their innocence and absence of guilt was a reversal of the burden of proof and breached the principle of the presumption of innocence. Illegal practices by the public prosecutor during the investigations were irregularly validated. None of the witnesses that appeared before the public prosecutor identified Ucan Nah directly, with the exception of the girl who subsequently retracted her statement and accused the public prosecutor of trying to force her to sign a false declaration.

23. When making their statements, none of the girls was accompanied by her parents, counsel or any official of the System for the Full Development of the Family, as required by the State's Code of Criminal Procedure. As a result they were left vulnerable and exposed to pressure. Even one of the girls complained to the trial judge that she had been threatened by officials of the criminal investigation police, who had warned her that if she did not sign the pre-drafted record she would be taken to the Juvenile Court.

24. Lastly the source considers that Ucan Nah's detention is arbitrary because she was not given the reasons for her detention, or shown the court's warrant. The proceedings were conducted in Spanish, a language that Ucan Nah does not understand, without the assistance of an interpreter. She was obliged to sign documents that contained statements which she could neither read nor understand. She was not assisted by counsel during the preliminary inquiry or at crucial stages of the trial, and a law enforcement officer, who had not been present when the statements had been taken, had agreed to sign as a trusted friend as if he had been present.

25. These grave procedural irregularities caused Ucan Nah to find herself constantly defenceless and lacking any proper objective understanding of the criminal proceedings she was undergoing or the implications of the charges brought against her. She had been unjustly deprived of her liberty for longer than three years, the victim of criminal trial proceedings plagued with irregularities that violated her human rights.

26. The source concludes that Ucan Nah's detention is arbitrary.

27. According to the source, the criminal proceedings brought against Ucan Nah show how the system of the prosecution and administration of justice can be manipulated in the State of Quintana Roo to make up convictions while putting across an image of a firm attitude to delinquency, by taking advantage of the social and economic vulnerability of indigenous women.

28. The source also calls for a halt to the harassment of persons connected with Ucan Nah and of witnesses in the case, particularly on the part of the Assistant Attorney for the Maya Area and the State public prosecutor's office. She complains that as a consequence of the grave irregularities of the proceedings and the flimsiness of the criminal case, a campaign has been launched to discredit Ucan Nah and pressure has been brought to bear on the Criminal Division of the High Court of Justice of Quintana Roo.

Response from the Government

29. In its reply of 16 June 2011, the Government maintains that since her arrest on 18 March 2008 ordered by the Criminal Court of First Instance of the Judicial District of Felipe Carrillo Puerto, in the State of Quintana Roo, Basilia Ucan Nah has enjoyed the full guarantees of due process in accordance with Mexican law and the international treaties to which Mexico is party, which is to say that she had a defence counsel, she was told the reasons for her arrest and she was not left in isolation, among others.

30. The Government adds that, subsequently to Ucan Nah's sentencing in first instance for the offences of procuring and corruption of minors to 12 years and 3 months' deprivation of liberty, her sentence was overturned by the High Court of Justice of the State on the grounds of flaws in the evidence for the prosecution, which led to her unconditional release on 24 May 2011.

31. The Government also reports that Ucan Nah lodged a complaint for the violation of her rights with the Human Rights Commission of the State of Quintana Roo, which was referred to the National Human Rights Commission, where it was currently under consideration.

Observations by the source

32. In a communication of 26 July 2011, the source confirms the release of Ucan Nah following her acquittal by the appeal court, and reiterates that the latter's trial was flawed by serious human rights violations, such as the fact that the investigations were held without the assistance of interpretation between her mother tongue and Spanish, the language in which the trial proceedings were held and with which she is not well acquainted. In the source's opinion, Ucan Nah was a threefold victim: because she was a woman, because she was indigenous and because she belonged to an underprivileged social background.

33. The source questions the nature and content of the evidence put forward during the investigatory phase and during the trial, which in her opinion amounts to serious human rights violations.

Considerations of the Working Group

34. As the person on whose behalf the complaint was brought has been released, the Working Group could simply file this case through an Opinion. Nevertheless, the Working Group reserves the right to decide on a case-by-case basis whether or not the deprivation of liberty is arbitrary, notwithstanding the release of the person concerned. In the light of the lengthy deprivation of liberty and the arguments put forward below, the Working Group decides to render an opinion as to whether or not Basilia Ucan Nah's detention was arbitrary.

35. As it has held in many opinions, the Working Group is naturally in no position to assess evidence put forward in the course of trial proceedings, whether by the prosecution or by the defence, which is why it shall refer only to some denials of rights, which are clearly apparent both in the background provided by the source and in the actual response of the Government.

36. The Government has not denied that Ucan Nah was deprived of liberty from 18 March 2008, the day she was arrested by the criminal investigation police of the State of Quintana Roo, until 24 May 2011, that is, during more than three years and two months. This delay constitutes a denial of the human right to be tried without undue delay and within a reasonable time.

37. The fact that procedures were delayed for more than three years constituted a denial of the presumption of innocence to which everyone is entitled.

38. The complainant was also denied the assistance of an interpreter, in breach of article 14, paragraph 3 (f), of the International Covenant on Civil and Political Rights. Further still, many of the proceedings were conducted without an interpreter, as stated by the source, a fact which has not been challenged by the Government.

39. All the appeals including *amparo* lodged by the detainee's counsel over three years were unsuccessful, since none of them achieved at least to have her tried at liberty, which should be the general rule in all criminal proceedings, as stipulated in article 9, paragraph 3, of the Covenant.

40. In the Working Group's opinion, these violations of the norms of due process mentioned above are of such gravity as to give the deprivation of liberty an arbitrary character, as referred to under category III in the methods of work of the Working Group (A/HRC/16/47, annex, para. 8 (c)).

Opinion of the Working Group

41. In the light of the foregoing, the Working Group decides:

(a) To file the case by virtue of the release of Basilia Ucan Nah, as provided for in paragraph 17 (a) of the methods of work of the Working Group; with the proviso, however, that the deprivation of liberty of this person implies a violation of the human rights enshrined in articles 3, 5, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, as well as article 2, paragraph 3, and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights; and that in consequence her detention was arbitrary, falling under category III of the categories applied by the Working Group to consideration of the cases submitted to it;

(b) Consequent upon the opinion rendered, the Working Group requests the Government of the United Mexican States to provide reparation for the harm caused by the arbitrariness exposed in this opinion.

[Adopted on 1 September 2011]