

# No. 2/2013 (Barbados)

## Communication addressed to the Government on 14 January 2013

### Concerning Raúl García

**The Government has replied to the communication on 12 April 2013. 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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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, as 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 case was transmitted to the Working Group on Arbitrary Detention as follows.

4. Raúl García (hereafter Mr. García), a 58-year-old native of Cuba, is currently being held in detention in Barbados after having completed a 20-year prison sentence on drug-related charges.

5. It is reported that Mr. García was born in Santiago de Cuba on X April XXXX. In April 1964, when he was 10 years old, his family immigrated to Spain and then to the United States of America. Under current Cuban law, he lost the legal right to return to Cuba and the Cuban authorities have expressly refused to permit him to return. He lived in the United States of America for 24 years from 1964 to 1988, under resident status.

6. It is alleged that Mr. Garcia got involved in drug trafficking in the United States and was subsequently arrested. He fled the country to evade prosecution and settled in Colombia in June 1988, where he assumed a new identity under the name of Edilberto Coronel Muñoz. He lost his resident status in the United States of America, and his status in Colombia was not legitimate.
7. The United States authorities have also expressly refused to permit him to return. Under this situation, he is considered, to all intents and purposes, a stateless person.
8. According to the information received, on 28 September 1994, Edilberto Coronel Muñoz was arrested in Barbados on drug charges. He was sentenced to life imprisonment and a fine of 500,000 United States dollars. During the appeal process, the Crown did not provide adequate evidence to substantiate its case for drug trafficking. Consequently, the sentence was reduced to 20 years' imprisonment. As he was unable to pay the fine, he was forced to serve the full sentence, which expired on 11 March 2010. Nonetheless, he has continued to be deprived of his liberty.
9. Concern was expressed by the source about the fact that Mr. Garcia has continued to be held in detention in excess of three years since the end of his prison term. During these three years, Mr. Garcia has been detained at Her Majesty's Prison (HMP) Dodds, a maximum security prison in Barbados, and is subject to all detention conditions imposed on convicted persons.
10. The source adds that on 9 September 2012, Mr. Garcia was moved to a house belonging to the Barbados Defence Force (BDF) and, since then, he has been in solitary confinement. He is locked in a small area of the house for 23 hours every day, and allowed to leave this restricted area for one hour a day to go to a small fenced-in yard area. He has been denied contact with his family and has limited access to his lawyer. Mr. Garcia is under 24-hour guard by soldiers of the Barbados Defence Force and armed police officers.
11. The source further reports that Mr. Garcia's medical condition has seriously deteriorated. He is suffering of angina pectoris and high blood pressure, continues to have digestion illnesses and has recently lost 16 pounds.
12. The source concludes that Mr. Garcia's detention is arbitrary and contrary to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

*Response from the Government*

13. In its response dated 12 April 2013, the Government of Barbados confirms that Mr. García was tried in Barbadian courts for crimes involving possession, importation and trafficking of cocaine. He completed his sentence and was released on 11 March 2010. However, he was deemed a prohibited person and was detained at Grantley Adams International Airport while the Immigration Department sought to repatriate him to his country of birth, Cuba.
14. On 17 December 2010, it became clear that his stay, pending deportation, had to be extended longer than expected. Consequently, Mr. García was moved to Her Majesty's Prison (HMP) Dodds. Mr. García cannot re-enter the United States of America as he lost his permanent residence status there; he cannot be returned to Colombia, his point of departure when he first came to Barbados, since he had apparently travelled to Barbados on a fraudulently obtained Colombian passport in a false name. Under Colombian law, he is criminally inadmissible.
15. In December 2010, Mr. García was issued a Cuban passport valid until 2016. However, the Cuban authorities advised that, due to the length of time Mr. García has resided outside Cuba, they were not willing to readmit him to Cuba, even if he is in possession of a valid Cuban passport and he was born in Cuba. The Government of Barbados points out that this position of the Government of Cuba is being challenged by Barbados, particularly in the light of the amendment to Cuban immigration laws, effective as from 14 January 2013.
16. The Government of Barbados further reports that on 9 September 2012, Mr. García was released from HMP Dodds into the custody of the Chief Immigration Officer. He is currently being housed at a private location. According to Section 13 (8) of the Immigration Act, Cap. 190, the Chief Immigration Officer may detain a person pending the issuance and execution of a deportation order.
17. The Government of Barbados considers that Mr. García is an immigrant in an irregular situation and subject to deportation/removal from Barbados. The Barbados authorities have taken all necessary steps to his effective removal. The Government has explored all possible avenues,

including repatriating him to Colombia; removing to the Dominican Republic; repatriating him to Cuba, his country of birth; repatriating/extraditing him to the United States of America, where he was a resident from the age of 10. According to the Government of Barbados, it has explored all the possibilities provided by the Office of the United Nations High Commissioner for Refugees and has even requested Cuba's assistance for Mr. García's removal to a third country.

18. In December 2012, Mr. García introduced a writ of habeas corpus (case No. 1666 of 2012) before the High Court (Civil Division) of the Supreme Court of Judicature. The Court considered that "given the intractable nature of the problem created by the claimant, coupled with Cuba's very prohibitive policies on the repatriation of its nationals, a reasonable period for the detention of this person has not yet expired".

19. The Government adds that the matter of the provision of appropriate facilities to which Mr. García can be released continues to occupy the attention of the Barbados High Court. The Government concludes that Mr. García's detention pending his deportation/removal from Barbados cannot be considered arbitrary.

*Further comments from the source*

20. The source has not provided the Working Group with further comments.

### **Discussion**

21. The Working Group notes that Raúl García continues to be held in detention for more than three years since completing his 20-year imprisonment sentence for drug-related charges. He has been held in detention pending deportation and remains incarcerated because of complications associated with his immigration status, which are described in the Government's response.

22. The Working Group - whose mandate also covers the detention of migrants in an irregular situation, refugees and asylum seekers - has, on several occasions, pointed out that migrants in an irregular situation must not be regarded as criminals. The principle of proportionality should always be applied and detention should be considered as the last resort. Furthermore, if detention is necessary, the person concerned must have an effective remedy to challenge the legality of her or his detention before a judicial authority. Alternative measures to detention must be preferred and the conditions of detention must not, in any case, be draconian.

23. In addition, if in practice Mr. García is considered a stateless person, his deportation and expulsion from Barbados cannot be achieved, with due regard to Barbados' obligations under the 1954 United Nations Convention relating to the Status of Stateless Persons.

24. The Working Group further notes the excessive powers given to the Minister responsible for immigration by the domestic legislation of Barbados, including the power to detain. In such cases, the Minister should ensure that following detention, the person is deported or removed from the national territory within a reasonable time.

25. If the person's deportation or removal cannot be achieved within a reasonable period, continued detention would no longer be reasonable, unless such continued detention is necessary to protect public order or national security. The Government has not provided reasons specifying why Mr. García's continued detention is necessary or convenient on the grounds of public order or national security. Indeed, his continued detention seems unreasonable, since all efforts to remove him from Barbados have failed. Mr. García is not accepted in his country of birth by the Cuban authorities by reason of his having remained outside of Cuba without the prior permission of the Cuban authorities.

26. The Working Group is of the view that, as there is no immediate prospect for Mr. García's deportation or removal from Barbados, his continued administrative detention is unreasonable and arbitrary.

27. Lastly, the Working Group notes that, in December 2012, Mr. García introduced a writ of habeas corpus as well as for judicial review of the detention order. However, more than four months later, his habeas corpus writ has not been decided by the Supreme Court. This is even more serious if the limitations on Mr. García to have full access to his legal counsel are considered.

### **Disposition**

28. The Working Group appreciates the cooperation by the Government of Barbados in the fulfilment of its mandate.

29. On the basis of all the information received, the Working Group considers that the detention of Raúl García is arbitrary, being contrary to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14, paragraph 3 (b) and (c), of the International Covenant on Civil and Political Rights, and falls within categories III and IV of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

30. Consequent upon the opinion rendered, the Working Group requests the Government of Barbados to immediately release Raúl García and to consider providing him with adequate reparation for damages suffered. The Working Group further requests Barbados to update its domestic legislation on migration in accordance with international principles and standards.

[Adopted on 30 April 2013]