

No. 17/2013 (Cuba)

Communication addressed to the Government on 25 February 2013

Concerning Ulises González Moreno

The Government replied to the communication of the Working Group on 2 May 2013. 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 the former Commission on Human Rights by its resolution 1991/42. The mandate of the Working Group was 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 further three-year period 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 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 that have been 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 aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Ulises González Moreno, a 45-year-old Cuban national, married to Ms. Jacqueline Daly and residing at Flat 2, 414 Concordia (between Gervasio and Escobar), Centro Habana, Havana, is Deputy Secretary-General of the organization known as the Sindicato Independiente de Carpinteros por Cuenta Propia (independent syndicate of own-account carpenters), which is affiliated with the Confederación de Trabajadores Independientes de Cuba (confederation of independent workers of Cuba). (These bodies are not officially recognized.) According to the source, Mr. González Moreno is a human rights defender who has worked to defend the right of association and has discharged his duties in a civically responsible and peaceful manner.

4. The source reports that Mr. González Moreno was arrested at his home by two plain-clothes National Revolutionary Police officers, who took him to the Second Police Unit in Zanja. Subsequently, on 28 November 2012, he was transferred to Valle Grande Prison, a facility attached to the Prison Department of the Ministry of Internal Affairs.
5. Mr. González Moreno was detained under an arrest warrant issued at the request of the Prosecutor's Office on charges of pre-criminal social dangerousness on the basis of his links to antisocial dissident elements, pursuant to Act No. 62 (the Criminal Code) and Act No. 5 (the Code of Criminal Procedure).
6. According to the source, the charges were actually brought in retaliation against Mr. González Moreno for refusing to act as a police informer. It is alleged that the threat to indict him for pre-criminal social dangerousness was reiterated by officers during Mr. González Moreno's interrogation on police premises.
7. On 27 November 2012, a summary trial took place before the Centro Habana Municipal People's Court. The Court found Mr. González Moreno guilty of pre-criminal social dangerousness for "carrying out dissident activities" and for "having links to antisocial elements" and sentenced him to two years' imprisonment. According to the source, the defendant's court appearance was manipulated and controlled by the State security services.
8. According to the source, an indictment for establishing links with antisocial elements entails the criminalization of peaceful private and political relations between citizens, who should not have to align their opinions with those of the Government in every instance. The source recalls that article 20, paragraph 1, of the Universal Declaration of Human Rights states that: "Everyone has the right to freedom of peaceful assembly and association."
9. The source reports that the defendant's counsel, Amelia Rodríguez Cala, was unable to act in his defence because of the summary nature of the trial.
10. The source states that Mr. González Moreno was arrested, held in custody and sentenced to two years' imprisonment, not for committing any offence, but for exercising his rights and freedoms in accordance with international law and Cuban legislation. The source considers that this case demonstrates the way in which dissidents are criminalized on the grounds of antisocial behaviour.
11. The source adds that the offence of pre-criminal social dangerousness creates a climate of legal uncertainty in which citizens fear punishment even when they have committed no offence whatsoever.
12. The source concludes that Mr. González Moreno's detention is arbitrary. Mr. González Moreno was convicted solely for carrying out trade union activities in a peaceful, civically responsible and independent manner outside the established trade union organizations that are controlled by the Government. The source recalls that article 23, paragraph 4, of the Universal Declaration of Human Rights proclaims the right of everyone "to form and to join trade unions for the protection of his interests".
13. According to the source, the criminal offence of pre-criminal social dangerousness is arbitrary and unjust insofar as it is used as a legal basis for imprisoning citizens who have committed no actual offence whatsoever. To leave it to a judge, tribunal or court to decide whether or not a person is likely to commit an offence in the future is an arbitrary measure, particularly when it is used to imprison political opponents. To maintain contact or links with dissidents, or even to be a dissident, is not an offence. The source recalls that article 11, paragraph 2, of the Universal Declaration of Human Rights states that: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed."

Response from the Government

14. The Government of Cuba stands ready to cooperate with the United Nations human rights mechanisms on the basis of the principle of non-selectivity and the non-application of double standards. It is concerned about the way in which the communications mechanism is being activated on the basis of unfounded accusations designed to distort reality and the achievements of Cuba in the promotion and protection of human rights for all. It considers that the accusations made by the source are part of a financed political campaign unrelated to legitimate human rights concerns, and it

regards this as being unacceptable, unethical and an abuse of United Nations mechanisms. By accepting allegations for consideration that are made by unreliable sources, the Working Group loses credibility and demonstrates a regrettable lack of rigour in analysing alleged complaints and submissions.

15. The Government maintains that Mr. González Moreno is serving a sentence for reasons unrelated to political activities, following a trial in which he was afforded full constitutional guarantees and which was based on respect for the principle of due process, as enshrined in the Cuban legal framework, including the right to a defence that is afforded to all Cuban citizens.

16. The citizen in question is serving a two-year sentence in a Directorate of Prisons facility pursuant to a preventive security measure relating to antisocial behaviour which was ordered by the Centro Habana Municipal Court. That sentence will have been completed on 15 November 2014. The Government wishes to inform the Working Group that another measure relating to antisocial behaviour was previously taken in respect of this person in 2005.

17. The Government wishes to add that: "No one in Cuba has been persecuted or punished for peacefully exercising any of his or her rights, including the rights to freedom of expression, opinion and association, within the context of the broad freedoms guaranteed by the Constitution of the Republic and its laws, which are fully compatible with international human rights instruments. Ethical standards have played an important role in shielding the Cuban Revolution from the aggressive and hostile policies of the world's major Power."

Comments from the source

18. In the comments and observations made regarding the Government's response, the source questions the lawfulness of Mr. González Moreno's deprivation of liberty on the grounds that he has not been accused of any unlawful act, since the Government has not indicated "the specific acts that constituted" the alleged antisocial behaviour which made him liable to two years' imprisonment. According to the source, the criminal offence of pre-criminal "antisocial behaviour" fails to meet the degree of descriptive clarity required in order for given forms of conduct to be punishable. The indictment fails to specify what criminal harm or damage might be caused to any legally protected interest.

19. The source emphasizes that, in its reply, the Government did not deny that Mr. González Moreno is a long-serving independent trade union leader or that he was detained on 15 November 2012, a few days after he and his wife had told the Al-Jazeera news channel that he had been beaten and ill-treated by the political police during a public demonstration held two months prior to his arrest.

Discussion

20. The response from the Government appears to be subjective and discourteous towards the Working Group. The Working Group wishes to make it clear that at all times it acts in accordance with its methods of work and that it complies fully with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council and the Manual of Operations of the Special Procedures of the Human Rights Council.

21. Both the source and the Government agree on two facts:

- (a) That Mr. González Moreno has been held in detention since 29 November 2012; and
- (b) That the fault imputed to him is pre-criminal "antisocial behaviour".

22. According to article 11, paragraph 2, of the Universal Declaration of Human Rights: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed." The core element of this provision is the existence of an "act" or "omission" considered to be a penal offence under the law.

23. However, the Government's response gives no indication as to the nature of the "act" or "omission" with which Mr. González Moreno was charged by the judge who ordered his deprivation of liberty, the prosecutor who brought charges against him or the court that tried and convicted him. What is more, if the act that gave rise to his arrest, the charges against him, and his trial and conviction is, according to the information provided by the Government, regarded as "pre-criminal", clearly, then, some element was lacking in order for it to be considered criminal and, therefore, a

criminal offence. According to the Government, Mr. González Moreno "is serving a two-year sentence in a Directorate of Prisons facility pursuant to a preventive security measure relating to antisocial behaviour which was ordered by the Centro Habana Municipal Court. That sentence will have been completed on 15 November 2014."

24. The source contends that fundamental rights of defence were not respected and that the trial took the form of summary proceedings; the Government, however, says otherwise.

25. The Government does not dispute the source's assertion that Mr. González Moreno is a trade union leader and human rights defender. It simply states that he "is serving a sentence for reasons that are unrelated to political activities", but it fails to indicate the actual grounds which, in its view, warranted his deprivation of liberty and conviction.

26. In the light of the foregoing, the Working Group considers that the reason for Mr. González Moreno's deprivation of liberty was based on the exercise of his human rights to the freedoms of opinion, expression and association, enshrined in articles 19 and 20 of the Universal Declaration of Human Rights. This constitutes arbitrary detention as defined under category II of the methods of work of the Working Group.

27. Mr. González Moreno's deprivation of liberty, which, at the time of the adoption of this Opinion, has already lasted 9 months and which may last 24 months, is also arbitrary because it is in violation of article 11 of the Universal Declaration of Human Rights. It thereby constitutes grounds for determining that the detention is arbitrary under category III of the methods of work of the Working Group, since a measure involving deprivation of liberty has been imposed in the absence of an act or omission constituting a penal offence.

Disposition

28. In view of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Ulises González Moreno is arbitrary and comes under categories II and III of the methods of work of the Working Group.

29. The Working Group recommends that the Government of Cuba take the following steps:

- (a) Order the immediate release of Ulises González Moreno;
- (b) Grant remedies that are commensurate with the gravity of the imposition of a prison sentence in the absence of acts or omissions constituting an offence;
- (c) Give consideration to the amendment of Cuban legislation which allows persons to be deprived of their liberty in the absence of the commission of a criminal act; and
- (d) Become a State party to the International Covenant on Civil and Political Rights, which has been in force for 37 years.

[Adopted on 26 August 2013]