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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April–1 May 2014

No. 20/2014 (El Salvador)

Communication addressed to the Government on 16 September 2013

**Concerning: Aracely del Carmen Gutiérrez Mejía, Verónica Beatriz Hernández Mejía
and Reyna Ada López Mulato**

The Government replied to the communication from the Working Group.

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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. 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, as established in the Universal Declaration of Human Rights and

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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. Aracely del Carmen Gutiérrez Mejía, a Salvadoran citizen born on 5 October 1990, a student, resident of Colonia Santa Clara (municipality of Santa Cruz Michapa, department of Cuscatlán) and daughter of María Florentina Mejía and Ángel Gutiérrez Torres, has been detained without charge and without trial since 20 August 2010 in unit B, cell TP-2, in Ilopango Prison.

4. Verónica Beatriz Hernández Mejía, a Salvadoran citizen born on 15 November 1986, a shopkeeper, resident of Residencial Santa Teresa de las Flores (Apopa, San Salvador) and daughter of Daysi Elizabeth Mejía and Manuel de Jesús Hernández, has been detained in unit B, cell TP-2, in Ilopango Prison since 13 May 2011. She has not been charged with any offence and has not been brought to trial.

5. Reyna Ada López Mulato, a Salvadoran citizen born on 31 December 1982, a shopkeeper, resident of Urbanización Trujillo (San Salvador) and daughter of María Magdalena Mulato Segura and Pedro de Jesús López, has been detained since 29 July 2011 in unit B, cell TP-2, in Ilopango Prison.

6. According to the information received, Ms. López Mulato was charged with the aggravated robbery of Javier Alejandro Flores Vidal and with being a member of the Mara-18 gang. Magistrates' Court No. 14 of San Salvador found her innocent and acquitted her of the charges. Nevertheless, Ms. López Mulato was not released and remains in prison.

7. The source considers that the detention of these three persons is arbitrary. Ms. Gutiérrez Mejía and Ms. Hernández Mejía have been detained in Ilopango Prison since August 2010 and May 2011, respectively, without being charged or brought to trial. Ms. López Mulato has remained in prison since July 2011, despite having been found innocent of the offences with which she was charged.

8. In the source's view, the detention of these three persons is arbitrary.

Response from the Government

9. The Government of the Republic of El Salvador replied to the communication from the Working Group on 20 November 2013.

10. According to the Government's reply, Ms. Gutiérrez Mejía was arrested in flagrante delicto on 29 October 2009 when trying to enter San Vicente Eastern Prison as a visitor with one large and eight medium-sized packages of marijuana hidden on her person. She is serving a 10-year prison sentence for illicit trafficking endangering public health, under a ruling by San Vicente Trial Court that was upheld by the Criminal Division of the Supreme Court.

11. With regard to Ms. Hernández Mejía, the Government reports that she was sentenced to 35 years' imprisonment for the aggravated kidnapping of five persons. The sentence was handed down by Specialized Trial Court "A" of San Salvador on 14 May 2013 and is currently being appealed before the Specialized Criminal Court of San Salvador.

12. As to Ms. López Mulato, the Government states that she was arrested in flagrante delicto on 10 June 2011. Magistrates' Court No. 14 of San Salvador sentenced her to 9 years' imprisonment for aggravated robbery.

13. The Government further states that, in the Republic of El Salvador, the right to liberty is guaranteed under article 11 of the Constitution. Pursuant to article 172 of the Constitution, it is the judiciary's duty to apply the law and hand down custodial sentences in accordance with the law.

Comments from the source

14. The Government's response was sent to the source for comments or observations.

15. According to the source, Ms. Gutiérrez Mejía has been detained without charge and without standing trial since 29 October 2009. When the source submitted the case to the Working Group, Ms. Gutiérrez Mejía had not been formally accused or brought to trial. A considerable amount of time passed between her arrest and sentencing.

16. Ms. Hernández Mejía was acquitted of criminal association in breach of the peace by Specialized Trial Court "A" of San Salvador on 2 October 2012. Yet she was not released. She has been tried for another offence, but has not received a final sentence and should be freed.

17. Regarding the case of Ms. López Mulato, the source states that she has been detained since 10 June 2011. She was acquitted by the Specialized Trial Court of Santa Ana of the aggravated homicide of Ms. Belmira Alicia González and of criminal association in breach of the peace, yet she was not released, despite having been acquitted. In order to keep her in prison, she was accused of unlawful coercion and stealing a mobile phone worth US\$ 30 and a wallet containing US\$ 0.85. The witnesses did not come forward to verify their statements to the court.

Discussion

18. The situation reported in the communication under consideration does not surprise the Working Group. During its visit to the country in January 2012, it received numerous complaints about the same kinds of situation, as it noted in its report (A/HRC/22/44/Add.2), in which it also said:

"90. In the meeting with the judges of the Supreme Court, the Working Group was told that there is no computerized system for following up on criminal cases or on prisoners and detainees.

91. Several convicts complained to the Working Group that they had never received written notification of their sentences. Some never saw their sentences. Prison authorities stated that often they have to petition the court clerk's office several times for a copy of the sentences or judicial decisions. This means that they often do not know what the real status of a prisoner is. It also prevents prisoners from claiming their entitlements, such as conditional or early release.

92. In some cases, prison authorities do not know whether a prisoner has already served their sentence and consequently whether they should be released. Some detainees complained to the Working Group that they should already have been

released. Prison authorities replied that they habitually petition the courts for information on the legal status of prisoners but their requests for information usually remain unanswered.”

19. The recommendations issued after the country visit included the following (A/HRC/22/44/Add.2, para. 132):

“(f) Take urgent measures and, if necessary, establish special mechanisms, to identify and immediately release all persons who have served their sentences but remain in custody.”

20. In the preliminary remarks addressed personally to senior government officials at the end of the visit, the Working Group placed particular emphasis on this situation. The authorities interviewed were alarmed to learn of this striking irregularity and informed the Working Group that they would take urgent steps to solve the problem, which feeds into another issue noted by the Working Group in its report, namely prison overcrowding:

“97. The prison population rose by 47 per cent between 2005 and 2010, and is now 313 per cent of the capacity of the country’s prisons. With a total prison population of 25,411 inmates (including 2,440 women) and an installed capacity of only 8,100, it is fair to say that the prison system has collapsed. Those awaiting trial or sentencing are housed in the same cells as those who have been convicted, due to the chronic lack of space.”

21. The cases reported in the communication outlined in paragraphs 3 to 8 of these Opinions relate to three women arrested on 29 October 2009, 13 May 2011 and 10 June 2011. These persons were tried a long time after their arrest, which shows that the authorities have not adopted the measures necessary to correct these injustices. Two of the persons in question were cleared of the offences with which they were charged and then tried and convicted of other offences.

22. The Working Group considers that, in the deprivation of liberty of Aracely del Carmen Gutiérrez Mejía, Verónica Beatriz Hernández Mejía and Reyna Ada López Mulato, there have been serious violations of due process, rendering the deprivation of liberty arbitrary under category III of the Working Group’s methods of work. All procedural avenues should have been exhausted without undue delay, and the right to a defence and to due process should have been guaranteed from the outset of detention.

23. With regard to Ms. Hernández Mejía and Ms. López Mulato, the Working Group considers that they should have been released following their acquittal by the courts, meaning that their detention is also arbitrary under category I of the Working Group’s methods of work.

Disposition

24. In light of the foregoing, the Working Group considers that the deprivation of liberty of Aracely del Carmen Gutiérrez Mejía, Verónica Beatriz Hernández Mejía and Reyna Ada López Mulato is arbitrary under category III of the Working Group’s methods of work.

25. In the case of Ms. Hernández Mejía and Ms. López Mulato, it is also arbitrary under category I of the Working Group’s methods of work.

26. The Working Group therefore recommends that the Government of El Salvador:

(a) Order that a fair trial in line with the rules of due process of law be held for Aracely del Carmen Gutiérrez Mejía, Verónica Beatriz Hernández Mejía and Reyna Ada López Mulato;

(b) Take urgent measures to put an end to the judicial authorities' practice of not informing persons deprived of their liberty of all the measures related to their detention immediately.

[Adopted on 1 May 2014]
