

**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-second session (20-29 April 2015)****No. 7/2015 (Bolivarian Republic of Venezuela)****Communication addressed to the Government of the Bolivarian
Republic of Venezuela on 14 September 2014****Concerning Rosmit Mantilla**

The Government has not replied to the Working Group's communication.

The State is 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 then 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 three-year period by resolution 24/7 of 26 September 2013. 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 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. According to the information provided by the source in its communication, Rosmit Mantilla is a Venezuelan national, the son of Ingrid Flores and a student of social communication at the University of Santa María. He is a defender of the rights of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community, founder of the Pro-Inclusion movement and leader of the youth movement of the opposition party Voluntad Popular (Popular Will). He was arrested in the early hours of 2 May 2014 at his grandparents' home in the Caricuao district of Libertador Municipality (Caracas) by agents of the Bolivarian National Intelligence Service. Following his arrest, he was taken to the headquarters of the Intelligence Service.

4. According to eyewitnesses, National Intelligence Service officials entered Mr. Mantilla's grandparents' home and planted envelopes there marked with the words "Altamira" and "Santa Fe" and containing United States dollars. The officials then immediately proceeded to search the home, without allowing either family members or legal counsel to be present. The officials accused Mr. Mantilla of receiving the envelopes and hiding them in his grandparents' home with a view to using the money to finance the student demonstrations that were taking place at that time in various parts of Caracas.

5. Later the same day the Minister of the Interior and Justice, Miguel Rodríguez Torres, reportedly told various media outlets that Mr. Mantilla was a member of a group responsible for financing the student protests as part of a conspiracy to destabilize and overthrow the Government.

6. On 3 May 2014 Mr. Mantilla was brought before the Eighth Procedural Court for the Criminal Court Circuit of the Caracas Metropolitan Area, which declined jurisdiction in favour of the Sixteenth Court.

7. The initial hearing was held on 6 May 2014. The judge remanded Mr. Mantilla in custody, ordering that he be held at the Intelligence Service's detention centre in its headquarters in El Helicoide.

8. Mr. Mantilla was charged with the following offences: (a) incitement to public disorder, as instigator, an offence under article 285 of the Criminal Code, punishable by a prison term of between 3 and 6 years' imprisonment; (b) public intimidation, an offence under article 296, section 1, of the Criminal Code, punishable by a prison term of between 2 and 5 years' imprisonment, read in conjunction with article 297 of the Code, which provides for a prison term of between 4 and 8 years; (c) blocking the public thoroughfare, an offence under article 357 of the Criminal Code, punishable by a prison term of between 4 and 8 years; (d) arson of public and private buildings, an offence under article 343 of the Criminal Code, which provides for a prison term of between 4 and 8 years; (e) damage with violence, an offence under article 473, section 3, of the Criminal Code, which provides for a prison term of between 45 days and 18 months, read in conjunction with article 474 of the Criminal Code; (f) criminal association, an offence under article 37 of the Organized Crime and Financing of Terrorism Act, punishable by a prison term of between 6 and 10 years.

9. The source affirms that during the hearing the public prosecutor was unable to say when, how, where or in what manner or circumstances Mr. Mantilla blocked the public thoroughfare or set fire to buildings.

10. The charges were based exclusively on two pieces of alleged evidence: the envelopes containing money, which officials of the National Intelligence Service are said to have planted in Mr. Mantilla's grandparents' home, and the brief statements of an anonymous witness (a "cooperating patriot") incriminating Mr. Mantilla.

11. The source affirms that on 20 June 2014 Mr. Mantilla was formally charged with the above-mentioned offences by the public prosecutor. The preliminary hearing was set for 15 July; it was first postponed until 6 August, then until 9 September and then again until 22 October 2014. According to the source, these repeated postponements of the preliminary hearing, which numbered 11 in total, constitute a serious procedural delay that undermines the effective protection of citizens' rights.

12. Mr. Mantilla has already missed two semesters of classes and may miss another. On 9 September 2014 a request was filed with the Office of the Attorney General of the Republic asking that Mr. Mantilla be allowed to attend classes; to date, no response has been received.

13. The source considers that Mr. Mantilla is a political prisoner. He is being punished for leading the fight for equal marriage and for his work defending human rights, in particular the rights of LGBTI persons, a community which is said to suffer legal, social and cultural exclusion because of their sexual orientation and gender identity.

14. The source affirms that Mr. Mantilla's right to be presumed innocent has been violated, in particular as a result of the statements made by the Minister of the Interior and Justice, who accused him, personally and directly, of acts that he allegedly did not commit. According to the source, these statements also constitute interference with the functions and powers of the judiciary and the Office of the Attorney General by senior officials of the executive branch.

15. The source considers that the unequal treatment given to the case — in which the principle of due process has been disregarded and Mr. Mantilla has been treated differently from ordinary citizens — constitutes a grave violation of the principle of equality before the law enshrined in article 7 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

16. The source affirms that Mr. Mantilla's right to freedom of association has also been violated, inasmuch as his detention is due in part to his being a youth leader of a political opposition movement. In addition, Mr. Mantilla's right to political participation, enshrined in article 21 of the Universal Declaration of Human Rights, has allegedly been breached, as has his right to protest and demonstrate publicly.

17. The source considers that Mr. Mantilla's rights to freedom of expression and opinion, enshrined in articles 19 of the Universal Declaration of Human Rights and the Covenant, have also been violated, inasmuch as protest and the expression of political dissent have been made criminal offences.

18. The source considers that Mr. Mantilla's detention is contrary to articles 3, 7, 9 and 21 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. His detention is also contrary to articles 21, 44, 57, 62 and 68 of the Constitution of the Bolivarian Republic of Venezuela.

Response from the Government

19. The Government has not responded to the communication addressed to it; nor has it requested an extension of the deadline for the submission of a response. The Working Group considers that it is able to accept as prima facie valid the allegations submitted by the source, which have not been contradicted by the Government, despite having had the opportunity to do so.

Discussion

20. It was for the Government to refute these allegations in a timely manner by submitting information and counterarguments. However, the Government has failed to take advantage of the opportunity to give a detailed explanation as to the place, time and manner of Mr. Mantilla's arrest, the offences with which he is charged, the manner in which he committed those offences and the manner and circumstances in which he was detained. Furthermore, the Government has also failed to indicate whether Mr. Mantilla's detention was in accordance with the applicable international obligations and constitutional and legal requirements.

21. The present case concerns allegations of violations, not only of human rights but also of the duty to protect a human rights defender, in this case a defender of the rights of the LGBTI community. In addition, the Working Group has before it an allegation that National Intelligence Service officials fabricated key evidence. Mr. Mantilla was the subject of serious accusations by senior officials of the executive branch made prior to the judicial investigation, and the proceedings in his case suffered serious delays, allegedly for political reasons, which is contrary to the effective protection of human rights.

22. Mr. Mantilla's arrest and detention appear to be motivated by the activities that he has conducted in favour of the rights of the LGBTI community, in particular the right to equal marriage. In pursuing those activities, Mr. Mantilla exercised freedoms enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,¹ in particular the rights and freedoms proclaimed in the Universal Declaration of Human Rights.

23. National Intelligence Service officials sought to incriminate Mr. Mantilla by allegedly "planting" evidence — envelopes containing United States dollars — in his grandparents' home. According to the officials, the money was intended to finance the student protest demonstrations that took place in 2014. No lawyers or family members were allowed to be present while Mr. Mantilla's grandparents' home was searched by officials, without a judicial warrant.

24. Apart from the envelopes containing money, the only other alleged evidence against Mr. Mantilla are the brief statements made by a "cooperating patriot", in other words an unidentified witness.

25. Mr. Mantilla's right to due process and judicial guarantees, including his right to a defence, has been violated. His right to be presumed innocent was violated by one of the highest officials of the State, namely the Minister of the Interior and Justice, who accused him of various offences at the time of his arrest and before any judicial investigation had been instituted. Furthermore, the Government has provided no information as to why the hearings have been repeatedly postponed. For these reasons, the Working Group considers that the Bolivarian Republic of Venezuela has failed to observe the international norms relating to the right to a fair trial and judicial due process guarantees, established in articles 9, 10 and 11 of the Universal Declaration of

¹ General Assembly resolution 53/144 of 9 December 1998, annex.

Human Rights and in articles 9 and 14 of the International Covenant on Civil and Political Rights.

26. Mr. Mantilla was detained as a result of the exercise of his rights to freedom of expression, opinion and association and of the right to demonstrate publicly and peacefully, rights that are enshrined in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant, to which the Bolivarian Republic of Venezuela is a party.

27. Lastly, the Working Group considers that Mr. Mantilla's detention may also be intended to punish him for his activities as a human rights defender, in particular his activities in defence of the rights of the LGBTI community and the right to equal marriage; in other words, his detention is motivated by discrimination based on political opinion.

28. The present communication forms part of a pattern of detentions that have been considered arbitrary by the Working Group in its opinions Nos. 1/2015 (Vincenzo Scarano Spisso), 51/2014 (Maikel Giovanni Rondón Romero and 316 others), 26/2014 (Leopoldo López Mendoza), 29/2014 (Juan Carlos Nieto Quintero), 30/2014 (Daniel Omar Ceballos Morales), 47/2013 (Antonio José Rivero González), 56/2012 (César Daniel Camejo Blanco), 28/2012 (Raul Leonardo Linares Amundaray), 62/2011 (Sabino Romero Izarra), 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas), 27/2011 (Marcos Michel Siervo Sabarsky), 28/2011 (Miguel Eduardo Osío Zamora), 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez) and 10/2009 (Eligio Cedeño). Many of these arbitrary detentions involved persons who identified themselves as members of the political opposition, as does Mr. Mantilla.

Disposition

29. In the light of the foregoing, the Working Group considers that the detention of Mr. Mantilla constitutes arbitrary detention under categories II, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

30. Accordingly, the Working Group recommends that the Government of the Bolivarian Republic of Venezuela release Mr. Mantilla forthwith, declare null and void the decision justifying his detention and provide full redress for the harm caused by his arbitrary detention.

[Adopted on 22 April 2015]