

**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. 18/2015 (Mexico)****Communication addressed to the Government of Mexico on
18 February 2015****Concerning Pedro Celestino Canché Herrera****The Government has 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 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 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group forwarded 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);

* Mexico ratified the Covenant on 23 March 1981.



(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. Pedro Celestino Canché Herrera, aged 44, of Mexican nationality, a reporter by profession and a defender of the rights of Mayan indigenous communities, was arrested on 30 August 2014 in the town of Felipe Carrillo Puerto, Quintana Roo State, by officers of the criminal investigation police.

4. His detention was ordered by the Criminal Court of First Instance of the Felipe Carrillo Puerto Judicial District, following a preliminary investigation which lasted, according to the source, a mere 49 hours instead of the normal 130 days. The experts' opinion was issued on 19 August 2014, in other words, one day before the official opening of the preliminary investigation, a situation which, according to the source, constituted a serious procedural flaw. In addition, the experts' opinion was requested by the Potable Water and Sewage Board (CAPA) and not by the Public Prosecution Service, as the law requires.

5. According to the source, Mr. Canché Herrera's detention was ordered under article 204 of the Criminal Code of Quintana Roo State, which qualifies the offence of sabotage. Mr. Canché Herrera was accused of committing that offence against CAPA. The source says that, after being remanded in custody without bail, Mr. Canché Herrera was sent to the maximum security unit (Block 1) of the Municipal Detention Centre of Felipe Carrillo Puerto.

6. The source considers that the qualification of the offence of sabotage in the Criminal Code is not in conformity with the relevant international legal standards, as the extremely vague definition makes it possible to enforce remand in custody abusively in order to silence critics of the Government, such as Mr. Canché Herrera.

7. The source reports that this person is well-known for his work in support of the claims of Mayan communities and for the investigation of human rights violations attributable to the State Government. His recent work includes reports on protests against excessively high water charges imposed on indigenous communities. The source states that Mr. Canché Herrera also recorded the suppression of protests by local authorities. One week before his arrest he posted a video on the Internet reporting on the Mayans' protests against the water charges demanded by CAPA.

8. According to the source, prior to his detention, this person was harassed by the authorities on several occasions. They stated in public that Mr. Canché Herrera was not a journalist and accused him of instigating the protests against CAPA. On 26 August 2014, in other words, four days before his arrest, he reportedly received threats from the State Governor's information technology coordinator and from a High Court official.

9. The source explains that at all times this person was merely exercising his freedom of expression and his right to receive, seek and publicize information, while correctly exercising his profession, even in situations closely concerning State policy. However, the accusations levelled against him have lacked clarity; it has not been

explained how publicizing the protests could constitute an act of sabotage nor can it be inferred that such reports could constitute criminally inspired acts. The acts with which he was allegedly charged do not constitute sufficient grounds to order his remand in custody and to keep him in detention for more than five and a half months.

10. On 29 September 2014 an appeal for relief from imprisonment was filed with the federal judiciary (Appeal No. 629/2014, lodged with the Sixth District Court of Quintana Roo in Chetumal). This appeal was not, however, entertained.

11. The source considers that the arrest and continued remand in custody of Mr. Canché Herrera are arbitrary and unlawful in the light of the international human rights standards applicable in this case. It states there are no grounds for detaining this journalist on unsubstantiated charges. According to the source, his detention was ordered solely in retaliation for exercising his profession and for political reasons or interests.

12. The source asserts that Mr. Canché Herrera has been ill-treated by the guards and other prisoners throughout his detention. He has not received the requisite medical treatment. On 25 September 2014, as result of the ill-treatment received in prison, he had to be sent to Quintana Roo general hospital. As a result of the blows he received, Mr. Canché Herrera suffers from lesions on his neck and spine and numbness in his shoulders, arms and hands. The authorities have allegedly refused to accept a written request that he be transferred to Cancún general hospital. The source adds that this situation, which has lasted for months, might cause irreparable damage to the physical and mental health of this person.

13. According to the source, the court ordered the holding of the pretrial investigation before the alleged offence had been committed. Incriminating evidence was fabricated by public officials, whose statements were contradictory. Several police officers have withdrawn their statements. Mr. Canché Herrera was reportedly able to prove that on the day of the acts of sabotage with which he was charged he was in the town of Cancún. Nor was there really any question of sabotage, since no CAPA plant was damaged in any way.

14. The source concludes that the detention of Mr. Canché Herrera constitutes an abuse of authority and is designed to silence criticism of the State authorities. It is a politically motivated fabrication. His detention is arbitrary and contrary to the principles which must govern lawful detention.

15. Lastly the source submits that the detention of this person is contrary to articles 5, 7 to 11, 13, 19 and 21 of the Universal Declaration of Human Rights, to articles 7, 9, 12, 14, 19, 25 and 26 of the Covenant, to which Mexico is a party, and to principles 2, 4, 11, 17, 18 and 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In view of the arbitrary nature of this person's detention, the source requests his immediate release.

Response from the Government

16. On 4 March 2015 the Government replied to the Working Group's communication of 18 February 2015.

17. In its response, the Government confirmed the factual allegations made by the source, including those regarding the violence to which this person was subjected in prison. It explained, however, that Mr. Canché Herrera was beaten up by other detainees, as appears to be common practice. The Government took the necessary steps to provide this person with specialized medical treatment and his health is constantly being monitored. A computerized tomograph scan was carried out in October 2014 and a magnetic resonance scan was made of his spine in February 2015.

Investigations have begun to identify those responsible for the violence suffered by Mr. Canché Herrera and steps have been taken to ensure his safety in prison after his transfer to Block 2 of the Municipal Detention Centre. According to the Government, the Office of the Attorney-General of Quintana Roo has informed it that it has not received any complaints regarding the assault that allegedly took place in prison. Mr. Canché Herrera himself apparently told representatives of the Attorney-General's Office that he was not interested in lodging a formal complaint.

Comments from the source

18. On 23 April 2015, the source promptly submitted its comments to the Government's response.

19. The source notes that the Government has failed to reply to the allegations regarding the arbitrary nature of the detention or the unlawful nature of the criminal proceedings. It takes issue with the fact that the judicial appeals, including the request for relief from imprisonment filed with the federal judiciary have not led to the victim's release. The Government failed to express an opinion on the merits of the detention and the judicial decisions, the conclusions of which bring to light breaches of due process.

20. The source refutes the Government's assertion that the deterioration in Mr. Canché Herrera's health is unrelated to the physical violence to which he was subjected in prison. The source holds that this is an attempt by the Government to deny the after-effects of the injuries caused by the beatings which he received in prison. Mr. Canché Herrera did not suffer from ill-health prior to his arrest and the pain which he is currently experiencing is the result of the incident that occurred in prison. Mr. Canché Herrera did not suffer from this discomfort before his imprisonment in the Municipal Detention Centre. The medication and injections which he is being given by the public health service should be reviewed, because this person does not know what active substance they contain or their possible contraindications and because they are causing him unceasing distress.

21. The source adds that the reason why Mr. Canché Herrera has not lodged any complaint with the Office of the Attorney-General of Quintana Roo in respect of the physical violence to which he was subjected in prison is that he is still in detention and fears retaliation and a repetition of the incidents. The arbitrary nature of his detention keeps him in a state of vulnerability and defencelessness within the prison.

Discussion

22. Mexico is well known as a multicultural country with many indigenous peoples.¹ The Mayan community is one of those indigenous peoples. Mayan communities have suffered from discrimination in Mexico as well as in neighbouring countries where they are located. In addition, as was stated at a meeting of the Committee on the Elimination of Racial Discrimination, "a major challenge facing the Mexican authorities consist[s] in resolving the paradox of a society that [is] rightly proud of the cultural heritage of Mayan civilization yet tend[s] to view its indigenous communities as socially backward. Unfortunately law enforcement officials sometimes [seem] to associate membership of an indigenous group with antisocial or even criminal behaviour".² Furthermore, there have been instances of a defender of the religious rights of the Mayan community being persecuted.³ The Working Group is therefore convinced that the Mayan peoples are a vulnerable group.

¹ See E/C.19/2014/6, para. 48.

² See CERD/C/SR.2130, para. 48.

³ See E/CN.4/2004/94/Add.3, para. 199.

23. In the instant case, in the absence of a rebuttal by the Government of Mexico and taking into account the overall context described above, the Working Group considers that the allegations made by the source are reliable and must be regarded as true.

24. For this reason, the Working Group considers that it is well settled that Mr. Canché Herrera is a journalist who has acted as a defender of the Mayan community's human rights through his professional activities. It is also ascertained that the investigations were conducted hastily and that the charges against this person have not been substantiated by reliable evidence. It is clear that this person has been harassed by the authorities on account of his work in defence of the Mayan community's human rights. The Working Group is therefore of the opinion that the arrest and detention of and the judicial proceedings against Mr. Canché Herrera are the result of retaliation against his activities.

25. The Working Group considers that this person's activities have been of a dual nature: on the one hand, he has exercised his own right to freedom of expression, in particular by repeatedly calling attention to the need for transparency in public affairs; on the other hand, however, he has assisted those whose rights have been violated by the authorities and by State policies. This case therefore falls into categories II and V of the categories mentioned in the preliminary paragraphs of this opinion.

26. The Working Group is gravely concerned by the statement that the inmates of Block 1 of the Municipal Detention Centre are in the habit of beating up newly arrived detainees without let or hindrance from the guards assigned to the municipal police. Prisons are the responsibility of the Government and it is the Government's duty to ensure the safety of all prisoners. Any violent treatment of the prisoners entails the joint responsibility of the Government, even if these abuses are investigated and ultimately punished. In the instant case the Working Group considers that the physical ill-treatment suffered by Mr. Canché Herrera while in prison is the result of negligence on the part of the Government, which makes it responsible for the victim's suffering.

Disposition

27. In the light of the foregoing, the Working Group concludes that the arrest and continuing deprivation of liberty of Mr. Canché Herrera are arbitrary and fall under categories II and V.

28. In accordance with this opinion, the Working Group asks the Government to arrange for the immediate release of Mr. Canché Herrera and to provide him with suitable redress, including inter alia the award of adequate compensation and the provision of the requisite medical treatment.

29. The Working Group recalls that the Human Rights Council has invited all States to cooperate with the Working Group in implementing its Opinions, including through the provision of suitable redress for victims of arbitrary detention and to inform the Working group of all the measures taken to give effect to its Opinions. The Working Group therefore requests the full cooperation of the Government of Mexico in the timely and effective application of this Opinion, in accordance with its international obligations.

[Adopted on 28 April 2015]⁴

⁴ Pursuant to paragraph 5 of the methods of work of the Working Group, Mr. José Antonio Guevara Bermúdez, member of the Working Group, did not participate in the discussion of this case or in the adoption of this Opinion.