

**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. 19/2015 (Mexico)****Communication addressed to the Government of Mexico on
19 February 2015****Concerning Librado Jacinto Baños Rodríguez****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 further three years 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. Librado Jacinto Baños Rodríguez, a 51-year-old Mexican national, a law graduate and a defender of the rights of the Afro-descendant and indigenous Mixteco, Amuzgo and Chatino communities of Pinotepa Nacional (Oaxaca), was arrested on 25 August 2013 at his home in the Democratic Civic Union of Neighbourhoods, Colonies and Communities (Colonia Unión Cívica Democrática de Barrios, Colonias y Comunidades (UCIDEBACC)) colony in Pinotepa Nacional (Oaxaca) by federal investigative police officers, who did not present an arrest warrant.

4. The source asserts that Mr. Baños Rodríguez was arrested during a raid on the Democratic Civic Union of Neighbourhoods, Colonies and Communities colony, a settlement consisting of some 200 low-income families. According to the source, on 25 August 2013 approximately 300 army and navy personnel, as well as officers of the state, municipal and investigative police forces, raided dwellings and violently removed residents from their homes. The officials seized Mr. Baños Rodríguez's personal computer, personal documents and documents belonging to his organization, the Democratic Civic Union of Neighbourhoods, Colonies and Communities.

5. Mr. Baños Rodríguez is currently on trial before State District Court No. 8 (criminal case No. 84/2013) for alleged improper use of insignia and emblems reserved for the use of a police agency, unlawful deprivation of liberty in the form of kidnapping and possession of firearms for the exclusive use of the army, navy and air force. Mr. Baños Rodríguez is being held in Santa María Ixcotel prison in Oaxaca.

6. The source emphasizes that there are known facts that prove the arbitrary nature of Mr. Baños Rodríguez's detention and the failure to respect due process principles and norms. Furthermore, the witnesses who testified against Mr. Baños Rodríguez are federal and state police officers. The officers who questioned Mr. Baños Rodríguez often contradicted themselves.

7. The source states that Mr. Baños Rodríguez is in poor health as a result of the physical ill-treatment to which he has been subjected in prison and that he is suffering from elevated intraocular pressure requiring surgery.

8. The source reports that Mr. Baños Rodríguez was previously arrested, on 16 October 2011, together with his wife, Eva Lucero Rivera Ortiz. Both Mr. Baños Rodríguez and his wife were beaten at the time of their arrest and later tortured by officers of the Pinotepa Nacional investigative police. They were subsequently released, since there was insufficient evidence to prove the offences with which they were charged.

9. The source adds that following their detention Mr. Baños Rodríguez's wife was the victim of several incidents of harassment, including death threats made by unidentified telephone callers and while she was travelling on public transport in Pinotepa Nacional. Mrs. Rivera Ortiz filed a criminal complaint concerning these incidents with the Special Prosecutor's Office for the Investigation of Offences of Social Concern. An investigation file (No. 15/FIDTS/2014) was also opened.

10. The source considers that Mr. Baños Rodríguez's detention and trial are motivated by his active participation in the social and political life of Oaxaca and his

work defending the rights of indigenous peoples and people of African descent, in particular their rights to education, health, food and housing. According to the source, his detention is linked to the political and economic interests of local bosses in the coastal region of Pinotepa Nacional. Mr. Baños Rodríguez's case is an example of the criminalization of human rights defenders through the improper use of criminal law. His detention is aimed at intimidating human rights defenders and paralyzing their work.

11. The source concludes that Mr. Baños Rodríguez's detention is arbitrary and contrary to the principles governing lawful detention. His detention constitutes arbitrary detention under category II of the categories applicable to the consideration of the cases submitted to the Working Group.

12. Lastly, the source submits that Mr. Baños Rodríguez's detention is contrary to articles 3, 4, 9, 10 and 11 of the Universal Declaration of Human Rights; articles 6, 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, to which Mexico is a party; articles 4, 5, 7, 15 and 16 of the American Convention on Human Rights; articles 2, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and articles 1, 2, 3 and 8 of the Inter-American Convention to Prevent and Punish Torture.

13. In view of the arbitrary character of Mr. Baños Rodríguez's detention, the source requests his immediate release.

Response from the Government

14. The Government of Mexico has not responded to the communication of 19 February 2015, as it is required to do in accordance with various Human Rights Council resolutions. Accordingly, the Working Group must render its opinion in the absence of a response from the Government and on the sole basis of the information available before it, in accordance with paragraph 15 of the Working Group's methods of work.

Discussion

15. In accordance with paragraph 5 of the Working Group's methods of work, one of its members took no part in the consideration of the present case or in the discussion that led to the present opinion.

16. As stated in various United Nations documents, Mexico is well known for being a multicultural country, of which many indigenous peoples are part.¹ The Mixteco communities are indigenous groups, and it is well known that indigenous groups suffer abuse in Mexico.² There have also been incidents of abuse committed against defenders of the rights of minority groups.³ The Working Group considers that Mixteco indigenous communities are a vulnerable indigenous group.

17. In the present case, in the absence of counterarguments and refutation by the Government of Mexico of the allegations submitted, the Working Group considers that those allegations are trustworthy, as is the source that submitted them. Accordingly, the Working Group considers the allegations to be established facts.

18. Accordingly, it is considered established that Mr. Baños Rodríguez is a human rights defender, who defends the rights of the Afro-descendant and indigenous Mixteco, Amuzgo and Chatino communities, in particular their economic, social and cultural rights. He has been subjected to attacks and acts of harassment and

¹ See document E/C.19/2014/6, para. 48.

² See, for example, opinion No. 18/2015 of the Working Group (Pedro Canché Herrera).

³ See opinion No. 18/2015 of the Working Group and document E/CN.4/2004/94/Add.3, para. 199.

intimidation, including previous detentions, torture, beatings and death threats against himself and his wife. Consequently, the Working Group considers that his arrest, detention and current trial are intended as acts of retaliation and reprisal for his active defence of the rights of the indigenous and Afro-descendent people of the region.

19. The Working Group considers that Mr. Baños Rodríguez's activities have a dual nature. On the one hand, Mr. Baños Rodríguez has been exercising his right to freedom of opinion and expression (articles 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights), in particular with regard to the discriminatory policies and practices of the public authorities. However, he has also been defending the rights of, and assisting, other persons whose fundamental rights are being violated by the policies and authorities of the State. Accordingly, his case falls within categories II and V of the categories of arbitrariness identified by the Working Group in its methods of work, as set out in paragraph 2 of the present opinion.

20. In addition, the Working Group is deeply concerned at the deterioration in Mr. Baños Rodríguez's health, as a result of the ill-treatment he has endured in prison. The Working Group recalls that it is the responsibility of the Government to ensure that detainees are treated in accordance with international norms and standards, particularly with regard to their health-care needs.

Disposition

21. In the light of the foregoing, the Working Group concludes that Mr. Baños Rodríguez's arrest and continued detention are arbitrary and fall within categories II and V of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the opinion rendered, the Working Group requests that the Government of Mexico immediately release Mr. Baños Rodríguez and ensure that he is awarded appropriate reparation, including, among other things, compensation and necessary medical treatment.

23. The Working Group calls upon the Government to take such actions as it considers necessary to address the concerns arising from the deterioration in Mr. Baños Rodríguez's health and to continue to provide him with the necessary medical assistance, including after his release.

24. The Working Group recalls that the Human Rights Council has called on States to cooperate with the Working Group through the implementation of its recommendations, including the granting of adequate reparation to the victims of arbitrary detention, and by keeping the Working Group informed of the measures taken. Accordingly, the Working Group seeks the full cooperation of the Government of Mexico in the effective and prompt implementation of the present opinion, in accordance with its international obligations.

*[Adopted on 28 April 2015]*⁴

⁴ In accordance with paragraph 5 of the Working Group's methods of work, Mr. José Antonio Guevara Bermúdez, a member of the Working Group, took no part in the discussion or adoption of the present opinion.