

Opinion No. 23/2017

concerning Pablo López Alavéz (Mexico)¹

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 8 February 2017 the Working Group transmitted to the Government of Mexico a communication concerning Pablo López Alavéz. The Government did not reply to the communication on time. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Pablo López Alavéz, born on XX April XXXX, is a farmer and defender of ecological, indigenous and community rights. Mr. López Alavéz has been a leader, actively defending the forests in San Miguel and San Isidro Aloapam against allegedly illegal deforestation programmes for more than 20 years.

5. The source reports that Mr. López Alavéz has held public office in his community, including as community police officer, member of the Drinking Water Committee, treasurer of the Roads Committee, president of the Community Bus Committee and president of the High Schools Committee.

6. The source also reports that Mr. López Alavéz has been deprived of his liberty in the past for his community and public role as part of what the source describes as the criminalization of social protest. Specifically, in 2000, he was detained, charged and convicted on trumped-up charges in relation to attacks on lines of communication. He was subsequently released following the decision of the Second Collegiate Court of the Thirteenth Circuit to grant him the remedy of *amparo* on grounds that his human rights had been violated by virtue of his conviction.

7. According to the information received, Mr. López Alavéz was deprived of his liberty on 15 August 2010 in Río Virgen, Ixtlán de Juárez, Oaxaca, where he was riding in his truck with his family when they were pulled over by another truck. Fifteen men in black clothing with their faces covered got out of the truck carrying rifles, tied Mr. López Alavéz up and forced him to get into their vehicle. The men did not identify themselves, produce an arrest warrant or explain the factual or legal basis for his arrest. After allegedly being disappeared overnight, he was committed to the prison of Villa de Elta, Oaxaca, on the next day, 16 August 2010.

8. The source states that Mr. López Alavéz's ongoing judicial detention without a conviction is part of a criminal trial that began in 2007 (case No. 102/2007) for the alleged offence of aggravated homicide in relation to events that took place on 18 June 2007. The detention order under which Mr. López Alavéz was deprived of his liberty was issued on 6 December 2010 by the criminal court of Villa de Elta. In the order, the judge describes the evidence gathered during the initial phase of proceedings and concludes that an offence was committed and that Mr. López Alavéz is the likely perpetrator.

9. According to the source, after the more than six years that Mr. López Alavéz has been in custody, the criminal proceedings remain at the investigation stage. Consequently, there has been no decision by a court of first instance.

10. In the light of the foregoing, the source draws attention to the information contained in recommendation No. 11/2015 of the Office of the Human Rights Ombudsman of Oaxaca, which looked into Mr. López Alavéz's legal and procedural situation and found that significant breaches of due process had been committed during the proceedings.

11. The source underscores that the main breaches of due process identified by the Office take the form of irregularities in the evidence on which the decision to deprive Mr. López Alavéz of his liberty was based. A number of established procedures were not followed when the evidence was submitted, revealing a lack of precision, care and coordination in how the evidence was collected, as well as inconsistencies between the dates, times and places of the alleged events and the procedures undertaken, and no involvement of experts. Furthermore, the source highlights the Office's finding that the delays in the investigation phase have been excessive and unjustified and, in any case, not in keeping with the time frames set in criminal law, thereby constituting an additional violation of the rights and safeguards to which Mr. López Alavéz is entitled.

12. The source alleges that the real reason behind Mr. López Alavéz's detention is his work defending the environment in the face of political and economic power groups in the context of a dispute over the seemingly irregular deforestation of the Oaxaca forests, a dispute in which Mr. López Alavéz took a leading role. The source cites violations of the human rights to freedom of expression, freedom of association and participation in public affairs, enshrined in articles 19 to 21 of the Universal Declaration of Human Rights, articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights and articles 13, 15, 16 and 23 of the American Convention on Human Rights, as evidence that Mr. López Alavéz's detention is arbitrary, as defined by the Working Group (category II).

13. The source further argues that the violations of legal safeguards, including due process, enshrined in article 14 of the Covenant, are also grounds for finding Mr. López Alavéz's detention arbitrary, as defined by the Working Group (category III).

Response from the Government

14. On 8 February 2017, the Working Group transmitted the source's allegations to the Government of Mexico in keeping with its usual practice. The Working Group requested the Government to submit, by 10 April 2017, detailed information on the circumstances of Mr. López Alavéz's detention and his current situation. The Working Group also requested the Government to clarify the legal basis for his continued detention and to provide details on how his deprivation of liberty complies with international human rights law and, in particular, with the treaties to which Mexico is a party.

15. On 6 April 2017, the Working Group received a request from the Government to extend the deadline for submitting its reply by one month. The Working Group found that the extension request did not fully meet the criterion established in paragraph 16 of its methods of work and, therefore, granted a partial extension of one week. The Government sent its reply to the Working Group's

communication on 1 July 2017. However, the Working Group cannot accept a reply that is not submitted within the allotted period.

Discussion

16. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

17. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

18. The Working Group recalls its previous opinions regarding Oaxaca State in Mexico² and considers that the allegations in the present case reveal a pattern of violations observed in similar prior cases.

19. Pablo López Alavéz is a farmer and defender of ecological, indigenous and community rights. For the past 20 years, he has led efforts to defend the forests in San Miguel and San Isidro Aloapam against deforestation projects. In that capacity, he has held various public posts in his community. He had already been detained in the past under laws against social protest.

20. On 15 August 2010, Mr. López Alavéz was arrested in Río Virgen, Ixtlán de Juárez, Oaxaca by 15 unidentified men in black clothing with their faces covered and armed with rifles. They tied him up and forced him to get into a vehicle, without any explanation and without producing an arrest warrant, under circumstances that can justifiably be described as ill-treatment or torture. On the next day, Mr. López Alavéz was committed to the prison of Villa de Elta, Oaxaca. Although he was held in prison and accused of being involved in an alleged homicide committed in June 2007, his detention order was not issued until 6 December 2010. Moreover, no court decision has yet been taken in the case.

21. The Working Group takes note of Mr. López Alavéz's situation with regard to the procedural irregularities raised by the source, based on recommendation No. 11/2015 of the Office of the Human Rights Ombudsman of Oaxaca, which, after assessing the situation, reached the conclusion that significant violations of due process had been committed in this case, such as evidentiary irregularities; lack of precision, care and coordination in how the evidence was collected; inconsistencies in the dates, times and places of the alleged events; failure to involve experts as required by law; and excessive and unjustified delays in the investigation. Therefore, the Working Group considers that the failure to comply with international standards on the right to an impartial trial, as established in the Universal Declaration of Human Rights and other relevant international instruments ratified by Mexico, is so serious as to make the deprivation of liberty of Mr. López Alavéz arbitrary under category III.

22. Furthermore, the Working Group accepts the source's statement that the real motive for detaining and trying Mr. López Alavéz is his work defending his community's environmental rights. This violates his freedom of expression and his right to take part in public affairs, as enshrined in articles 19 to 21 of the Universal Declaration of Human Rights, articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights and articles 13, 15, 16 and 23 of the American Convention on Human Rights, and constitutes arbitrary detention under category II.

23. Finally, in addition to the lack of a court-issued arrest warrant, it took five months for Mr. López Alavéz to be formally notified of the charges against him through an indictment, which is a violation of the right to be informed of the charges in a timely manner. The Working Group recalls that article 9 (2) of the Covenant requires that all persons who are arrested be promptly informed of the reasons for their arrest and of any charges against them. Accordingly, since there were no legal grounds to hold Mr. López Alavéz in that initial period, his detention was arbitrary under category I.

24. Taking into account the previous cases involving Oaxaca State and the authorities' harassment of Mr. López Alavéz since the year 2000, the Working Group asserts that there is a policy to discriminate against him as a social leader in Oaxaca, in violation of international norms on the right to equality before the law enshrined in article 7 of the Universal Declaration of Human Rights,

articles 2 and 26 of the Covenant and article 24 of the American Convention on Human Rights. This discrimination makes the detention arbitrary under category V.

25. In keeping with its practice, the Working Group will refer the case of ill-treatment and torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and will transmit a general referral to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

Disposition

26. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Pablo López Alavéz, being in contravention of articles 19 to 21 of the Universal Declaration of Human Rights and of articles 14, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

27. The Working Group requests the Government of Mexico to take the steps necessary to remedy the situation of Mr. López Alavéz without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

28. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. López Alavéz immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

Follow-up procedure

29. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. López Alavéz has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. López Alavéz;
- (c) Whether an investigation has been conducted into the violation of Mr. López Alavéz's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Mexico with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

30. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

31. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

32. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³

[Adopted on 25 April 2017]

¹In accordance with paragraph 5 of the methods of work, José Antonio Guevara Bermúdez did not take part in the discussion of the present case or in the adoption of this opinion.

²Opinions No. 23/2014, No. 19/2015 and No. 17/2016.

³See Human Rights Council resolution 33/30, paras. 3 and 7.