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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session (18-27 April 2016)

Opinion No. 16/2016 concerning José Daniel Gil Trejos (Nicaragua)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 1/102 and extended it for a period of three years by 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.

2. In accordance with its methods of work (A/HRC/30/69), on 20 July 2015 the Working Group transmitted a communication to the Government of Nicaragua concerning José Daniel Gil Trejos. The Government replied to the communication on 23 July 2015. 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 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);

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(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 rights (category V).

Submissions

Communication from the source

4. José Daniel Gil Trejos is a 55-year-old Costa Rican citizen; he is married and works as a businessman. He was arrested on the afternoon of 26 May 2015 at the Hotel Wayak in Managua, located across the street from the Terraza club, by officers of the National Police.

5. Mr. Gil Trejos had allegedly arrived in Managua that morning on a flight from San José (Costa Rica). He was travelling on business. Following his arrest, Mr. Gil Trejos was brought to the facilities of the Legal Cooperation Directorate and placed in its maximum security prison, better known as “El Chipote”, in Managua. At the time of his arrest, the police officers did not show an arrest warrant and did not inform him of the reasons for his arrest.

6. Mr. Gil Trejos was allegedly detained incommunicado and was not allowed visits from a lawyer or from the consular authorities until 26 June 2015, one month after his arrest. He was not immediately brought before a judge, nor was he seen by a doctor, despite the fact that he suffered from high blood pressure and required continuous medical care. The prison authorities failed to provide the medicines he needs. His health is said to have drastically deteriorated during his detention.

7. The source reports that Mr. Gil Trejos’ right to a defence, to due process, to medical care and to maintain contact with the outside world, and with his family in particular, have all been violated. He has not been informed of the reasons for his arrest and detention.

8. The source adds that the “El Chipote” detention centre is generally considered by non-governmental organizations (NGOs) to be dangerous and that its facilities do not meet the minimum hygiene and liveability standards. In the past, numerous cases of torture and other cruel, inhuman or degrading treatment or punishment in the detention centre have been reported.

9. Other Costa Rican citizens are also allegedly being detained in “El Chipote” and are prevented from contacting their country’s consular representatives.

10. Lastly, the source submits that Mr. Gil Trejos’ detention violates articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, article 8 (2) of the American Convention on Human Rights — on the judicial guarantees ensuring due process of law — and article 36 of the Vienna Convention on Consular Relations.

11. In view of the arbitrary nature of Mr. Gil Trejos’ detention, the source requests his immediate release.

Response from the Government

12. The Government of Nicaragua stated that it considers this to be a case of ordinary detention and not arbitrary detention, and that due process was provided pursuant to Nicaraguan legislation, while awaiting the conclusion of extradition proceedings against Mr. Gil Trejos. The judicial authorities of Mexico petitioned the International Criminal Police Organization (INTERPOL) requesting his extradition for an alleged offence of fraud,

which is an established criminal offence in Mexico under article 230 of the Federal District Criminal Code.

13. The Permanent Mission of Nicaragua to the United Nations Office and other international organizations in Geneva also indicated to the Working Group that the same matter is being considered by the Inter-American Commission on Human Rights, which is a body within the inter-American human rights system that has issued a request for precautionary measures to protect Mr. Gil Trejos. In the light of this procedure, the Government of Nicaragua was of the view that it was inappropriate for this case to be considered by two international bodies and asked the Working Group to end its consideration and dismiss the case.

14. Despite this request, however, the Government of Nicaragua informed the Working Group that the national judicial authorities had issued a decision on the request for precautionary measures in the domestic courts, in which it had been noted that, pursuant to the Nicaraguan Code of Criminal Procedure, factors such as the magnitude of the damage caused by the offence and the risk of the detainee escaping should be taken into account when considering whether or not to grant precautionary measures, based on, inter alia, the fact that the detainee lacked social ties in the country. Also, Act No. 745 on the enforcement, related benefits and judicial oversight of criminal punishments in Nicaragua states unequivocally that all persons accused of fraud, which is classified as a serious offence, shall be kept in preventive detention for the duration of the proceedings, until a sentence has been handed down. Thus, in the present case of extradition, the person in question should remain in preventive detention until a decision is issued to either carry out or refuse the extradition.

15. The Government also reported that the Supreme Court of Nicaragua ordered that Mr. Gil Trejos should remain in preventive detention until the same Court has ruled on the admissibility of the extradition request.

16. In the Government's view, the aforementioned criminal proceedings are being carried out in strict compliance with Nicaraguan legislation and with the international human rights instruments to which Nicaragua is a party.

Comments from the source

17. The response from the Government was transmitted to the source on 25 September 2015. However, no additional comments from the source have been received.

Discussion

18. As has been the practice of the Working Group, and because the events in question relate in part to Mexico, the Working Group member who is of Mexican nationality has recused himself from the consideration of this case.

19. In its reply to the communication, the Government of Nicaragua merely states that the detention was not arbitrary and that Mr. Gil Trejos is being deprived of his liberty in the light of proceedings to extradite him to Mexico. It does not, however, provide evidence to support this.

20. The Government of Nicaragua also reports that the present case is being considered by the Inter-American Commission on Human Rights, based on the power of that body to order precautionary measures, and asserts that the Working Group should not consider the same case. It does not, however, provide evidence to show that the present case is actually being considered by the Commission, or that the case before the Commission concerns the same facts that led to the submission of the communication to the Working Group. It is important to note that, even if the present case is being considered by the Commission, the

Working Group's methods of work do not prevent it from considering a communication that is connected with precautionary measures ordered by the Commission. The Working Group therefore considers this argument to be inadmissible.

21. The Government did not provide detailed information regarding the time, place and manner in which Mr. Gil Trejos was deprived of his liberty, nor did it prove that, at the time of his arrest, the police officers showed an arrest warrant and informed him of the reasons for his arrest. The Government also failed to provide information that would invalidate the claim that Mr. Gil Trejos was held in incommunicado detention or that he was denied access to his lawyer and to the Costa Rican consular authorities for a period of one month, starting from the time of his arrest in May 2015.

22. According to article 9 of the Covenant, everyone has the right to be informed of the reasons for their detention from the moment of their arrest. Similarly, article 14 of the Covenant refers to the right of all persons charged with a criminal offence to due process and to have adequate time and facilities for the preparation of their defence and to communicate with their counsel.

23. The Working Group also notes that Nicaragua is a party to the Vienna Convention on Consular Relations and that, in accordance with article 36 (1) (b) of that Convention, if the accused so requests, the competent authorities of the receiving State shall, without delay, inform the relevant consular post of the sending State if, within its consular district, a national of that State is arrested in any way, detained, or placed in preventive detention. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his or her rights under this provision of the Convention.¹

24. The Working Group further points out that persons deprived of their liberty have the right to legal assistance immediately after their arrest and that the authorities must inform them of this right at the time of the arrest.²

25. Accordingly, the Working Group concludes that the detention of Mr. Gil Trejos was arbitrary, as it violated articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Disposition

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

The deprivation of liberty of José Daniel Gil Trejos is arbitrary and falls within category III of the categories of arbitrary detention considered by the Working Group when examining cases that have been submitted to it.

27. Accordingly, the Working Group requests the Government of Nicaragua to provide full reparation for the damage caused by the arbitrary deprivation of liberty of Mr. Gil

¹ See the judgment of the International Court of Justice in the *Avena and other Mexican Nationals* case, paras. 124 and 139. See also Inter-American Court of Human Rights Advisory Opinion OC-16/99 of 1 October 1999, para. 122, in which the Court "believes that the individual right under analysis in this Advisory Opinion must be recognized and counted among the minimum guarantees essential to providing foreign nationals the opportunity to adequately prepare their defense and receive a fair trial".

² United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court (A/HRC/30/37, annex), principle 9 (Assistance by legal counsel and access to legal aid).

Trejos, including damage resulting from his lack of access to appropriate medical treatment for his high blood pressure during his detention.

28. In the light of the complaints received concerning numerous past cases of torture and other cruel, inhuman or degrading treatment or punishment in the “El Chipote” detention centre, the Working Group considers it to be appropriate, in accordance with paragraph 33 (a) of its methods of work, to refer the situation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

[Adopted on 25 April 2016]
