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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. 19/2016 regarding Mauro Vay Gonon, Mariano García Carrillo and Blanca Julia Ajtun Mejía (Guatemala)

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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in 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 11 February 2016 the Working Group transmitted a communication to the Government of Guatemala concerning Mauro Vay Gonon, Mariano García Carrillo and Blanca Julia Ajtun Mejía. The Government has not replied to the communication. 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);

(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 other status and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Mauro Vay Gonon, born in Guatemala, usually resides in the canton of Cancin, in the municipality of Santo Domingo Suchitepéquez. His unique identification number is 2431391951101. He is a 60-year-old Quiché Mayan leader who, from a very young age, fought to defend human rights, mainly those of indigenous peoples and campesinos in Guatemala. In 1992, he set up the Comité de Desarrollo Campesino (Campesino Development Committee) with the aim of protecting the agricultural labour rights and access to land of campesino families. He is currently the organization's coordinator.

5. Mariano García Carrillo, born in Guatemala, usually resides in the village of Capellanía, in the canton of Santo Domingo (municipality of Chiantla). His unique identification number is 2558141001302. He is a member of the Comité de Desarrollo Campesino and a campesino leader at the national level.

6. Blanca Julia Ajtun Mejía, born in Guatemala, usually resides in the canton of Siglo II, in the municipality of Santa Cruz Muluá. Her unique identification number is 1844888501103. She is a member of the Comité de Desarrollo Campesino and a campesino leader at the national level.

7. On the morning of 26 June 2014, Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía travelled to the municipality of San José Ixcay in Huehuetenango to attend a community assembly with other members of the Comité de Desarrollo Campesino in order to discuss the delivery of fertilizers and other matters related to land use.

8. Once the assembly had finished, the three individuals caught a bus and stopped for lunch in the canton of Santo Domingo Capellanía in Chiantla. At around 2.30 p.m., while they waited by the side of the main road to Huehuetenango for another bus to take them to the city, they were detained against their will by five plain-clothes individuals who claimed to be members of the Chiantla Community Development Council. The authors' captors then called other people and kept the authors at that location.

9. The source indicates that Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía were detained by four Community Development Council members and three deputy mayors from Chiantla, who, the source maintains, had no authority to arrest or detain individuals.

10. At around 4 p.m., Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía were delivered into the hands of officers of the National Civil Police who were driving police vehicle No. HUE-091 and were on duty at substation No. 43-13 of the National Civil Police in Chiantla.

11. According to oral statements made by the captors, the three individuals in question were detained after being caught in the act of bringing together local residents with the intention of asking them for money in exchange for a reduction in the cost of the electricity supplied by the company Energuate, because, as members of the Comité de Desarrollo Campesino, they were able to connect households directly to an electric power unit and

would be charged only a consumption fee. The captors stated that using the electricity supply in that manner would amount to robbery or theft at the expense of Energuate, so they detained the authors.

12. At the end of the authors' time in police precautionary detention, the National Civil Police officer in charge at substation No. 43-13 in Chiantla signed the police precautionary detention order. Subsequently, the justice of the peace in Chiantla ordered the authors' detention and forwarded the case file to the criminal trial judge for drug-related offences and crimes against the environment of the department of Huehuetenango, who then bound the authors over for trial.

13. The National Civil Police officers stated that the three individuals were transferred to detention centres in the departmental capital (Mr. Vay Gonon and Mr. García Carrillo were sent to a men's public prison and Ms. Ajtun Mejía to a women's public prison; both prisons are in the department of Huehuetenango).

14. At a hearing on 27 June 2014, the criminal trial judge for drug-related offences and crimes against the environment of the department of Huehuetenango declared that the detention was lawful, without verifying that the authors had in fact been caught in flagrante delicto or the existence of any evidence, and found that the authors' arrest was justified. The authors were charged with coercion, making threats, aggravated fraud, sedition, incitement to commit a crime and breaching internal State security.

15. At the same hearing, the trial judge ordered the authors' detention on remand for aggravated fraud and for breaching internal State security, which are offences under articles 264 (1) and 390 (2), respectively, of the Guatemalan Criminal Code, deciding not to use an alternative to pretrial detention on the grounds that there was a danger of obstruction of the truth, as established in article 263 of the Guatemalan Code of Criminal Procedure. The judge explained that the movement to which the defendants belonged operated at the national level and could influence other persons who were being criminally prosecuted and cause witnesses to give false testimony. The source maintains that detention on remand may be imposed on an exceptional basis to ensure that defendants are present during their trial, provided that there is a fact, circumstance or element of behaviour that could reasonably imply the existence of risk.

16. On 2 July 2014, the defendants' legal defence filed an appeal against the remand order issued on 27 June 2014 by the criminal trial judge with the Seventh Chamber of the Court of Appeal dealing with criminal matters, drug-related offences and crimes against the environment of the department of Huehuetenango, requesting that the order should be revoked and that the defendants should be released immediately. On 9 July 2014, the Seventh Chamber of the Court of Appeal declared the appeal inadmissible and reiterated that the detention was lawful and that the authors had been caught in flagrante delicto. In doing so, the Court took it as read that the authors had in fact been caught in flagrante delicto, without checking whether there was any evidence to that effect or establishing specific facts that demonstrated that the authors had been caught in the act of committing the two offences of which they had been charged.

17. On 4 July 2014, the defendants' legal defence submitted an application for the remedy of habeas corpus to the trial judge, arguing that: (a) no arrest warrant had been issued pursuant to the law by a competent authority; (b) the authors were detained by private individuals, Community Development Council members, deputy mayors and local residents, rather than by National Civil Police officers; (c) the National Civil Police officers had no knowledge of an offence having been committed, nor was there any evidence to that effect; (d) there was no formal evidence that an offence had been committed; (e) the only formal document submitted during the proceedings was police precautionary detention order No. 830/2014. On 7 July 2014, the Seventh Chamber of the Court of Appeal, acting

as a habeas corpus court, found that the authors were not detained, prevented from enjoying their individual freedom or threatened with the loss of that freedom in a manner that would require the restoration or safeguarding of their freedom to be secured. The Chamber therefore declared the application for the remedy of habeas corpus inadmissible.

18. On 25 July 2014, a second application for the remedy of habeas corpus was submitted before the Constitutional Court, which declared it inadmissible on the grounds that it was the Supreme Court that was competent to hear the application. The source indicates, however, that the Supreme Court had already dismissed the previous application as inadmissible.

19. On 29 September 2014, an intermediary hearing was held, during which the trial judge granted an alternative to pretrial detention, replacing the charge of aggravated fraud with attempted aggravated fraud and excluding the claim made at the outset of the authors' detention that they had been caught in flagrante delicto. Accordingly, the judge ordered the opening of a trial for the offences of breaching internal State security and attempted aggravated fraud. After the hearing, the authors' bail was posted.

20. The source reports that the authors remain in detention, under house arrest, and cannot leave their respective departmental constituencies. The judge scheduled the public hearing for 16 February 2016, as ordered by the judge at the hearing of 29 September 2014.

21. The source goes on to explain that there have been some irregularities during the course of the legal proceedings, including the fact that Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía were arrested without a warrant or any legal basis. The failure to meet those legal requirements made it necessary to claim that the authors had been caught in flagrante delicto. The source explains that falsely claiming that the authors had been caught in flagrante delicto — to date, the truth of the claim has not been proved — avoiding the requirement for an arrest warrant and facilitating an arrest without presenting a warrant amount to fraudulent acts under article 4 (2) of the Judiciary Act of Guatemala.

22. As to the handing over of the three individuals to National Civil Police officers, the source states that the officers had been unaware of the events and had arrived at the scene only after being called by the captors. Moreover, they have accepted the captors' version of events without investigating their claims.

23. The source maintains that, in the police precautionary detention order, the claim that the authors were caught in flagrante delicto is not well grounded or described, in that mention is made only of articles 7 and 8 of the Constitution, which require notification of the grounds for arrest and of the rights of each defendant. No other legal provision is cited to justify the authors' arrest. Consequently, the source considers that the police precautionary detention order is vitiated by the fact that it is very general and does not contain the information required by article 305 of the Guatemalan Code of Criminal Procedure (a description of the steps taken by the police, an indication of the day when they were taken and any particulars that might be useful for the investigation, among others).

24. The source adds that the detention of Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía is arbitrary for the following reasons:

- The authors were detained not by a competent authority but by private individuals who did not have a warrant.
- It is impossible to invoke any legal basis justifying the detention, given that the persons in question were not caught in flagrante delicto.
- The trial judge based the detention on the captors' claim that the authors had been caught in flagrante delicto, without conducting an investigation into the claim.

- All detained persons have the right to be informed of the reasons for their arrest and of any charges against them. In the present case, however, there is no record of police officers having immediately notified the detainees of the reasons for their arrest.
- The deprivation of liberty results from the exercise of the following rights or freedoms enshrined in the Universal Declaration of Human Rights: freedom of movement (art. 13), since the authors had travelled to the place of arrest to meet five fellow community representatives; the right to freedom of thought (art. 18), since they intended to hold a meeting to express ideas and thoughts regarding the delivery of fertilizers and other matters of interest to them as campesinos, freely and without offending anyone or committing any offence; and the right to freedom of peaceful assembly (art. 20), since they intended to meet peacefully with five people to exchange ideas on the delivery of fertilizers and other matters of common interest in their capacity as campesinos and community representatives.
- The deprivation of liberty also results from the exercise of the following rights enshrined in the Covenant: freedom of movement (art. 12); freedom of thought (art. 18); freedom of opinion (art. 19); freedom of assembly (art. 21); freedom of association (art. 22); and the prohibition of discrimination (art. 26).
- There was a breach of international standards relating to the right to a fair trial as established in the Universal Declaration of Human Rights (arts. 8-11) and in other relevant international instruments.
- The detention, including the pretrial detention, is based on vaguely and ambiguously defined criminal offences.

25. Lastly, in the light of the foregoing, the source maintains that the detention of the three authors is arbitrary under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group. The lack of an arrest warrant, the fact that it is impossible to invoke any legal basis justifying the detention as the authors were not caught in flagrante delicto, the failure to conduct a preliminary investigation and to respect international standards relating to the right to a fair trial, and the fact that the authors' detention resulted from the legitimate exercise of their rights to freedom of opinion, expression and peaceful assembly under articles 19 and 20 of the Universal Declaration of Human Rights and 21 and 22 of the Covenant, amounts to a violation of the human rights enshrined in articles 9 (prohibition of arbitrary detention), 10 (the right to a fair and public hearing by an independent and impartial tribunal) and 11 (presumption of innocence) of the Universal Declaration of Human Rights, and of articles 9 and 14 (1), (2) and (3) of the Covenant.

Response from the Government

26. In a letter dated 11 February 2016, the Working Group sent a summary of the case to the Government of the Republic of Guatemala and informed it of its right to provide information in response to the allegations presented by the source.

27. The Working Group would have liked the Government to respond to the letter. Nevertheless, given that the source's submissions have not been countered by the Government, even though it has been given the opportunity to do so, the Working Group considers that it is in a position to issue an opinion on the detention of Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía.

28. Bearing in mind that the Government has not replied to the communication transmitted to it or requested an extension of the deadline for doing so, the Working Group finds that the Government of the Republic of Guatemala has failed to cooperate. The

Working Group therefore considers that it should render its opinion on the basis of the allegations submitted, which it considers *prima facie* as valid.

29. In accordance with rule 15 of its methods of work, the Working Group renders the following opinion based on all the information compiled.

Discussion

30. On 26 June 2014, Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía were detained at the side of a road by five people who were not empowered by law to arrest or detain anyone. The authors were subsequently handed over by their captors to National Civil Police officers.

31. According to the captors, Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía were detained after being caught in the act of bringing together local residents with the intention of asking them for money in exchange for a reduction in the cost of the electricity supplied by the company Energuate, because, as members of the Comité de Desarrollo Campesino, they were able to connect households directly to an electric power unit and would be charged only a consumption fee. The captors stated that using the electricity supply in that manner would amount to robbery or theft at the expense of Energuate, so they detained the authors.

32. On 27 June 2014, the judiciary declared that the detention was lawful, without verifying that the authors had in fact been caught in *flagrante delicto* or the existence of any evidence, and without even analysing the reasonableness of the detention, which it found to be valid. As noted by the Human Rights Committee in paragraph 39 of its general comment No. 35 (2014) on liberty and security of person: “Review of the factual basis of the detention may, in appropriate circumstances, be limited to review of the reasonableness of a prior determination.” The remand order, however, was issued for the offences of aggravated fraud and breaching internal State security. In examining the applications for the remedy of habeas corpus and the appeals that were submitted, the various courts did not analyse the relevant factual and legal aspects presented by the defendants and upheld the lawfulness of the detention on the grounds that the defendants had been caught in *flagrante delicto*.

33. The Government of the Republic of Guatemala, having been given the opportunity to explain how, when, where and under what conditions criminal investigations were carried out into the allegations, in fulfilment of its international human rights obligations, chose not to reply.

34. The Working Group received convincing information that: (a) the offences of which the authors are accused are vague (breaching internal State security and attempted fraud); (b) no arrest warrant was issued pursuant to the law by a competent authority; (c) the authors were detained by private individuals without authority or justification; and (d) there is no relevant, lawful evidence that the defendants committed an offence.

35. Although the Working Group has been informed that Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía are under house arrest pending trial, in accordance with rule 17 of its methods of work, it considers the issuance of this opinion appropriate and is convinced that the arrests in the present case were made without a warrant or any legal basis. Moreover, the judiciary sought to justify the arrests by stating that the authors had been caught in *flagrante delicto* on the sole basis of the erroneous version of events given by the captors, who had no authority to detain individuals. The Working Group was not convinced that the offences of which the authors are accused can be identified by private individuals during their commission. Furthermore, when they were detained, the three individuals were travelling along a road on public transport to a community that the captors had no reason to know about.

36. The Working Group considers that the detention of Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía was in violation of their rights to freedom of thought and expression, since they intended to hold a meeting to express freely ideas and opinions regarding the delivery of fertilizers and other matters of interest to them as campesinos. Moreover, they were detained because they planned to exercise their right to freedom of peaceful assembly, in that they intended to meet peacefully with five people to exchange ideas on those topics in their capacity as campesinos and community representatives.

37. Given the lack of an arrest warrant issued by a competent authority, the fact that it is impossible to invoke any legal basis justifying the detention — the detention by the private individuals, at least — the failure to substantiate the claim that the authors were detained after being caught in flagrante delicto, and the fact that the detention of Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía resulted from, or aimed to prevent, the legitimate exercise of their rights to freedom of opinion, expression and peaceful assembly, the Working Group considers that the authors' detention is arbitrary.

Disposition

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

The deprivation of liberty of Mauro Vay Gonon, Mariano García Carrillo and Blanca Julia Ajtun Mejía is arbitrary and falls under categories I, II and III of the categories of arbitrary detention applicable to the consideration of cases submitted to the Working Group.

39. Under applicable international law, victims of arbitrary detention have the right to seek and obtain reparation from the State, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In accordance with this opinion, the Working Group requests the Government of Guatemala to afford comprehensive redress to Mr. Vay Gonon, Mr. García Carrillo and Ms. Ajtun Mejía.

[Adopted on 27 April 2016]
