

Decision No. 26/1994 (Colombia)

Communication addressed to the Government of Colombia on
12 November 1993.

Concerning: Fidel Ernesto Santana Mejía, Guillermo Antonio Brea Zapata, Francisco Elías Ramos Ramos and Manuel Terrero Pérez, on the one hand, and the Republic of Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of Decision No. 10/1994.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Colombia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) According to the complaint, the Dominican citizens Fidel Santana M., Guillermo A. Brea Zapata and Francisco E. Ramos R. were arrested at Ibagué, Colombia, on 2 October 1992 and Manuel Terrero was arrested on 13 October 1992. The communication states that the four Dominican citizens had been invited to Colombia to attend a scientific seminar on "The Americas: past, present and future" and that, following this meeting, they made contact with a number of persons in political, trade union and social circles. They also expressed interest in contacting guerrilla organizations and indigenous organizations. On 2 October 1992 the three first-mentioned persons were arrested by the Colombian Army and subjected to various (unspecified) forms of torture, and on 6 October 1992 they were taken to Bogotá, where an order was issued for their release. This decision was not carried out. On 22 October 1992 they were transferred to the Model Prison together with Terrero, who had been arrested on 13 October 1992.

(b) Since that time, they have been under trial by the "Public Order Court" which, according to the complaint and the accompanying information, "does not recognize the right to a defence and the principle of holding proceedings in public and creates secret judges, secret prosecutors, secret witnesses, secret evidence and secret experts; there is no adversary procedure, neither counsel for the defence nor the accused is allowed to address the court personally, evidence may be concealed, no time-limit is set for completion of the examination proceedings, it is forbidden to photocopy the file and the lawyer has to confine himself to reading it and then

presenting the case for the defence in writing rather than orally". The charges against the prisoners are rebellion and conspiring to commit an offence. According to the source, release cannot be granted unless it is confirmed by a court of appeal.

(c) In its report, the Government states that the above-mentioned persons are being tried for the alleged offences of rebellion and impairment of national integrity by the Regional Judge of Santa Fé, Bogotá. On 10 February 1994 an order was issued for the opening of the proceedings under the charge formulated by the Regional Prosecutor's Office on 9 December 1993. In drawing up the indictment, the Prosecutor's Office considered, in accordance with article 441 of the Code of Criminal Procedure, that the existence of the act was demonstrated and that the responsibility of the accused was involved. From this it is deduced that "at no time have these Dominican gentlemen been unlawfully deprived of their freedom; on the contrary, they have been tried in accordance with the procedures applicable to all trials and with due respect for their rights and safeguards, both constitutional and legal".

(d) It should be pointed out that, in its reply, the Government does not specify the acts which serve as the basis for the indictment, nor does it deny or dispute that the indictment is based on the attempt to establish contact with indigenous or guerrilla organizations, as claimed in the communication.

(e) In this connection, it is the Group's understanding that the acts on which the indictment of rebellion and impairment of national integrity are based are those indicated in the communication.

(f) It has been argued that the rules of due process have been violated through the existence of proceedings in which much of the evidence presented was secret, as also were the judge and the prosecutor.

(g) In the Working Group's view, it is reasonable for legislation to establish adequate arrangements to ensure due protection for magistrates administering justice. These measures necessarily include those laid down by certain bodies of legislation in order to keep the judge's identity confidential.

(h) If these exceptional measures are accepted, however, an effort has to be made to ensure their compatibility with the international rules concerning due process of law. In this connection, an accused person - and, indeed, any judiciable person - is entitled to be tried by an independent and impartial tribunal. If the State grants the judge the privilege of keeping his identity confidential, it should take some additional action to avoid a situation in which the judge is not independent and impartial, not only in the abstract but also for the specific case dealt with. In the present instance, there is no evidence of such action having been taken.

(i) However, it is not enough for the judge to be impartial and independent. The proceedings themselves must be conducted with due safeguards, inter alia, that the accused should be given a public hearing with due guarantees. In addition, he is entitled to have "adequate time and

facilities for the preparation of his defence" and to "examine, or have examined, the witnesses against him". None of these rules can be observed if the identity of the witnesses is also kept secret and if their testimony is not public.

(j) The claims regarding the fact that the trial is being conducted by writing without the lawyer or the accused being entitled personally to address the court cannot be entertained. Neither the Universal Declaration nor the International Covenant on Civil and Political Rights makes oral proceedings an attribute of due process of law, and written proceedings can very well provide the accused with sufficient guarantees.

(k) The considerations set out in paragraphs (h) and (i) above indicate infringements of the rules of due process of law which, in the Group's view, are such as to render the detention arbitrary, in accordance with the provisions of category III of the Group's methods of work.

6. In the light of the above the Working Group decides:

The detention of Fidel Ernesto Santana Mejía, Guillermo Antonio Brea Zapata, Francisco Elías Ramos Ramos and Manuel Terrero Pérez is declared to be arbitrary being in contravention of articles 9 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, to which the Republic of Colombia is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Colombia to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.