

DECISION No. 13/1992 (CUBA)

Communication addressed to the Government of Cuba on
14 October 1991.

Concerning: Daniel Azpillaga Lombard, Tomás Azpillaga,
Basilio Alexis López and Rigoberto Martínez Castillo on the one hand
and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), 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. The Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.
3. (See paragraph 3 of Decision No. 1/1992.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. 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. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).
6. The Working Group considers that:
 - (a) According to the allegation, Daniel Azpillaga Lombard, Tomás Azpillaga, Basilio Alexis López and Rigoberto Martínez Castillo were detained at Havana on 6 September 1991 and were tried on charges of which they were not informed, with sentences of between 10 months' and 2 years' imprisonment being requested against them;
 - (b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;
 - (c) The Government states that those accused in case 3469/91 were sentenced to the following prison terms: Daniel Azpillaga, 2 years; Tomás Azpillaga, 10 months; Rigoberto Martínez, 11 months; and

Basilio Alexis López, 10 months. The three last-named ought to have completed their sentences on 5 July or 5 August 1992. The ground for the sentences is the offence of "creating a public disturbance";

(d) The report of the Special Representative of the Secretary-General mentions this situation, indicating that, according to the reports received, the persons to whom this decision refers were detained "during a demonstration in front of the Villa Marista (State Security) in Havana on 6 September 1991 calling for the release of all political prisoners". They are said to have been charged with creating a public disturbance;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) The Government has not accused the detainees of any act of violence or other such act. On the contrary, it has merely indicated that the penalty is "for the offence of creating a public disturbance", a vague accusation which does not warrant detention. The information provided by the Special Representative, as mentioned above, suggests, that the four persons concerned were arrested because of their participation in a demonstration calling for the release of political prisoners, which constitutes a legitimate exercise of the right of freedom of assembly and freedom of expression and opinion;

(g) In accordance with the criteria of the Working Group, as set out in paragraph 3 of this decision, detention is arbitrary if the facts giving rise to it concern the exercise of particular rights recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, such as those mentioned in paragraph 3 above (category II);

(h) In the absence of any further information, the Working Group takes it that Tomás Azpillaga and Basilio Alexis López have been free since 5 July 1992 and Rigoberto Martínez since 5 August 1992, having been released on completion of their sentences;

(i) The methods of work adopted by the Group provide that, if the person concerned has been released for whatever reason since the Group took up the case, the case is filed. Although the Group, at its third session, reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of the deprivation of liberty, the lack of information from the source does not allow it to do so in the present situation.

7. In the light of the above, the Working Group decides:

(a) To file the cases of Tomás Azpillaga, Basilio Alexis López and Rigoberto Martínez Castillo since these persons have been released;

(b) The detention of Daniel Azpillaga Lombard is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Daniel Azpillaga Lombard to be arbitrary, the Working Group requests the Government of the Republic of Cuba 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.

(See also annex II, decision No. 13/1992.)

Annex IIDECISION ON CASES OF REPORTEDLY RELEASED DETAINEES
AND LIST OF SUCH PERSONS

In the course of its consideration of some of the cases of alleged arbitrary detention which it transmitted to Governments, the Working Group was informed, either by the Government concerned or by the source of the allegation, and in some cases by both, that the person(s) concerned is (are) no longer in detention.

Paragraph 14 (a) of its methods of work states that the Working Group, in the light of the information examined during its investigation, shall take one of the following decisions:

"(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned".

The following list contains the cases of persons who are reportedly no longer in detention and regarding whom the Working Group, after having examined the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of their detention. The Working Group, without prejudging the nature of the detention, therefore decides to file their cases, in the terms of paragraph 14 (a) of its methods of work.

(The names of the persons listed below are preceded by the number of the decision regarding them, by order of its adoption by the Working Group, and the country concerned. The signs (X), (Y) and (Z) following each name indicate whether the information of that person's release was provided by the Government (X), the source (Y), or both (Z).)

Decision No. 13/1992 (CUBA): Tomás Azpillaga (X), Basilio Alexis Flores (X), Rigoberto Martínez Castillo (X). (See also annex I, Decision No. 13/1992.)