

Decision No. 22/1994 (Peru)

Communication addressed to the Government of Peru on
20 September 1993.

Concerning: Luis Alberto Cantoral Benavides, on the one hand, and
the Republic of Peru, 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 concern that to date no information has been forwarded by the Government of Peru in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the complaint and accompanying documents, Luis Alberto Cantoral Benavides was arrested at his home in Lima on 6 February 1993 by the National Anti-Terrorist Directorate (DINCOTE) and charged with treason before the military court. The reason for his arrest, according to the source, was his close acquaintanceship with José Antonio Cantonal Benavides, against whom a detention order had been issued for alleged terrorist activities. It is said that he was tortured on DINCOTE premises.

(b) He was acquitted of the charge of treason by the military court which nevertheless referred him for trial to the ordinary courts "because the records contained proof and reasonable circumstantial evidence suggesting that he could be held responsible for the offence of terrorism. This judgement of the military court, a court martial, was handed down on 2 April 1993, but so far no proceedings have been initiated before the ordinary courts.

(c) The Working Group, in a desire to obtain further details about the situation, requested the Government, by letter dated 19 May 1994, to clarify certain legal aspects. Over four months have elapsed and the Government has failed to comply with this request.

(d) Since proceedings against Luis Alberto Cantoral Benavides were to have been initiated before an ordinary court we requested the Government for information on this point. The Government would undoubtedly have informed the Working Group whether proceedings had commenced. In the absence of such information the Working Group assumes that they have not begun and will accordingly take a decision on this basis.

(e) The Working Group, in accordance with its mandate and methods of work, can decide whether a detention is arbitrary or not only in the cases indicated in paragraph 3 of this decision, namely, (1) where there is no legal basis for the detention; (2) where the arrest took place as a result of the legitimate exercise of some of the rights mentioned therein; and (3) where the rules of due process have been so seriously violated as to render the detention arbitrary.

(f) The first ground for finding the detention arbitrary must be rejected because the detention was validated, according to the source itself, by a judicial order, proceedings have been initiated before the Lima Military Court, at which time the detainee had been at the disposal of a judge of an ordinary court.

(g) The second ground must also be discarded since the detention has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3, subparagraph II.

(h) Specifically, the complaint alleges the following: (1) Undue delay in bringing proceedings for the offence of terrorism before the ordinary court, since the records required to carry out a review of the court martial's acquittal decision were in the possession of the Supreme Council of the military courts system; and (2) the innocence of the detainee for want of proof of his participation in terrorist acts - what evidence there is being unacceptable since it was obtained by torture.

(i) The excessive delay in the initiation of proceedings for the offence of terrorism constitutes a violation of the rights set out in articles 9, 10 and 11 of the Universal Declaration of Human Rights, articles 9.1, 9.2, 9.3, 9.4, 14.1, 14.2, 14.3 (a) and (c) of the International Covenant on Civil and Political Rights, and Principles 11, 36, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment inasmuch as these provisions proclaim the right to personal freedom, presumption of innocence, trial without undue delay, and release on bail since pre-trial detention should not be the general rule.

(j) This failure to ensure the impartiality of the proceedings is so serious as to make the detention arbitrary.

(k) However, the request that the Working Group should declare the detainee innocent and review the evidence on which the charge is based is well outside the terms of its mandate.

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

(a) The detention of Luis Alberto Cantoral Benavides is declared to be arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which Peru is a party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Group further decides to bring the allegations made by the source to the attention of the Special Rapporteur on the Question of Torture.

7. Consequent upon the decision declaring the detention of the person concerned to be arbitrary, the Working Group requests the Government of Peru 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.