

Decision No. 25/1994 (Peru)

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

Concerning: Luis Enrique Quinto Facho, 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 concerned 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 the copious accompanying documentation, Luis Enrique Quinto Facho, together with his pregnant live-in companion, a brother of hers, a nephew and two other persons, were arrested at the former's house by Technical Police officers on 6 November 1992. A few days beforehand, the police had searched the house without finding anything suspicious, yet on the day of the arrest, they claimed to have found three explosive devices, two segments of fuse and subversive pamphlets. The accused were charged with belonging to the Shining Path organization of the Communist Party. They are currently being prosecuted for offences against public tranquillity (terrorism) under case No. 183-93. Although a copy of the prosecutor's report of 17 February 1993 is attached, there is no indication how far the case has progressed. It is contended that Quinto Facho is innocent of the charges.
 - (b) It is alleged that Quinto Facho was physically and psychologically tortured on DINCOTE (anti-terrorist police) premises.
 - (c) In the absence of any information from the Government, the Working Group will have to take a decision based solely on the information and documentation available.

(d) In accordance with its mandate and methods of work, the Working Group can only pronounce on the arbitrariness or otherwise of detention in the cases indicated in paragraph 3 of this decision, in other words: (1) where there is no legal basis for the detention; (2) where the detention has occurred 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.

(e) The first ground for finding the detention arbitrary must be discarded, since according to the source itself the detention has been validated by a judicial order issued by the Lima Court of Investigation, and the relevant proceedings have been initiated. Indeed, at the current stage of the proceedings, the Government Prosecutor has already been heard.

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

(g) It is not for the Working Group to assess the adequacy of the evidence adduced during the proceedings, except in so far as there may have been a refusal to admit evidence (for instance, if the accused has not been allowed to present his own witnesses or to examine witnesses for the prosecution, in accordance with article 14 (3) (e) of the International Covenant on Civil and Political Rights), a refusal which has not been alleged. The Group cannot declare a convicted person innocent.

(h) There has been no allegation of any procedural defect deriving from a possible infringement of the international rules governing due process.

(i) On the basis of the information provided, it is not possible to decide whether the detention was arbitrary or not.

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

(a) To keep the case pending while awaiting further information under paragraph 14 (c) of its methods of work.

(b) To transmit this case to the Special Rapporteur on the Question of Torture in the light of the allegations made in the communication.

Adopted on 29 September 1994.