

Decision No. 23/1994 (Peru)

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

Concerning Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez, 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 cases 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 each of the cases 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. 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 cases, 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, Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez were arrested by members of the Huantane Infantry Battalion No. 21 of the BIM on 8 April 1992 because of their alleged connection with the Shining Path faction of the Peruvian Communist Party and their alleged responsibility for the murder of Daniel Curro Chambi, Mayor of Ayrampuni, on 21 May 1989. No further information is provided.
 - (b) 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 provided by the source.
 - (c) In view of the paucity of information, the Working Group asked the source for further particulars. More than four months later, the source has not replied.

(d) The Group also requested information from the Government concerning legal aspects with a bearing on the cases, but this has not been forthcoming either.

(e) 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: (i) where there is no legal basis for the detention; (ii) 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.

(f) 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 and criminal proceedings have been instituted in Puno, although the communication does not specify which is the investigating or trial court.

(g) 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.

(h) In this case it is alleged that: (1) there has been an undue delay in the proceedings, which have already been in progress for more than two years, and there is a complaint over their continuation pending before the Supreme Court; (2) the prisoners are innocent of the charges against them; and (3) there is inadequate proof of their involvement.

(i) The very protracted nature of the proceedings is a violation of the rights provided for by articles 9, 10 and 11 of the Universal Declaration of Human Rights, articles 9 (1), (2), (3) and (4) and 14 (1), (2), (3) (a) and 3 (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, inter alia, the right to personal freedom, presumption of innocence, trial without undue delay and release on bail, as well as declaring that pre-trial detention must not be the general rule.

(j) The above-mentioned breaches of the rules relating to a fair trial are so serious as to render the detention arbitrary.

(k) On the other hand, the request that the Working Group should declare the prisoners innocent, pronounce on the evidence of the indictment and resolve the alleged contradictions between police affidavits and statements by judges and prosecutors falls completely outside its mandate.

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

The detention of Ciriaco Gutiérrez Quispe, Justino Curro Gutiérrez, Justo Chipana Maldonado and Rafael Curro Gutiérrez 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.

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 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.