

OPINION No. 11/1997 (MEXICO)

Communication addressed to the Government on 26 November 1996.

Concerning: David John Carmos.

Mexico is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time, although it does not refer to all the information requested.
3. (Same text as paragraph 3 of Opinion No. 1/1997.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but has not yet received its comments.
5. According to the source, David John Carmos, an American citizen and Bishop of the Iglesia de los Escénicos, was arrested at Mexico City Airport, where he arrived from Brazil, by agents of the Federal Criminal Investigation Service. He was tried for the offence of possession and illegal introduction into the country of the substance MDA, and sentenced to 10 years' imprisonment without remission.
6. According to the source, various irregularities occurred during this case: (a) the evidence presented by the accused was not admitted; (b) the evidence on which the charge was based was not genuine but fabricated by the police; (c) his lawyer, assigned by the State, never appeared before the court; (d) the lawyer that the accused named in his appeal was not accepted; and (e) the accused was not provided with an interpreter.
7. In its reply the Government confines itself to informing the Group that the detained person was tried and sentenced to 10 years' imprisonment and a fine, but makes no reference at all to the alleged procedural irregularities.
8. The Working Group believes that, in order to express an opinion on whether or not the detention is arbitrary, it should determine whether the case is covered by one of the three categories of arbitrariness mentioned previously. With regard to Category I it is clear that the deprivation of liberty has a legal basis, namely, a judgement; with regard to Category II, there is no doubt that the deprivation of liberty is not the result of the legitimate exercise of the human rights mentioned. In this connection, nowhere does the source allege that this is a case of persecution connected

with the functions of the Bishop of Iglesia de los Escénicos, so that the deprivation of liberty cannot be described as arbitrary under this category.

9. This leaves Category III. Here, it is first necessary to disregard the point made in paragraph 6 (b) above, since it is not possible for the Working Group - as it has repeatedly stated - to evaluate the evidence on which a State's decision, whether judicial or extrajudicial, to deprive an individual of their liberty is based. This is neither the function of the Group under the resolution establishing it, nor would it be physically or legally possible for it to do so.

10. On the other hand, the allegations made in (a) refusal to admit evidence presented by the defence; (c) and (d) lack of a defence lawyer chosen by the defendant; and (f) absence of an interpreter, if true, would constitute a serious violation of the rules of due process as set out in article 14.3, introductory part and subparagraphs (a), (b) and (d) of the International Covenant on Civil and Political Rights.

11. However, as the source fails to present any proof of its serious accusations and as, the Government in its reply avoids giving any information on the facts which were transmitted to it in good time, the Group is unable to express an opinion on these various points.

12. The Government's reply having been transmitted to the source, the latter still did not provide the proof that would enable the Group to formulate an opinion.

13. In the light of the above, the Working Group decides to keep the case of David John Carmos pending awaiting further and more up-to-date information, under the terms of paragraph 14.1 (c) of its methods of work.

Adopted on 18 September 1997.