

OPINION No. 16/1997 (Bolivia)

Communication addressed to the Government on 14 July 1997

Concerning: Juan Carlos Pinto Quintanilla

Bolivia 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 regrets that the Government has not replied within the 90_day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - III. When the total or partial non_observance of the relevant international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
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 latter, the Working Group believes that it is in a position to render an opinion 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. According to the communication, Juan Carlos Pinto Quintanilla was arrested on 13 April 1992 by eight armed personnel of the CEIP (Police Intelligence). He disappeared for four days, and appeared before his parents at the place where he was detained until 21 April, although they were unable to speak to him. It is claimed that during the eight days when he was on police premises he was tortured and had no access to counsel. Though he has been deprived of liberty for five and a half years, his case has not gone beyond the investigation stage, basically due to the fact that the relevant documents were transferred successively, owing to problems of competence, to the Second, Third and Fourth Courts.
6. It is alleged that he faces 12 charges of rebellion and sedition, although in fact the only real accusation relates to his alleged militancy in a group known as the Ejército Guerrillero Tupaj Katari (EGTK).
7. When the facts of the complaint were brought to the attention of the Bolivian Government, the latter did not issue any report nor requested more time to prepare its reply.

8. In the light of the foregoing, the Working Group considers only the following facts to be ascertained: (a) that Pinto Quintanilla was arrested on 13 April 1992; (b) that he is accused of militancy in the EGTK; (c) that he has not been convicted under this charge.
9. The Government has not reported any act of violence attributed to Pinto, nor has it denied that, after five and a half years of deprivation of liberty, he has not yet been brought to trial.
10. That in accordance with article 16 of the Bolivian Constitution, "from the moment of his detention or imprisonment, a person held has the right to be assisted by a defender", while article 297 of the Code of Criminal Procedure establishes that the failure to designate an official counsel for the accused is ground for nullifying the case. Article 171 of the latter Code further provides that the investigation of a case has to be completed within 20 days.
11. That the torture to which Pinto was submitted was corroborated by a report of the Commission on Human Rights of the Bolivian Chamber of Deputies.
12. That the fact that Pinto was deprived of liberty for five years without being brought to trial, and that he was not allowed to consult a lawyer during the first eight days of his deprivation of liberty, constitutes such a serious violation of the rules of the due process of law enshrined in Bolivian legislation, and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, as well as articles 9, 10 and 11 of the Universal Declaration of Human Rights, that the imprisonment may be considered arbitrary, falling within Category III of the Group's Methods of Work referred to above.
13. In addition, the report of the aforementioned Bolivian Parliamentary Commission gives accounts of the torture denounced by Pinto and other prisoners belonging to the EGTK and other groups considered to be subversive, pointing out that this ill_treatment occurred during the period of illegal incommunication, since the legal time limits had already been exceeded, and that it occurred in several places of detention. The report adds that such treatment was presumably aimed at obtaining self_incrimination.
14. That under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no statement made as a result of torture may be invoked as evidence in any proceedings.
15. That the complaint refers to a further 34 persons, who are named, who are alleged to be suffering "the same situation of violations of their human rights, in similar circumstances, at a similar time and in similar ways".
16. In the light of the foregoing, the Working Group renders the following opinion:
- (a) The deprivation of liberty of Juan Carlos PINTO Quintanilla is arbitrary, as being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, and falls within Category III of the categories applicable to the consideration of cases submitted to the Working Group;
 - (b) The content of the complaint is to be passed to the Special Rapporteur on the question of torture;
 - (c) Acting on its own initiative, as authorized by its methods of work, the Working Group is also to transmit the other 34 cases included in the communication to the Government of Bolivia.
17. Consequent upon the opinion rendered, the Working Group requests that the Government take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 28 November 1997.