

**OPINION No. 37 (2000) MEXICO**

Communication addressed to the Government on 11 July 2000

Concerning Jacobo Silva Nogales, Gloria Arenas Agis, Fernando Gatica Chino and Felicitas Padilla Novas

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government did not reply within the 90-day time limit.
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 in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth 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 Government, 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, Jacobo Silva Nogales, a rural schoolteacher and social activist, was arrested without a warrant in Mexico City on 18 October 1999 by the Federal Crime Prevention Police. He spent the first three days of his detention in an unknown place, where he

was severely tortured. He was then transferred to a military base, where he was again tortured on the following days. On 24 October 1999, he was transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where he remains in detention at the present time.

6. Gloria Arena Agis, a social activist, was arrested on 22 October 1999 in the State of San Luis, Potosí, Mexico, but no warrant was produced. According to the source, she was kept for the first two days of her detention in an unknown place, presumably a military base, where she was severely tortured. She was then transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where she remains in detention at the present time.

7. According to the source, Fernando Gatica Chino and Felicitas Padilla Navas were arrested on 22 October 1999 in Chilpancingo, State of Guerrero, Mexico by the Federal Crime Prevention Police and the army, but no warrant was produced. The source claims that during the first two days of their detention in an unknown place, presumably a military base, Fernando Gatica Chino was severely tortured and Felicitas Padilla was subjected to psychological torture. On 24 October 1999, they too were transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where they are still detained at the present time.

8. The source considers the deprivation of the liberty of these persons to be arbitrary because:

- (i) The detainees were arrested in a violent manner, without any arrest warrant or court order for the arrests. They were abducted and kept incommunicado, Silva Nogales for five days and Gloria Arenas Agis, Gatica Chino and Felicitas Padilla for two days. They were arrested in different places, the first detainee in Mexico City on 19 October 1999, the second in San Luis, Potosí on 22 October 1999 and the last two in Chilpancingo on 22 October 1999, but the official statement accused them all of the same act, even though the first two were not acquainted with the last two.
- (ii) They were denied access to counsel for approximately the first four weeks of their detention.
- (iii) The detainees were deprived of the majority of their rights during the trial, which took place in the prison and was described by the Government as a "secret trial not open to the public", although there was no law permitting such a trial in a maximum security prison. Likewise, following the request addressed to the judge by counsel to take the necessary steps to make the hearings public, the judge stated that permission to attend the trial had to be applied for, and permission had to be granted by the prison director. On various occasions before and during the trial, the prisoners were denied the right of access to their counsel and the right to speak with him in private. Similarly, family members and witnesses were denied access to the trial.

- (iv) It is also claimed that there were many anomalies in the evidence submitted by the Government, including the falsification of many official statements and of other documents, medical examinations and the so-called “signed confessions” that were obtained by torture.
- (v) The arrests were confirmed by the Under-Secretary for Public Security and by the Research Centre for National Security, which specified the charges as membership of the Revolutionary People’s Army (ERPI), terrorism, criminal association, rebellion, damage to the property of others, intentional homicide, organized crime, hoarding of arms and possession of cartridges intended for the exclusive use of the armed forces. The source dismisses as untrue the official claim that the four were arrested in Chilpancingo on the same date, 22 October 1999, by the Criminal Investigation Service of the State of Guerrero, while executing a warrant for the arrest of an alleged kidnapper, and that no arrest warrant was needed to arrest the four because they were encountered “in flagrante”, with arms, ammunition, uniforms and ERPI propaganda in their homes.
- (vi) It is claimed that in the cases described there were violations of articles 5, 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Mexico is a party.

9. The complaints by the source were not denied by the Government, which had the opportunity to do so, within the time limit of three months.

10. The Working Group considers that the arrests of Jacobo Silva Nogales on 19 October 1999 in Mexico City, of Gloria Arenas Agís on 22 October 1999 in San Luis and of Fernando Gatica Chino and Felicitas Padilla on 22 October 1999 in Chilpancingo were not carried out on the basis of an arrest warrant from a competent body or at the time of the commission of an offence.

11. As it has stated on a number of occasions, the Working Group is not able to render an opinion on the innocence or otherwise of a person deprived of liberty. However, it can render an opinion on the arbitrary nature of an arrest in which the principles of due process were not complied with.

12. The Working Group considers that in the case of Silva Nogales, Arena Agís, Gatica Chino and Padilla Navas, the right of the detainees to the presumption of innocence was not respected inasmuch as they were forced to incriminate themselves under torture, nor, during the first four weeks of their detention was the right to be assisted by counsel. Likewise, the trial, which took place in prison and which initially was secret, was not conducted with the safeguards of impartiality. The violation of these principles of due process is so serious as to determine that the deprivation of the liberty of these persons was arbitrary.

13. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of the liberty of Jacobo Silva Nogales, Gloria Arenas Agís, Fernando Gatica Chino and Felicitas Padilla Navas is arbitrary, as constituting a breach of the provisions of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 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.

14. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation in accordance 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 27 November 2000