

**OPINION No. 13/2004 (BOLIVIA)**

Communication addressed to the Government on 5 February 2004

Concerning: Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In view of the complaints submitted, the Working Group welcomes the cooperation of the Government. The Working Group has transmitted the Government's reply to the source. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:
  - (a) Francisco José Cortés Aguilar, a Colombian citizen, identity card No. 79,584,240; 41 years of age; former agricultural and trade union leader in Colombia; member of the National Association of Farm Users - Unity and Reconstruction (ANUC-UR); Director-General of the Social Corporation for Counselling and Community Capacity-building (COSPACC); participant in the Ministry of the Interior witness protection programme;
  - (b) Carmelo Peñaranda Rosas; 30 years of age; agricultural labourer; leader of the Progress towards Socialism Movement (MAS) in Cochabamba;
  - (c) Claudio Ramírez Cuevas; agricultural labourer; former mayor of Asunta, Yungas, who lodged Cortés Aguilar in his home.
6. It is reported that these three individuals are in pre-trial detention in the maximum security facility for convicts at Chonchocoro, El Alto, La Paz. According to the source the three individuals were arrested in the early morning of 10 April 2003 at the home of Claudio Ramírez Cuevas in Villa Adela, El Alto, by hooded members of military intelligence (Special State Investigation Centre) carrying machine guns and other automatic weapons. The arrest took place as part of operation "Early Warning". At the time of their arrest they were taken to military intelligence headquarters with their hands tied and blindfolded.
7. The source indicates that Cortés Aguilar has no record as a subversive or terrorist in Colombia. On various occasions he has been threatened by members of paramilitary organizations, as a result of which he decided to seek exile with his family in Bolivia. In 2001 he made a first trip, lasting six days, to Bolivia to take part in an international conference by the

anti-globalization organization Peoples' Global Action. He returned to Bolivia in 2002 to begin formalities for purchasing a home. He made a third trip in April 2003 to finalize purchase of the house and accept an invitation extended by Bolivian social organizations. Six days after his arrival he was arrested.

8. Cortés Aguilar was presented to the press as a guerrilla fighter and member of the so-called National Liberation Army (ELN) organization in Colombia; it was stated that he had travelled to Bolivia to organize a guerrilla group, the Bolivian National Liberation Army (ELN-B), and provide military training. Cortés Aguilar denied any link with subversive organizations.

9. In the operation on 10 April 2003 the following minors were also arrested: Nelly Ramírez, 17, daughter of Claudio Ramírez Cuevas, and her cousin, Betty Nina Díaz, also 17. An application for habeas corpus was also reportedly filed in July 2003 on behalf of these minors before the Constitutional Court. The Court reportedly ordered their immediate release.

10. According to the source, the authorities showed the press the following items as proof of guilt: military uniforms; an ELN flag; photographs of Cortés Aguilar with Evo Morales, MAS leader; books by Lenin and Mao Zedong; US\$ 4,000; and two kilos of cocaine paste. According to the detainees the drug was planted in the house by the arresting officers at the time of the arrest. The security forces also reportedly attempted to plant booby-traps, but were prevented by the neighbours. The money found reportedly belonged to Cortés Aguilar, who had taken it to Bolivia with the intention of purchasing a house. However, it was represented to the press as the proceeds of drug trafficking and proof of funding of a guerrilla organization. It is stated that these finds were presented to the press some hours after the arrests and search of the house.

11. It is also stated that in accordance with Bolivian law, the prosecutor should have brought charges within six months, which he failed to do. Instead, he asked the judge for an extension of the time limit. According to the source of the communication, this was because of a lack of firm evidence. At the time of their arrest, the individuals were held incommunicado in solitary confinement, reportedly for two months.

12. The source adds that these persons were arrested for political reasons only, in the context of a confrontation between the Government of then President Gonzalo Sánchez de Lozada and MAS. The continued detention of these individuals, notwithstanding Sánchez de Lozada's flight to the United States and subsequent change of Government, was reportedly the result of inertia on the part of the judiciary and prosecution services. It adds that the then Minister of the Interior sought to exploit the arrest of these individuals as evidence that MAS was involved in narco-terrorist activities, which the organization refuted immediately through statements by its parliamentary spokespersons.

13. The source adds that the capture of these individuals was exploited politically by the then government party in El Chapare, where photographs of Cortés Aguilar, represented as a drug trafficker, with Evo Morales, were distributed, with the aim of attacking Evo Morales. Operation "Early Warning" was then represented as a timely blow against the resurgence of terrorism in the country.

14. Cortés Aguilar's Bolivian lawyers have reportedly received death threats. They have been denied access to the court file and evidence. This indicates obstruction of the right to defence, disclosure and due process. The source concludes that these individuals were arrested only for internal partisan political reasons, with the aim of displaying before the press successes in efforts to counter terrorism and drug trafficking and undermining the prestige of MAS and its leaders.

15. The Government, in its response, states that the public prosecutor conducted an investigation concerning Francisco Cortés Aguilar and other individuals in accordance with the Code of Criminal Procedure of 1999 and trial procedure, and in full respect for the rights and guarantees of the individuals charged. The Government states that the arrest was carried out on the orders of the examining judge in the city of La Paz, in accordance with established procedures, under press scrutiny.

16. The Government states that it did not present Francisco Cortés to the press, but that after the hearing on interim measures, the press had attended a press conference, at which Cortés himself stated that he had been arrested on a charge of being a guerrilla and for alleged links with ELN in Colombia.

17. The Government states that the arrests of the minors Nelly Ramírez and Betty Nina Díaz were not linked to the measures taken against Francisco Cortés, but, rather, to action by the public prosecutor against trafficking in controlled substances. It further states that the evidence regarding possible liability on the part of Francisco Cortés and the other persons charged was formally admitted with the bringing of the charges by the public prosecutor. Prosecutors on the case and the national press witnessed events at the home of Claudio Ramírez when Francisco Cortés was arrested.

18. The Government states that article 134 of the Code of Criminal Procedure provides that "in the event of a complex investigation owing to the fact that the circumstances relate to offences committed by criminal organizations, the prosecutor may ask the investigating judge to extend the preparatory stage to a maximum period of 18 months". On the basis of this legal provision the prosecutor in the case sought an extension in accordance with the law, the investigating judge ordering interim measures having extended the time limit for the preparatory stage.

19. The Government states that the public prosecutor was not aware that the accused had been incommunicado for two months. It also indicates that the public prosecutor played no role in the supposed politicization of the case. It further states that access to the evidence collected by the public prosecutor fell within the discretion of the court at the time of the hearing for interim measures. It states, however, that the file relating to the investigation is public and is open to the parties concerned at any time on request to the prosecutor handling the case or, if appropriate, to the district prosecutor or investigating judge, so that the lack of access claimed is not apparent.

20. The Government concludes by stating that the relationship supposedly existing between the accused and the political party known as the Progress towards Socialism Movement did not

form part of the criminal investigation conducted by the public prosecutor. The accused were not arrested by military intelligence officers; the arrest and subsequent detention were by the National Police, in the exercise of criminal investigation police functions.

21. The Working Group considers that to render an opinion it must receive additional information from both the source and the Government on the following points:

- (a) The legislation under which the charge is brought and the nature of the charge levelled by the public prosecutor and of the penalties should the accused be convicted;
- (b) Information as to whether the accused resorted to violence of any kind;
- (c) The judicial phase of the proceedings at present and the steps open to the accused.

22. In the light of the foregoing, the Working Group, on the basis of paragraph 17 (c) of its methods of work, decides to maintain the case under review pending further information.

Adopted on 15 September 2004