

**OPINION No. 12/2005 (BOLIVIA)**

**Communication addressed to the Government on 2 February 2005.**

**Concerning Mr. Francisco José Cortés Aguilar, Mr. Carmelo Peñaranda Rosas and Mr. 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. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. The Working Group on Arbitrary Detention, on the basis of paragraph 17 (c) of its revised methods of work, adopted opinion No. 13/2004 (Bolivia), and decided to maintain the case under review pending further information from both the Government and the source 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.
5. Both the Government and the source have responded to those points, and the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
6. In its reply, the Government explains the legislation on which the criminal prosecutor based the charges, of involvement in organized crime, terrorism, armed uprising threatening the security and sovereignty of the State, falsification, the use of forged documents, and the manufacturing, trading or possession of explosives. The prosecutor for matters involving controlled substances charged Francisco Cortés Aguilar, Claudio Ramírez Cuevas and Carmelo Peñaranda Rosas with the crime of trafficking in controlled substances.
7. The Government also reports that the detainees did not engage in violence. It states that Mr. Cortés has requested the termination of his pretrial detention and that this request has been granted and a series of alternative measures have been taken.
8. Responding to the same questions, the source claims that both the accusation and the charge were formulated in a general manner, making it impossible to determine the specific allegations being made against the accused or the nature of the specific evidence that led to charges being brought against them. It is claimed that a single generic charge was brought against 19 individuals, including Messrs. Cortés, Ramírez and Peñaranda, making it impossible

to link the alleged crimes to specific acts or to substantiate the allegations. It is claimed that all that was done was to draw up a long list of undefined acts and evidence of unclear relevance, and that this situation prevented the defence from going about its work in an organized and methodical manner.

9. The source reaffirms that the detention took place in an atmosphere designed to make a scapegoat of Colombian human rights defender Francisco Cortés Aguilar, by using his detention as a piece of political propaganda to convince public opinion that it constituted a step forward in the fight against terrorism. It is claimed that the judge in the case travelled to Bogotá, where, at the request of the prosecutor, he illegally took statements from two Colombian citizens who are used by the Colombian army to give false testimony in trials in Colombia. All of this took place outside the presence of the parties.

10. The principle of the presumption of innocence has been gravely breached, and there have also been attacks on individuals working either directly or indirectly for the release of this Colombian citizen.

11. The source also refers to the harassment of a Colombian woman lawyer and member of the Colombian campaign to free Francisco Cortés, who went to Bolivia in connection with the trial and was repeatedly filmed, photographed and questioned at all the airports in that country.

12. The source also claims that all the judicial proceedings had been delayed unnecessarily, rendering the defence mechanisms provided by the Bolivian system ineffective. Francisco Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas have been deprived of liberty since 10 April 2003 and continue to be held in pretrial detention.

13. Lastly, the source affirms that Francisco Cortés Aguilar is being held in a private jail, and is continually being harassed by intelligence agents. He is filmed, photographed and placed under microphone surveillance, guarded round the clock by four wardens and subjected to subhuman conditions of detention, which have affected his health.

14. Having received the additional information requested, the Working Group is in a position to analyse the circumstances of the case and to see if they correspond to one of the categories applicable to its methods of work.

15. Serious doubts exist as to the manner in which the arrest was conducted, and these doubts have not been dispelled by the information received. The Government has not denied that when the homes of the accused were raided and the accused were arrested in the early morning hours, they were portrayed in a large-scale media operation as guilty of the crimes with which they were charged. Nor has the Government denied that the detainees are farm workers' leaders, or that Francisco Cortés Aguilar has no record as a subversive or terrorist in Colombia, that he has denied any link with subversive organizations, and that, on the contrary, he had to seek exile in Bolivia with his family as a result of being threatened by paramilitary organizations.

16. The Government has not denied that the media's portrayal of the arrest of the accused individuals was potentially damaging to their defence and in contravention of the principle of the presumption of innocence. Similarly, there has been no denial of the allegation that evidence found in the home of the accused had been planted there hours earlier.

17. Nor has there been any denial of a series of acts of intimidation and harassment of the lawyers who were working for the defence initially. These lawyers received death threats, and, at the start of the case, were denied copies of the case file, which prevented them from properly presenting evidence in rebuttal. Furthermore, it has been noted that the public nature and seriousness of the charges have led to threats against other lawyers and defence attorneys associated with Francisco Cortés.

18. In this regard, the Working Group has been informed that several Colombian citizens and one Peruvian citizen, all of whom had been granted refugee status by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Bolivia, were forced to leave Bolivia because the police threatened to arrest them if they did not denounce Francisco Cortés. Consequently, an urgent appeal has been made on their behalf, without prejudging the merits of the case.

19. Likewise, on the basis of the information received, the Working Group notes that the serious charges made in this case were formulated in a general and imprecise manner, without defining the specific acts that constituted the criminal offences concerned.

20. It is also noted that the detainees have been deprived of their liberty since 10 April 2003, that this situation has not changed since then - although there has been a change in the place of detention in one case - and that they continue to be held in pretrial detention.

21. In these circumstances, and given the gravity of the charges, it is essential to respect international standards concerning the right to a fair trial.

22. The Working Group notes, however, that in the foregoing case, the accused have not been able to enjoy the fundamental guarantees stemming from the right to a fair trial; the failure to observe these guarantees is of such gravity that it imparts an arbitrary character to the deprivation of their liberty.

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

The deprivation of liberty of Francisco José Cortés Aguilar, Carmelo Peñaranda Rosas and Claudio Ramírez Cuevas is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases presented to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005