

OPINION No. 30/2006 (COLOMBIA)

Communication: addressed to the Government on 2 February 2006.

Concerning: Ms. Natalia Tangarife Avendaño and seven other persons.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group regrets that, despite having sought and obtained a 90-day extension from the Working Group and despite having been sent a reminder on 9 August 2006, the Government failed to respond.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
4. In view of the allegations made, the Working Group would have welcomed the cooperation of the Government. Notwithstanding the absence of official information, the Working Group believes that it is in a position to render an Opinion, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. The source alleges that Ms. Natalia Tangarife Avendaño, born on 24 January 1981, resident in Medellín; Mr. Juan David Ordóñez Montoya, born on 28 May 1977, resident in Medellín; Mr. Juan David Espinoza Henao, born on 7 September 1982, resident in Medellín; Mr. Juan Camilo Mazo Arenas, born on 21 November 1986, resident in Medellín; Mr. Carlos Andrés Peláez Zapata, born on 6 February 1982, resident in Medellín; Mr. David Esneider Mejía Estrada, born on 26 February 1984, resident in Envigado; Mr. Andrés Mauricio Zuluaga Rivera, born on 7 January 1985, resident in Itagui; and Mr. Yeison Arlet García Pérez, born on 5 November 1985, resident in Medellín, all university students of Colombian nationality, were arrested in the early hours of 5 May 2005 in simultaneous raids on their homes by members of the National Police. The arrests were made, with the stipulation that the students should be held in pretrial detention without the possibility of bail, under warrants issued by Prosecution Office 51 at the Criminal Court of the Medellín Special Circuit assigned to the National Police's Special Counter-terrorism Squad (CEAT).
6. Some of the arrestees are leaders of the General Student Assembly of Antioquia University. Others are students who were injured during the events in the University on 10 February 2005. On that date, students held a day of protest against negotiations on a free-trade agreement with the United States of America. When members of the National Police's Mobile Anti-Riot Squadron (ESMAD) fired buckshot and teargas at the demonstrators, a group of hooded persons threw stones and low-power explosive devices ("explosive potatoes") at the police officers.
7. At 12.10 p.m. there was a loud explosion in the chemistry laboratory and first-floor corridor of Block 1 on the campus, where the hooded persons were preparing their explosive devices. As a result, two female students died from burns and an undetermined number of

other people who were in the vicinity of the explosion were injured, some of them seriously. Some of the injured were taken to the university infirmary and 17 others to the municipal outpatients' clinic.

8. The source states that Special Prosecution Office 51 in Medellín is not an independent judicial organ. It is located within the CEAT site, a fact which limits not only its independence but also the possibility of access by victims and witnesses to make statements and testify free from pressure, fear or additional risk. Its staff are prosecutors assigned to the forces of law and order.

9. The source states that, in keeping with an internal instruction, the Office of the Attorney-General usually assigns criminal investigations to a prosecutor unconnected with the police investigation and independent of the security services. In the case in question, however, the CEAT commander expressly asked for the criminal investigation to be carried out by Special Prosecution Office 51 assigned to his unit. By memorandum 0509/CEAT-MEVAL of 12 April 2005, the head of CEAT in Medellín explicitly requested that the investigation be entrusted to Special Prosecution Office 51 assigned to CEAT, thereby giving rise to different and discriminatory treatment of the detained students.

10. The source alleges that detention of the students was unnecessary, disproportionate and unreasonable. No evidence has been presented to link the detained students with the above-mentioned guerrilla groups and the only thing that the criminal investigation has shown so far is that the students were victims of, and injured in an accidental explosion.

11. There can be no question of terrorism, since the explosion was an accidental, chance event. Nor, since there is no correlating factor between the explosion and the constituent elements of the offence, can there be any question of rebellion. Still less can there be any question of aggravated theft because of the mere disappearance of a few keys from university premises.

12. The source considers that, the students being subject to judicial proceedings that are not impartial and to discriminatory conditions, their rights to personal liberty, judicial safeguards and due process have been violated.

13. The source provided the Working Group with the text of the decision of the Third Prosecution Office of the Medellín High Court on the appeal made against the warrants for the students' arrest.

14. The source states that the prosecution office which ordered the arrests in May 2005 was not independent, since it was designated by name and specifically to investigate the acts in question, whereas, under the standard procedure provided for in an internal instruction from the Attorney-General, the case should have been given to the prosecutor who was first on the roster for assignment.

15. The source adds that the office entrusted with the investigation, Special Prosecution Office 55 in Medellín, cannot be considered an independent body, since it is located within the premises of CEAT.

16. As different prosecution office, the Third Prosecution Office of the Medellín High Court, examined the detainees' appeal, it may perhaps be considered that there was compliance with article 14, paragraph 1, of the International Covenant on Civil and Political Rights, according to which it is as essential part of the definition of a fair trial that detainees should be able to appeal their detention to an independent judicial organ.

17. However, even if the fact that the investigation was made by a body of questionable independence from the Government did not result in violation of the principle of a fair trial, inasmuch as the students were able to contest their detention before an independent agency, there were other procedural irregularities that must be taken into account.

18. The students have been in prison for over 15 months without having been formally charged with specific offences to justify their detention. The accusations against them are generic and relate principally to the explosion that occurred in May 2005 in the laboratory at Antioquia University. Even the prosecutor of the Medellín High Court recognizes that the explosion was accidental, despite holding that its ultimate cause was the fact that some hooded persons - who the investigating prosecutor apparently thinks included some of the detainees - were making "explosive potatoes" for use in fighting off the attempts of the National Police to break up a university protest against the free-trade agreement between Colombia and the United States of America.

19. Article 14 of the International Covenant on Civil and Political Rights provides, in paragraph 3 (a), that everyone is entitled to be informed promptly of the nature and cause of the charge against him. That requirement has not been met in the present case, since after 15 months' detention no formal, individualized charges have been brought.

20. Article 14, paragraph 3 (c), provides that everyone is entitled to be tried without undue delay. In determining what constitutes undue delay, account must be taken of the nature and characteristics of the acts in question, which exhibit no particular complexity that might justify delay or inactivity in the process of investigation.

21. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Natalia Tangarife Avendaño, Juan David Ordóñez Montoya, Juan David Espinoza Henao, Juan Camilo Mazo Arenas, Carlos Andrés Peláez Zapata, David Esneider Mejía Estrada, Andrés Mauricio Zuluaga Rivera and Yeison Arlet García Pérez is arbitrary, and contravenes article 14, subparagraphs 3 (b) and (c), of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Having rendered this Opinion, 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.

Adopted on September 2006.