

No. 30/2010 (Colombia)

Communication addressed to the Government on 26 July 2010

Concerning: Edison Palomino Banguero

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the 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 give the deprivation of liberty an arbitrary character (category III).
3. The case summarized hereinafter was reported by the source to the Working Group on Arbitrary Detention as follows:
4. Edison Palomino Banguero, a 30-year-old Colombian national, the President of the Skilled Workers Union (SINTRAOVA), a municipal councillor in the municipality of Arauquita since 2000, a former enumerator for the National Department of Statistics (DANE) in 2000 and the former secretary of the Arauquita municipal council in 2000 was first arrested on 2 March 2003 in Arauquita by troops from the national army and held for 11 hours together with other members of SINTRAOVA who were taking part in a meeting. On that occasion, their names, given names, addresses and telephone numbers were taken.
5. On 11 July 2003, Palomino Banguero was arrested for a second time at 2 p.m. and again held for 11 hours in a cell at Arauquita police station.
6. On 9 August 2004, Palomino Banguero was again arrested when national police officers under the orders of Corporal John William Nogera Varga went to pick him up at the Municipal Technical Assistance Unit (UMATA) in Arauquita, where he was working. The union secretary, Juan Carlos Rueda, was also arrested and taken to Arauca prison where he was charged by the Special Prosecutor under charge No. 63141, in which he was charged jointly with Palomino Banguero on the

basis of a testimony from a former member of a guerrilla group who had been reintegrated into society. Both Palomino Banguero and Rueda were cleared of the charges on 22 December 2006.

7. On 12 January 2008, Palomino Banguero was yet again arrested at his home at 6 p.m. At no point did the authorities who arrested him present an arrest warrant or any other type of decision issued by a public authority; this seriously undermined his right to be informed of the grounds for his arrest. Four hours after his arrest, at 10 p.m., he was told that he had been arrested on the basis of an arrest warrant issued against him on charges of rebellion, extortion and conspiracy to commit an offence. An application for conditional release was turned down in first instance and on appeal.

8. The source considers that the arrest and detention of Edison Palomino Banguero is arbitrary and contrary to the Constitution of the Republic of Colombia, articles 18, 28, 29, 30, 38 and 40 of which guarantee the rights to individual liberty and security, to freedom of conscience, opinion and expression, to freedom of association, to due process, to invoke habeas corpus and to participate in the control of political power. It is also contrary to articles 3, 8, 9, 10, 11 and 12 of the Universal Declaration of Human Rights and articles 6, 9, 10, 14 and 15 of the International Covenant on Civil and Political Rights, to which Colombia is a party.

9. The Working Group was subsequently informed that Palomino Banguero was released without charges in April 2010, after having spent more than 2 years in detention in Arauca.

10. Accordingly, the Working Group decides to file the case under the terms of paragraph 17 (a) of its methods of work.

[Adopted on 25 November 2010]