

DECISION No. 46/1996 (PERU)

Communication addressed to the Government of Peru on
20 February 1996.

Concerning: María Elena Loayza Tamayo, on the one hand, and the
Republic of Peru, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 37/1996.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case.
5. The Working Group considers that:

(a) According to the source, María Elena Loayza Tamayo, professor at San Martín de Porres University, was arrested on 6 February 1993 by agents of the Anti-Terrorism Department (DINCOTE). She was accused of the crime of terrorism, on the basis of a denunciation made under the Repentance Law by a student at the same university who had been preparing a thesis under the guidance of Ms. Loayza and who had been arrested previously. The precise charge is militancy of behalf of Sendero Luminoso and, specifically, being the militant known as "Rita", an important leader of this group. Although the statements made by the student were not verified as required by law, the professor was arrested, accused and sentenced. She was held incommunicado for 10 days and, according to the allegations, was raped and ill-treated. She was initially accused of the crime of betraying the country before the Special Naval Court under military law, which acquitted her in first instance on 5 March 1993; on appeal by the Military Prosecutor she was sentenced to 30 years' imprisonment - a sentence which was set aside by the Supreme Council of the Military System of Justice (24 September 1993), which ordered her to be tried by the ordinary courts for the crime of terrorism. The trial took place before the 43rd Provincial Court in Lima and she was sentenced by the "faceless" court to 20 years imprisonment for this offence. Appeal proceedings were initiated before the Supreme Court of Justice. The communication maintains that the accusations are unfounded and that Ms. Loayza is not a member of Sendero Luminoso, that she has always criticized their activities, and that the alleged "Rita" is someone quite different whom it has not been possible to arrest. It is maintained that, during the second trial, the ordinary court did not have before it the evidence presented by the defence.

(b) Having been consulted, the Government confines itself to answering as follows: "It was stated that the custodial penalty of 20 years for the crime of terrorism could not be set aside".

(c) The communication alleges a series of procedural irregularities, such as arrest without a warrant in a case not involving flagrante delicto; arbitrary detention incommunicado; denial of real access to a lawyer, since the lawyer only made a token appearance when she was questioned; and trial by a "faceless" court which failed to ensure the necessary guarantees of independence and impartiality.

(d) The Working Group has received an invitation from the Government of Peru to visit the country. This visit is of vital importance for the adoption of a decision in this case, since it will be possible to evaluate the functioning of the so-called "faceless" tribunals and the guarantees of due process of law which they might have been violated, even if the explanations provided by the Government are valid.

(e) The Group has received many communications alleging discrepancies between Act No 25.475 and international human rights instruments, a matter on which the Group will issue a statement after its visit to Peru.

(f) As on previous occasions, the Group decided to leave the decision on this case pending until after its visit to Peru, which will provide it with the necessary background information, in accordance with its methods of work.

6. In the light of the above the Working Group decides to keep the case pending until it has carried out its planned visit to the Republic of Peru.

Adopted on 3 December 1996.