

OPINION No. 18/1997 (Peru)

Communication addressed to the Government on 14 July 1997

Concerning: **Gustavo Adolfo CESTI Hurtado**

Peru is a party to the International Covenant on Civil and Political Rights

1. The Working Group on arbitrary detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above_mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90_day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the total or partial non_observance of the relevant 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 confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the latter, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Gustavo Adolfo Cesti Hurtado was arrested on 28 February 1997 by order of a military court (which is not mentioned by name) and detained at the Simón Bolívar Military Barracks. Anticipating his arrest, Cesti had previously lodged an appeal of habeas corpus, on the grounds that he felt threatened in his right to personal liberty, which was duly received by the competent court.

6. When he was arrested, the Thirtieth Criminal Court of Lima ordered his immediate release, considering the deprivation of liberty to be illegal. Nevertheless, Cesti is still detained by order of the Military Court, which considers itself competent on the grounds that Cesti is retired from the army.

7. The Peruvian Ombudsman considered that the Military Court's procedure was arbitrary and ordered the ruling given on the habeas corpus appeal to be given effect.

8. Moreover, according to the complaint, the imprisonment is supposed to be based on the fact that the detainee publicly denounced a misappropriation of public funds in a 90_per_cent State_owned enterprise.

9. When the Government of Peru was consulted regarding the facts of the complaint, it did not provide any information, nor did it request the Group to extend the deadline for its reply.

10. In the circumstances, the Group considers only the following facts to be established: (a) that Cesti Hurtado was arrested on 28 February 1997; (b) that he is accused of having denounced a common offence; (c) that a court order has been issued for his release and has not been implemented.

11. The Government has not reported any type of offence which may be attributed to Cesti.

12. That the Group for the time being does not have sufficient information on the basis of which to evaluate Cesti's misappropriation complaint, which might be remedied in the course of its visit to Peru in January and February 1998.

13. That the failure to obey a release order issued by a competent judge, maintaining a person deprived of liberty, constitutes a contravention of international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, of such gravity as to give the deprivation of liberty an arbitrary character.

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

(a) The deprivation of liberty of Gustavo Adolfo Cesti Hurtado is arbitrary, as being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group;

(b) In the course of its visit to Peru, the Group will assess whether, furthermore, the detention is arbitrary as a case which might fall within category I and/or category II of its working methods.

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

Adopted on 28 November 1997.