

DECISION No. 26/1998 (PERU)

Communication addressed to the Government on 29 February 1996

Concerning Lori Berenson

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

1. The Working Group on Arbitrary Detention, in conformity with its methods of work 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 a complaint of arbitrary detention said to have taken place in the country concerned.
2. The Working Group notes with appreciation the information forwarded by the Government in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.
3. In reaching its decision, the Working Group considers whether the case in question falls within one or more of the following categories:
  - (i) When deprivation of liberty is arbitrary because it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an amnesty act applicable to the person in question) (category I);
  - (ii) When deprivation of liberty is the result of judicial proceedings or a sentence consequent upon the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights or in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial infringement of international standards relating to a fair trial 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 complaint made, the Working Group welcomes the cooperation of the Government concerned. The Working Group is in a position to take a decision on the facts and circumstances of this case, taking into account the complaint made and the Government's reply.
5. In its Opinion No. 45/1996, the Working Group decided to leave the case pending until after the planned visit to Peru, which would provide it with the necessary background information to enable it to reach an opinion in accordance with its methods of work. The visit to Peru did indeed enable it to obtain the background information it needed to render an opinion, as is clear from the relevant report.

6. The Working Group considers that:

(a) Lori Berenson, an American citizen interviewed by the delegation of the Working Group during the visit, was sentenced on 11 January 1996 by a secret military court to life imprisonment for the crime of treason. She stated that she was kept for more than five weeks in solitary confinement, without access to a lawyer, and that during this time she was subjected to intensive psychological manipulation;

(b) The Government stated that Lori Berenson was arrested on 30 November 1995 together with other persons, during an armed clash between members of the Tupac Amaru Revolutionary Movement and the police, at a time when the former were preparing to break into the National Congress in order to take some of its members hostage and thereby obtain the freedom of other militant members of the group. It confirmed that Ms. Berenson was tried by a military court, which fully respected the rules of due process, and was sentenced for the crime of treason, covered by and punishable under Decree-Law No. 25,659, before the reforms that entered into force in October 1997;

(c) In its report on the visit, the Working Group presents an extensive analysis of the functioning of faceless courts, and particularly military courts, whose decisions cannot be challenged and which, up to October 1997, handed down their judgements following secret hearings and with minimum defence guarantees. Such trials, in the Working Group's opinion, constitute such a serious violation of the rules of due process as to confer on the deprivation of liberty an arbitrary character, in conformity with category III of its methods of work.

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

The deprivation of liberty of Lori Berenson is arbitrary since it is contrary to articles 8, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Having rendered this opinion, 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 3 December 1998