

OPINION No. 24/1998 (PERU)

Communication addressed to the Government on 20 September 1993

Concerning Carlos Florentino Molero Coca

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 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. 24/1994, the Working Group decided to leave the case pending until it had received more information from both the source and the Government. Subsequently, in January and February 1998, a delegation of the Working Group visited Peru and obtained the background information it needed to render an opinion, as is clear from the relevant report.

6. The Working Group considers that:

(a) Carlos Florentino Molero Coca, a university student interviewed by the delegation of the Working Group in Castro Castro prison, was arrested on 30 April 1992 and charged with

membership of the Sendero Luminoso movement. He was tried by a faceless civil court and sentenced to 12 years' imprisonment, which he is currently serving. According to the submission, he is innocent, since there was insufficient supporting evidence, he was sentenced for a crime he had not been charged with and no decision has been reached in an appeal for annulment;

(b) The prisoner told the delegation that: "DINCOTE pressed me to accuse my father of crimes, but I could not do that since I know that my father has not committed any crimes." He also said, "On top of that, I was tortured during the first few days of my arrest at DINCOTE" and, finally, "The charge against me was based on presumption, because I am at San Marcos University. The strongest evidence that I do not belong to that group is that I am kept away from the two political groups in this prison";

(c) From the information provided by the Government and that collected during the visit, it is apparent that the judgement at first instance, sentencing him to 12 years in prison, was confirmed in October 1993 by the Supreme Court, and that he had a lawyer, in the person of his own father;

(d) The Working Group, as it has maintained on numerous occasions, cannot comment on the innocence or otherwise of a person deprived of liberty;

(e) In its report on the visit, the Working Group presents an extensive analysis of the functioning of the faceless civil and 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 Carlos Florentino Molero Coca 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