

OPINION No. 23/1998 (PERU)

Communication addressed to the Government on 4 May 1994

Concerning Pablo Abraham Huamán Morales*

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 concerned 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. 42/1995, the Working Group decided to leave the case pending until it had received more information from both the source and the Government. Subsequently, in

* On 22 January 1999, the Peruvian authorities informed the Working Group that Mr. Huamán Morales had been pardoned by Presidential Decree of 6 June 1998 and released. This information had been made available to the Office of the High Commissioner for Human Rights on 10 June 1998; regrettably, the Working Group was unaware of this information when it adopted the present Opinion.

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. The delegation had a meeting with Mr. Huamán in Castro Castro prison in Lima.

6. The Working Group considers that:

(a) According to the complaint, Pablo Abraham Huamán Morales was arrested with two of his brothers and a sister on 15 October 1992; they were all committed for trial on charges of terrorism by the forty-third Provincial Procurator's Office in Lima. In due course, the Working Group was informed by the Government that his brothers, Luiso Rolo and Julián Oscar, had been released. During the visit, at the meeting with Pablo Abraham, the release of his sister, Mayela Alicia, was confirmed, leaving him the only one deprived of his liberty;

(b) During his stay at DINCOTE, which lasted 15 days, he was represented by an officially appointed lawyer whom he had never seen before the trial, who did not speak at the trial and whom he never saw again. He was tried by a faceless civil court and sentenced to 20 years' imprisonment for collaborating with terrorists. The Supreme Court, which was also faceless, confirmed the judgement;

(c) A decision on his case by the ad hoc committee on reprieves and pardons (described in the report on the Working Group's mission to Peru) is now pending;

(d) In its report on the visit, the Working Group presents an extensive analysis of the functioning of the faceless civil and military courts 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. The trial of Mr. Huamán predates the reform that entered into force in October 1997.

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

The deprivation of liberty of Pablo Abraham Huamán Morales 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