

OPINION No. 25/1998 (PERU)

Communication addressed to the Government on 20 February 1996

Concerning Margarita M. Chiquiure Silva

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. 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. 34/1996, 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 render 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. The delegation of the Working Group had a meeting with Margarita Chiquiure in Chorrillos prison.

6. The Working Group considers that:

(a) Margarita M. Chiquiure Silva, a lawyer, was arrested on 28 February 1994 while leaving a judicial meeting she had been attending in the exercise of her professional duties, which consisted of no less than the defence of her own 14-year-old daughter. Accusations had been made against her daughter by a prisoner taking advantage of the Repentance Act, who linked her to Sendero Luminoso. In fact, according to the account given by Ms. Chiquiure to the delegation, the alleged “informer” never linked either her or her daughter to Sendero Luminoso, despite being tortured. The alleged informer had himself been in prison for more than three years as a result of allegations by another “informer”;

(b) The Government stated that an appeal was pending in the Supreme Court against the lawyer’s sentence of 20 years’ imprisonment for the offence of terrorism. The Working Group observed that the appeal had been rejected by the Supreme Court in July 1997 and the sentence upheld. Both the High Court and the Supreme Court had operated as faceless courts;

(c) 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 of such gravity as to confer on the deprivation of liberty an arbitrary character, in conformity with category III of its methods of work. Perhaps one of the cases that best illustrates these irregularities is that of the lawyer Margarita Chiquiure, as recorded in paragraph 67 of the report on the mission:

“67. The Working Group received complaints that the system was a source of injustices: one person sentenced to 20 years’ imprisonment said that the voice-distorters ‘only made noise. I never heard the questions; I asked them to repeat them for me, but I don’t know whether they did so’ (Margarita Chiquiure, Santa Monica prison, quoted by permission).”

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

The deprivation of liberty of Margarita Chiquiure Silva 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