

OPINION No. 10/2000 (PERU)

Communication addressed to the Government on 21 June 1999

Concerning Mirtha Ira Bueno Hidalgo

The State 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, which extended and clarified its mandate in resolution 1997/50 and reconfirmed it in resolution 2000/36. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.
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 in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, 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 non-observance of the international standards relating to a fair trial set forth 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. The Group welcomes the Peruvian Government's prompt and complete reply to its request and the final comments of the source.
5. According to the complaint, Mirtha Ira Bueno Hidalgo, a university student, was detained in Lima on 10 August 1990, without being caught in flagrante and without an arrest warrant. She was tried for terrorism-related offences by the High Court of Lima, found innocent and released on 20 July 1991. However, the Office of the Public Prosecutor lodged an appeal for annulment with the Supreme Court of Justice, which was accepted and a new trial ordered. In this connection Mirtha Bueno was detained a second time on 15 November 1995. A new trial was conducted by the High Court of Lima, Special Division for Terrorism-Related Offences. She was sentenced to 12 years' deprivation of liberty on 20 March 1996, and her sentence was upheld by the Supreme Court of Peru on 21 July 1997.

6. The complaint maintains that the deprivation of liberty was arbitrary because when she was detained on 10 August 1990 she was not caught in flagrante and no arrest warrant was issued, that no weight was given to evidence exonerating her and that she was tried by a “faceless” court.
7. In its reply, the Government states that the trial and conviction of Mirtha Bueno does not constitute an arbitrary deprivation of liberty, as Ms. Bueno was tried by a competent, independent and impartial tribunal, and that it is not for the Working Group to evaluate the evidence used by a national court in handing down a conviction.
8. The Group would like to note, first of all, that the case at hand does not involve an infringement of the principle non bis in idem, as the communication appears to maintain. In reality, there was only one trial, as the trial which the communication refers to as a “new trial”, as opposed to a “first trial”, did not result in a final acquittal: the acquitted was revoked and a continuation of the trial ordered, eventually resulting in a conviction.
9. Furthermore, the Group shares the Government’s view that the Group’s mandate does not authorize it to act as an additional body for evaluating anew the evidence processed by national courts. It has stated as much on numerous occasions, especially in cases of communications from sources in Peru.
10. It is true that the trial which resulted in Mirtha Ira Bueno’s conviction was carried out by a “faceless” court, or a court protected from publicity, for reasons which the Peruvian Government qualifies as security-related.
11. In this respect, the Group can only reiterate its conviction regarding the serious incompatibilities raised by the system of anonymous judges introduced in Peru by Act No. 25,475, which was in force from 1992 to 1998, to which it referred in its mission report (E/CN.4/1999/63/Add.2, paras. 65 to 68, 83 to 92 and 133 and 134). In the Group’s opinion, the violation of the rules of due process of law represented by this exceptional system of justice is of such gravity that it confers in itself an arbitrary character on the deprivation of liberty, in conformity with category III of the Group’s principles for consideration of the cases submitted to it.
12. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mirtha Ira Bueno Hidalgo is arbitrary since it is contrary to article 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.
13. 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 17 May 2000