

OPINION No. 9/2000 (PERU)

Communication addressed to the Government on 30 June 1999

Concerning César Sanabria Casanova

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 detailed information provided by the Government in response to the Group's request.
5. According to the complaint, César Sanabria Casanova was detained on 23 July 1992 near his home in Villa El Salvador, Lima, while walking to the home of the director of the school where he taught in order to suggest a social activity to be held the following day. He was alone when detained, but the police report states that he was detained together with a Sendero Luminoso militant, carrying subversive material. He was tried by a "faceless" civil court and sentenced to 30 years' rigorous imprisonment, which the Supreme Court reduced to 25 years. According to the complaint, among the grounds for the sentence was the fact that the courts considered Mr. Sanabria to have used his teaching activities to engage in propaganda for Sendero Luminoso.

6. The complaint cites various grounds on which the detention may be considered arbitrary: (a) detention without a warrant in a case where the accused was not arrested in flagrante delicto; (b) inappropriate assessment of the incriminating and exculpatory evidence; (c) lack of availability of an effective remedy to challenge the detention, as those provided by law had been suspended by the anti-terrorism laws; (d) trial by a “faceless” court.

7. In its reply, the Government maintains that none of Mr. Sanabria’s human rights have been violated, as the entire proceedings have been conducted in full compliance with the legislation in force, and transcribes the norms applicable to the case.

8. In the Group’s opinion, first, it is not in a position to decide whether Mr. Sanabria was detained in flagrante delicto. The offence for which he was prosecuted is that of conspiracy to commit terrorism, which involves ongoing commission of the crime and, therefore, an ongoing situation of flagrante delicto.

9. As it has repeatedly stated in opinions concerning Peru, the Group must again stress the following: it is not within the Group’s mandate to evaluate evidence, nor is it in a position to do so. Deprivation of liberty is arbitrary depending on whether it falls into one of the three categories included in the Group’s methods of work.

10. In its report on the mission to Peru the Group cites as a “highly positive” development in Peruvian legislation the fact that the right to habeas corpus “cannot be suspended during states of emergency” (E/CN.4/1999/63/Add.2, para. 125). It is true that it was in fact suspended from 1993 (after Mr. Sanabria’s detention) to 1996, but it was later re-established, hence this section of the communication has to be disregarded.

11. Finally, as it has stated in previous opinions, the Group repeats that deprivation of liberty handed down by a faceless court, pursuant to Act No. 25,475, is contrary to the rules of due process of law (*ibid.*, paras. 65 to 67 and 134).

12. In accordance with the contents of paragraphs 9 and 12 above, the Group considers that Mr. Sanabria’s detention is arbitrary, since it falls within category III of the principles for the consideration of cases submitted to the Group.

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

The deprivation of liberty of César Sanabria Casanova is arbitrary since it is contrary to article 10 of the Universal Declaration of Human Rights and article 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.

14. 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