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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 57/2016 concerning Edith Vilma Huamán Quispe (Peru)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 20 June 2016 the Working Group transmitted a communication to the Government of Peru a communication concerning Edith Vilma Huamán Quispe. The Government replied to the communication on 19 August 2016. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Edith Vilma Huamán Quispe, a national of Peru born on 6 May 1967, is an artisan entrepreneur who lives in Huamanga, Ayacucho (Peru) She is a member of the indigenous community.

5. The source reports that on 15 October 2005, at 6.00 a.m., Ms. Huamán Quispe and her daughter, who has a disability and was not feeling well, set off to visit the pharmacy. On arrival at the pharmacy, they were apprehended by a man emerging from a white car and claiming to be a public prosecutor, together with several other men in civilian attire who were not identified. No arrest warrant was shown, nor was she informed orally of the reason for her arrest. The men tried to force the victim into a car, but they were not successful because the locals of the neighbourhood helped her to resist their efforts. According to the source, the victim was beaten several times and the incident looked more akin to a kidnapping than an arrest carried out by the competent authorities.

6. The incident went on until 11.00 a.m. the same day, when a public prosecutor arrived at the scene, two police surveillance vehicles showed up and most of the men in civilian attire disappeared. The new arrivals informed the victim that she was under investigation at Santa Anita police station in Lima. The source maintains that at the time of the victim's arrest the authorities showed no warrant, order or document of any kind to prove that the arrest was lawful. One of neighbourhood locals, who was a lawyer, repeatedly asked the police to take the victim to a forensic physician. When they reached the surgery, the doctor had the victim sign a form and told the police to return in two days' time as it was a Saturday. The victim was then taken directly to Santa Anita police station in Lima, around five hours after the fact.

7. According to the source, the victim remained at the police station for two hours and gave her statement in a state of shock and under pressure. Her lawyer arrived subsequently. The incident described above was logged as if the victim had been arrested on public disorder grounds. The source alleges that when they arrived at the police station, the officer in charge informed the victim that she had been accused of illegal drug trafficking and was being investigated by one of Lima's criminal courts. During this process she was denied the right to receive adequate assistance from her lawyer, and the authorities also refused to let her call another lawyer. The source states that the victim was not able to contact a lawyer of her choice until several days after the incident.

8. The source alleges that Ms. Huamán Quispe was victim of a "planting" of evidence, or, in other words, an unlawful intervention in which a police officer forcibly places drugs or some other object in a victim's possession in order to be able to charge them with an offence or aggravate an existing offence.

9. According to the submissions received, on Monday, 17 October 2005, at 8.00 a.m., the victim was taken to the fifty-first criminal court of Lima to give her preliminary statement. The victim was transferred without having been given food and without having received adequate medical care to treat the injuries sustained during arrest. The file on the victim's medical history that was put together in Santa Mónica prison contains evidence of the beatings she had received. The source also maintains that some of the officials attached to the fifty-first criminal court of Lima who were involved in the case at this time were disciplined following the disappearance of evidence submitted by Ms. Huamán Quispe. However, this fact was not taken into account by the judges who subsequently sentenced the victim.

10. According to the submissions received, the victim's arrest was supposedly linked to events that occurred during a police operation on 7 March 2005, during which around 13 persons were identified, although the source specifies that the victim herself was not arrested during this operation. According to the authorities, witnesses testified that the victim was carrying 2.5 kg of drugs in a suitcase from her home village of Ayacucho to a bus terminal operated by the León of Huánuco bus company. As evidence of this, the authorities submitted a bus ticket bearing the victim's name. The supposed witnesses also maintain that, on the day of the offence, the victim was not seen by the police officers who carried out the operation, despite being the alleged supplier of drug consignments totalling 6.3 kg that were seized from 17 persons by the special unit of the National Police's anti-

drug division. Although the allegations made against the victim suggest that she was involved in this offence, the source points out that, at the time of the events, she was in her village, Ayacucho, celebrating Easter. Lastly, the source notes that, of the 17 persons charged, only 3 were convicted.

11. In May 2005, the report on this offence was logged with the Provincial Prosecutor's Office. On the same date, the on-call Lima criminal judge was seized of the case and issued an arrest warrant against the victim.

12. In October 2005, the case was transferred to the fifty-first Lima criminal court for examination of the evidence submitted. During these proceedings, the victim submitted proof of her innocence and asked the judge to grant a change to her detention order. Her request was refused even though it met legally-established requirements. The court also acted in violation of due process, since the victim was not allowed to call witnesses and other evidence submitted was not duly examined. Consequently, after three years of court proceedings, on 9 May 2008, in the first criminal chamber dealing with imprisoned defendants, the victim was sentenced to 20 years' imprisonment for illegal drug trafficking pursuant to article 297 of the Criminal Code of Peru. The source specifies that article 297 of the Criminal Code of Peru was invoked despite the fact that the case did not involve more than 10 kg of drugs, as was required for this article to be applicable, and that there was no consensus between the three prisoners who were convicted and no indication that they even knew each other.

13. The victim challenged the conviction and filed an appeal for annulment. The appeal was heard before the permanent chamber of the Supreme Court, which upheld the sentence. Lastly, the victim filed three habeas corpus petitions related to her arbitrary deprivation of liberty and the violation of due process, but her applications were all declared inadmissible.

14. The authorities of the prison in which the victim was being held ordered that her medical treatment be suspended without specifying the reasons, thereby ignoring her health problems. They also moved her to a prison wing in which she has to contend with persons with mental disorders. The source states that the victim is still being held in this wing even though she has never once been disciplined for misconduct in 10 years of deprivation of liberty.

15. The source alleges that there was a violation of due process in the victim's case under categories III and V of the applicable circumstances for the consideration of cases by the Working Group on Arbitrary Detention.

Response from the Government

16. The Government of Peru notes that it has not received the communication of the alleged victim; it has received only a summary of the facts (contrary to the provisions of paragraph 15 of the Working Group's revised methods of work). This situation constitutes a violation of the Government's right of defence as it prevents it from disproving or raising pertinent observations in connection with the claims made in the alleged victim's written statement.

17. The Government of Peru is thus placed in a position of defencelessness and for this reason requests sight of the aforementioned communication and any other related document or annex. Until this request is satisfied, the Government reserves the right to raise and substantiate further questions and/or considerations (in addition to those already raised and substantiated) on various aspects of this case.

18. The elements of the victim's complaint that are unrelated to her deprivation of liberty or arbitrary detention cannot be subject to analysis by the Working Group on Arbitrary Detention, but should be referred to the Council.

19. With regard to the alleged lack of evidence against the alleged victim presented in the judicial proceedings, the Government refers to the views expressed by the Working Group in its opinion No. 10/2000 (Peru). This opinion confirms that evaluating anew evidence processed in criminal proceedings to assess whether or not an alleged victim is guilty is not part of the Working Group's mandate.

20. The Government of Peru is of the view that Ms. Huamán Quispe's detention was not arbitrary. With regard to the alleged existence of a case of arbitrary detention falling under

category III, there has been no failure to observe the international norms relating to the right to a fair trial of such gravity as to give the deprivation of liberty an arbitrary character.

21. In accordance with the international standards to which the Working Group refers, a person can be lawfully deprived of liberty only on grounds established by law and in accordance with the procedures set out in law.

22. The Government of Peru maintains that national legislation, including the Constitution of 1993, does not run counter to international human rights norms when it comes to determining whether or not a detention is arbitrary.

23. A person may be detained either upon presentation of a written court order setting out the reasons for arrest or if caught in flagrante delicto. Moreover, under article 79 of the Code of Criminal Procedure, a court-issued detention order is expressly required by law in cases of illegal drug trafficking, demonstrating the existence of prior law authorizing the detention order issued against the victim.

24. There are also three fixed prerequisites for obtaining a court-issued detention order: sufficient evidence; an estimate of the number of years of the corresponding sentence; and a high possibility of the suspect attempting to escape justice. All these issues would have been considered by the competent judicial body prior to issuing the detention order.

25. It is noted that it appears from both the police report and the criminal charges that the victim was not present and, therefore, could not have been aware of the investigation.

26. When the charges of drug trafficking were laid before the Provincial Prosecutor's Office, the fifty-first criminal chamber of Lima High Court of Justice issued a detention order against the alleged victim.

27. It can thus be seen that the provisions of the Constitution of Peru concerning cases of court-ordered detention — which provisions conform to international human rights norm — have been respected, demonstrating that Ms. Huamán Quispe's detention was not arbitrary.

28. The Government considers that the Working Group's decision No. 10/1994 (Tunisia) should be taken as a precedent.

29. After examining the present case, the Government concludes that the first ground for claiming arbitrary detention must be rejected, since the detention was authorized, according to the source himself, by a court order issued by the fifty-first criminal chamber of Lima High Court of Justice, judicial proceedings having been instituted before the first specialized chamber for trials involving imprisoned defendants attached to the same High Court. The second grounds for claiming arbitrary detention must also be discarded as the deprivation of liberty has not been associated with the legitimate exercise of any of the rights mentioned in paragraph 3 (b) above. The third ground claimed should also be dismissed because there was no failure to observe international norms relating to the right to a fair trial.

30. These same criteria have been taken into consideration by the Working Group in other cases concerning the State of Peru, including, for example, decision No. 21/1994 (Peru), in which the Working Group found the detention to be arbitrary because of the "suspension of the proceedings for such a long time, failure to designate the court that is to hear the case and the legal impossibility of arranging release on bail". Since these circumstances did not apply in the case of the alleged victim, the detention cannot be deemed arbitrary in this case.

31. In the present case, an appeal was filed on the victim's behalf against the detention order issued by the fifty-first criminal chamber of Lima High Court of Justice. This appeal, dated 23 May 2006, challenged the order declaring inadmissible the request for a change to the detention order. Thus, the alleged victim had the opportunity to challenge her detention through the corresponding judicial channel.

32. Among the facts set out in the communication it is mentioned that on 15 October 2005 a group of unidentified men attempted to arrest the alleged victim without showing a warrant or informing her of the reasons for her arrest. It is also reported that at 11.00 a.m. a public prosecutor arrived at the scene and informed her that she was under investigation at Santa Anita police station in Lima, but that he did not show an arrest warrant.

33. The Human Rights Committee has stated that the specific requirements associated with the right of all persons to be informed, in a language they understand, of the charges against them may be met by stating the charges either orally or in writing, provided that the information provided includes both the law and the alleged facts on which they are based.

34. The Committee has also indicated that the specific requirements may be met by stating the charge either orally — if later confirmed in writing — or in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based.

35. In the present case, the alleged victim was informed orally of the reasons for her detention, according to the summary of the facts and has not indicated that she was not provided with information in writing. The Government has shown that there was a written detention order and that the alleged victim was brought promptly before a judge to give her statement.

36. In previous cases relating to Peru (decision No. 7/1992 (Peru)), the Working Group has found that, even if the police acted without a prior arrest warrant, if the person in question was subsequently brought before the court, the detention is not deemed arbitrary.

37. Article 139 of the Constitution of Peru recognizes the principle that no person may be deprived of their right to a defence at any stage of the proceedings. The Code of Constitutional Procedure also recognizes the existence of this right, noting that violations of the right could be the subject of habeas corpus proceedings.

38. The complainant asserts that, after being transferred to Santa Anita police station, she gave her statement under pressure and without her lawyer, who she was not able to contact until several days later. It should be specified that the alleged victim had the option of filing an application for habeas corpus, specifically in relation to the absence of a lawyer, but that she did not do so.

39. The facts described indicate that the alleged victim was able to receive assistance from a lawyer of her choice within a matter of days. Thus, although she did not have a defence lawyer present when she gave her first statement, when giving subsequent statements during the criminal proceedings, in which she stood by the version of events given in her first statement, she was assisted by a defence lawyer.

40. It should be emphasized that the determining factor in the alleged victim's conviction was not her first statement, or at least that this has not been demonstrated by the party. It follows, therefore, that, while the absence of a lawyer could constitute an abuse of process, this is not of such significance as to justify either the claim that her rights have been violated or the annulment of the sentence imposed. This approach was also adopted by the Constitutional Court of Peru in its judgment on case No. 06442-2007-PHC/TC.

41. Thus, it can be concluded that the fact that the alleged victim apparently lacked counsel, though only during her first statement before the police, did not affect the subsequent development of the trial and had no bearing on her arrest or detention, and, accordingly, that international norms relating to the right to a fair trial have not been violated.

42. The Government cites article 9.3 of the International Covenant on Civil and Political Rights and article 2 of the Constitution of Peru. With regard to the criteria used to determine whether or not a case is brought "promptly" before a judge, it also cites the Committee's general comment No. 8 (1982) on article 9, which states that "delays should not exceed a few days". It also notes that, for the Human Rights Committee and the Committee against Torture, delays in excess of 48 hours following arrest or detention are considered excessive.

43. The arrest took place on Saturday, 15 October 2005, at 11.00 a.m. and the preliminary statement was taken on Monday, 17 October 2005, at 8.00 a.m. in the fifty-first criminal chamber of Lima High Court of Justice, that is, within 48 hours.

44. The arrest was made on a Saturday, which is not a working day, and for this reason the case could not be brought before the court until two days later (the following Monday, which was the court's first working day after the arrest).

45. Under applicable national law, the maximum time permitted for bringing a detainee before a judge is the required travel time, but this time period may be extended for offences involving illegal drug trafficking, which is the offence for which the victim was investigated and sentenced in the present case.

46. From the foregoing, it is clear that, in the present case, there has been no violation of the right to be brought promptly before a judge.

47. It has been noted that the alleged victim apparently falls under category V of the applicable circumstances for consideration of cases by the Working Group, that is, cases of deprivation of liberty on the grounds of discrimination and violation of equality.

48. There is no evidence to demonstrate that there was a violation of equality or that an act of discrimination was committed that infringed the right to liberty in the present case.

49. In this connection, although the alleged victim is female, and even assuming that she belongs to an indigenous community, neither of these factors were an obstacle or impediment to her exercising her right to a defence, as is evident from the facts of the case described and the various appeals that have been lodged on her behalf.

50. The alleged victim had the opportunity to exercise her right to a defence and to be heard by a court in conditions of equality. In response to the judgment handed down by the first specialized criminal chamber for trials involving imprisoned defendants of Lima High Court of Justice, on 22 May 2008 an appeal for annulment was filed with the permanent criminal chamber of the Supreme Court of Justice of Peru, which rejected the appeal by casting vote on 19 February 2010, ruling that there were no grounds for annulment.

51. An extraordinary appeal for judicial review was then filed on behalf of the alleged victim before the transitional criminal chamber of the Supreme Court of Justice, under case file No. 215-2010. This appeal was also declared inadmissible.

52. The remedy of habeas corpus is offered under the Constitution of Peru as a means to challenge cases of arbitrary detention or violation of the right to personal liberty. From the foregoing, it can be seen that a habeas corpus ruling may be subject to appeal before a higher court. The second-instance ruling may then be subject to an appeal for constitutional review, the Constitutional Court constituting the final instance for habeas corpus cases. As can be seen, the alleged victim was able to avail herself of all of these procedures.

53. She filed an application for habeas corpus, under case No. 19 -2010, before the seventeenth criminal chamber of the Lima High Court of Justice, which declared her application unfounded by decision of 4 January 2011. In response, she filed an appeal, which was upheld by decision of 1 August 2011.

54. Subsequently, the fourth specialized criminal chamber for trials involving imprisoned defendants of Lima High Court, by decision dated 19 August 2013 served in case No. 16314-2010-HC, upheld the challenged ruling that declared the application unfounded.

55. This decision was the subject of an application for constitutional grievance review before the Constitutional Court, which, in its judgment under case No. 00188-2014.PHC/TC, found the application inadmissible.

56. The judgment in case No. 00188-2014.PHC/TC was also subject to an application for reconsideration, meaning a request for review by the Constitutional Court, which was settled by order dated 22 September 2015, declaring the request inadmissible.

57. An application for habeas corpus was also filed with the twenty-first criminal chamber of Lima High Court, under case No. 11825-2012-HC. In a decision dated 25 May 2012, the High Court dismissed this application, which was then subject to appeal.

58. Subsequently, the second specialist criminal chamber for trials involving defendants on bail attached to the same High Court, in its judgment of 28 December 2012, upheld the contested judgment.

59. This decision was the subject of an application for constitutional grievance review before the Constitutional Court, which, in its judgment under case No. 136-2014-PHC/TC, found the application inadmissible.

60. The alleged victim again filed an application for habeas corpus, which was settled by the seventeenth criminal chamber of Lima High Court, by decision dated 6 January 2012, declaring the application unfounded. The alleged victim was notified of this decision, which was also the subject of an appeal.

61. Subsequently, the fourth specialist criminal chamber for trials involving defendants on bail attached to the same High Court, in its judgment of 19 August 2013 served under case No. 28644-2011-HC, upheld the contested judgment.

62. This decision was the subject of an application for constitutional grievance review before the Constitutional Court, which was resolved by decision of 2 June 2014, handed down under case No. 521-2014-PHC/TC, declaring the application inadmissible.

63. The judgment in case No. 521-2014-PHC/TC was also subject to a request for reconsideration by the Constitutional Court, which was settled by order dated 1 December 2014, declaring the request inadmissible.

64. Lastly, an application for habeas corpus was filed on the alleged victim's behalf and was heard before the second specialized criminal chamber for trials involving defendants released on bail attached to Lima High Court, which declared the application inadmissible.

65. This decision was the subject of an application for constitutional grievance review before the Constitutional Court, which was resolved by decision of 13 April 2011, handed down under case No. 04261-2010-PHC/TC, declaring the application inadmissible.

66. No less than four applications for habeas corpus have thus been filed on the alleged victim's behalf, and all of them have been considered by the Constitutional Court, which is the supreme body competent in the matter. This demonstrates that, having petitioned the competent judicial bodies, including the Constitutional Court itself, on numerous occasions, Ms. Huamán Quispe has not been prevented from exercising her right of defence and has not been precluded from taking the corresponding action.

67. The alleged victim has also had the opportunity to petition the Judicial Oversight Office, which is the body responsible for the disciplinary oversight of judges, in accordance with article 102 of the annex of Supreme Decree No. 017-93-JUS, the consolidated text of the Organic Act on the Judiciary, article 19 of the aforementioned consolidated text and administrative decision No. 242-2015-PJ-CE. These are various possible procedures for requesting investigation of the conduct and judicial decisions of the judges who ruled on her criminal proceedings and on the applications for habeas corpus that she filed, and she was not denied access to these procedures.

68. The National Council of the Judiciary is responsible, inter alia, for appraising the performance of judges and prosecutors. With this in mind, Ms. Huamán Quispe submitted various written applications to the Council, which responded to her various communications.

69. Proof of this can be found in Ms. Huamán Quispe's written submission to the National Council of the Judiciary dated 23 January 2013, in which she states that she has received the Council's letter informing her that she has been granted the opportunity to make a statement.

70. The alleged victim has had access to justice and the opportunity to be heard by a number of judicial and judicial oversight bodies, both internal and external to the judiciary, without discrimination or any violation of equality to her detriment.

71. Just as there has been absolutely no violation of the right to equality involving detention of an arbitrary character, still less has there been a deprivation of liberty falling under category V mentioned above.

72. The trial of Ms. Huamán Quispe which resulted in her imprisonment has been the subject of various reviews and investigations by bodies other than the court which issued the sentence, including the Constitutional Court, the Judicial Oversight Office and the National Council of the Judiciary.

73. Notwithstanding the foregoing, the National Prison Institute has been asked to provide information about the conditions in which the alleged victim is currently being detained, and this information will be promptly forwarded to the Working Group. The Government is clear that the mandate of the Working Group is limited to assessing the

allegation of deprivation of liberty. However, in the spirit of cooperation with this body of the universal system for the protection of human rights, it is ready to provide the information relating to this issue.

74. The Government requests the Working Group to find that there has been no arbitrary detention in this case.

75. The Government states that the detention of Ms. Huamán Quispe cannot be characterized as arbitrary, since a court-authorized detention order was issued, she was informed of the reasons for her arrest and she was brought promptly before the competent judge. Furthermore, Ms. Huamán Quispe received legal assistance during the criminal proceedings.

76. The Government also asserts that the detention of Ms. Huamán Quispe cannot be considered arbitrary since she was not deprived of liberty on grounds of discrimination or in violation of equality, and she had the opportunity to lodge a wide range of petitions with various State bodies.

77. The Government notes that the alleged victim submitted a similar communication citing the same facts, the same grounds and the same legal basis to the Inter-American Commission on Human Rights (precautionary measure 6-12) and that for this reason the Working Group should consider the possibility of not ruling on the merits of the communication in order to avoid duplication of effort, in accordance with its methods of work and rules of procedure.

Comments from the source

78. The Working Group forwarded to the source the response provided by the Government of Peru, dated 1 September 2016. The source responded with comments on 28 October 2016.

79. The judicial proceedings violated national legislation and relevant international standards in that due process was not observed and the proceedings were full of irregularities that have not been taken into account in the Government report:

(a) On 15 October 2005, the victim was beaten during her arrest;

(b) The victim was not informed of the proceedings being brought against her, contrary to the claims made in the Government report, in which it is stated that she was not residing at the address shown on her national identity document. This is true, since, at the time, in the city of Lima it was very difficult to update data held in the National Identity and Civil Status Register. However, she did have a home in the city of Ayacucho, which was the property of her parents and has been registered in the database of the National Customs and Tax Authority since 1994. Aside from this, the victim reported a robbery to the police in June 2005, that is, one month after the criminal gang was captured on 7 May 2005 and the drugs that the gang members had in their possession were seized. While some of the persons arrested were later released, the police recorded Ms. Huamán Quispe as having been involved in the incidents logged on 7 May 2005. It is evident from the votes cast by the Supreme Court judges that the victim was added to the case 9 and 11 days after the real perpetrators had been captured;

(c) At the time of the victim's arrest, no documents were presented to attest to the existence of a warrant, and the incident as a whole seemed more akin to a kidnapping than a police intervention. One of the men involved, who identified himself as the chief police officer, did inform the people of the neighbourhood that an investigation was under way at Santa Anita police station, but the information was not credible because the victim's home is located within the jurisdiction of Villa Hermosa police station. In a bid to appease the people present, another of the men then claimed to be a public prosecutor, but faced with copious questions, this man disappeared. The action of a man who was present during the disturbance and accompanied the victim to the police station prevented the police from planting evidence on her, as they tried to do, despite the fact that she had left home that morning wearing pyjamas and sandals, carrying only a small wallet. They then sought to make the victim attest that she was in a state of shock and to exclude the man who was accompanying her from any further involvement. Several days later, having succeeded in making contact with a lawyer of her choice, the victim learned that the judicial record system attested to the existence of an arrest warrant issued by the fifty-first criminal

chamber of Lima, even though the case file indicated that the warrant had been issued by a judge attached to the thirtieth criminal chamber of Lima;

(d) During the proceedings, some of the evidence submitted to attest to the victim's innocence was mislaid, but this was not reported when the case was re-examined on appeal. The loss was denied, and was also covered up;

(e) The victim's lawyer called on the police officers who had arrested the co-defendants, along with the victim, on 7 May 2005, to testify. He also requested that the persons who had been with the victim in Ayacucho on 6 and 7 May 2005 be allowed to give evidence during the trial, but the request was refused and the authorities chose those who would be allowed to give evidence;

(f) Evidence of the victim's innocence was presented, but was not taken into account;

(g) When the victim was led out in front of the two co-defendants who claimed to recognize her, the only persons present in the courtroom were the two co-defendants, the representatives of the judiciary and the victim herself, whereas the correct procedure, and the procedure that is generally followed, is to bring out several women from amongst whom the person implicated must be picked out, but this was not the case here;

(h) No drugs were found in the victim's possession. The drugs at the centre of the offence were found in the possession of other persons who were released after signing a record of seizure. In addition, the victim states that she has no past criminal record of this kind. The victim was issued with a sentence used for highly dangerous criminals, in her view, out of extreme cruelty;

(i) The victim is surprised that a public prosecutor from Callao has been involved; the police operation of 7 May 2005 covered several districts of the city of Lima, while Callao is in another province. For this reason, she wonders why, on the day of the police operation, the case was not assigned to a public prosecutor's office in Lima, which would have competence and jurisdiction.

80. The report recounting the police operation that led to the victim's trial (case No. 1036-2005) reveals that there was no reason to issue a detention order; on a day on which an entire criminal gang was arrested, the victim states that it would hardly have been possible for her to flee, given that, according to the version of events given by the men who implicated her, she is a woman of solid build with heart issues and psychological problems. For this reason, the victim wonders how it was that on the day in question the police were able to capture men of athletic build but not her. The men captured on the day of the offence had drugs in their possession, yet they were released on bail — an action that was questioned by the senior prosecutors during the oral proceedings brought against the victim and was later also queried by the Judicial Oversight Office — and these proceedings came to nothing. The victim was charged, sometime later, without the fact that the persons captured in flagrante had criminal pasts, including previous convictions for the same offence, unlike the victim.

81. The authorities stated that there had been a mobile telephone conversation — a fact that could be verified either by asking the mobile phone companies for their call records or by checking the mobile phones confiscated on 7 May 2005. However, these checks were not done at any stage of the victim's trial. In fact, the mobile phones have disappeared, even though their confiscation is recorded in the police report.

82. The report also indicates that the victim attempted to evade justice, in that she did not enter her address on her national identity document. This was not her intention; at that time, many people did not update the data on their national identity documents because of the tedious administrative formalities required. However, the victim's address had been registered with another State body, namely, the National Customs and Tax Authority, since 1994. In 2005, the victim organized a traditional festival in the city of Huamanga, Ayacucho, where she was born. This festival was broadcast on television and is famous throughout Peru.

83. For the reasons described above, it is evident that the victim's trial was biased, as she was sentenced as if she were a member of a criminal organization, even though the

victim questions which organization exactly was concerned, as almost all the detainees were released and cleared.

84. On 7 May 2005, the victim was not in the city of Lima, where the events took place. Although this was proven, none of this evidence was considered in the first-instance proceedings. However, in the second-instance proceedings, three high court judges, of the total of seven who reviewed the case, acquitted the victim, and had it not been for the presiding judge's casting vote the victim would have been at home with her children for a number of years already.

85. For the victim the presiding judge's casting vote is questionable; in the case of the votes to acquit, while the votes are duly recorded in all records contained in the case file of her trial and the irregularities that occurred in the first-instance proceedings are mentioned, the grounds for the decision, including the legal basis and the relevant articles, are not, whereas in the case of the votes to uphold her first-instance conviction and the casting vote of the presiding judge in the second instance, the legal basis and relevant articles are recorded.

86. The victim has indicated that no court order was ever shown at the time of her arrest and that the arrest was not carried out in accordance with the legally established parameters. The victim just managed to avoid having evidence planted on her, and one of the police officers even attempted to pass himself off as a public prosecutor although, faced with energetic protests from the local people present, this person disappeared before his lie was discovered; at the police station to which the victim was taken, the same man was referred to as a colleague, but there was no public prosecutor's signature on the police report issued by the police station for that day (or on any other record). The events stand out as being particularly strange as they occurred at the weekend, on a Saturday at 6.30 a.m., whereas the public prosecution service works from Monday to Friday only. At the time in question, it would clearly have been difficult to get a genuine on-call public prosecutor to come to the scene.

87. Deadlines were routinely missed throughout the proceedings against the victim. She was sentenced on 9 May 2008, despite having been arrested on 15 October 2005, and during this period the hearing in which the sentence was due to be issued was delayed three times, a situation that enabled the other defendants who were captured on the day of the offence to evade justice. Similar delays affected all the habeas corpus applications submitted by the victim; the respective formalities were not carried out for years.

88. The Code of Criminal Procedure authorizes pretrial detention for 9 months in straightforward cases and 18 months in complex cases. Even when the prosecutor assigned to the case submits a reasoned request for the maximum period of pretrial detention in order to allow time to collect the evidence required to substantiate charges and prevent impunity, the judge may, if there are grounds for ordering pretrial detention, agree a minimum term of less than 9 months.

89. According to the victim, the prosecutor designated at this point was really a police officer who lied and then disappeared in the face of the copious questions raised by the victim's neighbours. Proof of this is that there is no prosecutor's signature or stamp either in the police report describing the victim's arrest at Santa Anita police station or in any other record established that day.

90. The victim did not have access to a lawyer to take immediate charge of her case at the time of her arrest, nor during the oral proceedings, when she was brought to appear before her co-defendants, because the lawyer representing her had resigned, although even this was not reported. The first criminal chamber for imprisoned defendants justified the fact that the victim had no lawyer at this stage by saying that she had an ex officio lawyer, which is not true, as this lawyer was the lawyer representing her co-defendant — the one who implicated her in the events described.

91. The victim's detention order was issued by the thirtieth criminal court, although it was not within this court's competence but within the competence of the fifty-first criminal court, before which she gave her court statement and which she twice petitioned for a change to her detention order. This request was denied, even though she satisfied the legally established prerequisites in terms of her work and family situation (which was not the case of her co-defendants, who had dual identities and no fixed abode).

92. The victim gave her preliminary statement not at 11.00 a.m. but at 6.30 a.m. on 15 October 2005, finishing it at 11.00 a.m. This explains the heightened police presence at Santa Anita police station. The victim also questions why she was taken to this police station when it is Villa Hermosa police station that has jurisdiction in the area of her home. The arrest was carried out by a senior officer who identified himself as such on 15 October 2005 and, along with other officers, oversaw the arrest through to the end. However, when the defence lawyer asked for statements to be taken from a number of police officers who were present on 7 May 2005, the authorities refused his request, allowing only the senior police officer, who was none other than the supposed chief, to give a statement. The victim stated that this officer had attempted to pass himself off as someone else on the day in question, but nothing happened as a result. The victim does not know what this officer was trying to achieve by assuming a different identity, but considers this person to be a key factor in her trial.

93. The victim suffered discrimination, in that she was subjected to violence by police officers and, subsequently, in court, her co-defendants were given preference; when the victim asked to call key witnesses during her trial, she was denied the opportunity and she was sentenced without any proven reason, solely on the basis of two witness statements. The evidence, the statements and the irregularities that were committed during her trial have not been examined. All the State bodies involved "are washing their hands with a same inhumane version of events". The victim also clarified that her national identity card indicates that she was born in Huamanga, in the province of Ayacucho, and that she speaks Quechua, and that her family names are typical of the place where she was born, for which reason she totally disagrees that, as stated in the report, it was not established that she belongs to an indigenous community.

94. In the ruling handed down by the first criminal chamber for imprisoned defendants (case No. 10363-2005) it is stated that the supposed reason for which the victim travelled from Ayacucho to Lima was to commit the offence in question, and that from Lima she then returned to Ayacucho. Given the distance that this journey entails (565 km), the time it would take to make it (seven to nine hours of land travel, since in 2005 there were no flights covering this route) and the lack of records of such a journey, this charge can be disregarded.

95. On 6 May 2005, the victim signed a rental agreement in the village of Tambo (La Mar, Ayacucho), three hours from Huamanga, which means that it was impossible, given the magnitude of the distance, for her to have been supplying drugs on Avenida Naranjal in Lima on this same day. It would likewise be irrational to conclude that on the following day the victim could be asking the co-defendant to supply drugs, when on the day in question she was in the city of Huamanga, Ayacucho, along with representatives of the Huamanga community ombudsman's office, looking for her daughter, who was lost for several hours. Such version of events was challenged by the chamber, but the victim was never given a genuine opportunity to obtain justice, since a number of the representatives who were with her on 7 May 2005 — persons who are also State officials — could have been summoned to appear as witnesses but no such summons were issued. In other words, no importance was given to the controversy over the distance, or to the fact that information about the calls made to and from each mobile phone was not requested from the mobile telephone companies and that no link between the other two co-defendants and the victim was ever established, in addition to the fact that her ability to mount a full defence was limited. Furthermore, on the day the victim was sentenced (9 May 2005), it was mentioned that a new date would be set for the sentencing of one of the co-defendants. However, this defendant was released on 23 June 2008 since the maximum permitted period of pretrial detention had elapsed. He did not appear subsequently for the reading of his sentence because he had taken flight in the meantime, and he is still at liberty today.

96. Habeas corpus applications Nos. 521-2014, 188-2014 and 136-2014 have not served the victim's constitutional rights of defence as they took years to be resolved, and involved events of a bizarre nature. After five years of one habeas corpus application after another, none of the remedies pursued on the appellant's behalf — whether during the criminal proceedings or in associated legal proceedings — were successful.

97. The Constitutional Court violated due process since the victim was not informed of the aforementioned notification of appeal for reconsideration or review, which is mentioned

in the Government report and was resolved in 2015, until more than a year after its resolution.

98. As a result of the complaints filed with the Judicial Oversight Authority, the disciplinary bodies initiated disciplinary proceedings against the judges and other officials who handled the case. Complaints of misconduct were submitted through all possible channels, but all these processes were unexpectedly interrupted. In the early stage of proceedings in the Judicial Oversight Office, disciplinary charges were made against the judges and other officials who were involved in the victim's trial, but they were absolved of responsibility.

99. With regard to the complaints lodged with the National Council of the Judiciary, it should be clarified that the authorities failed to take due action against the evident irregularities and compounded the judges' misconduct, by making the victim wait three years for an oral hearing in case No. 28644-2010. In case No. 16314 (habeas corpus application), meanwhile, heard before the fourth criminal chamber for defendants released on bail, the two petitions were heard one after the other but were subject to all sorts of irregularities.

100. In 2012 the victim appealed to the Inter-American Commission on Human Rights, as she had exhausted the remedies available before the final-instance body in Peru. The Commission ordered precautionary measure No. 6-12, but this action proved too late.

Discussion

101. The Working Group is mandated to investigate all cases of deprivation of liberty imposed arbitrarily that are brought to its attention. In the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned. Therefore, the Working Group recognizes that the Government of Peru has responded to this special procedure of the Human Rights Council in a clear spirit of cooperation, providing a wealth of information on the legal framework of Peru and also on the jurisprudence of the Working Group and other United Nations treaty bodies that deal with individual cases.

102. In this context, the Working Group has a duty to process communications of which it is aware, provided that the communications relate to issues that fall within the mandate conferred upon it by the Human Rights Council and have been submitted in accordance with its methods of work. In no part of the applicable legal provisions is it stipulated that the Working Group shall refrain from considering matters that are being or have been examined under other international or regional procedures, including, for example, under the inter-American system of human rights protection. In addition, the Working Group, in accordance with the methods of work that govern its actions, and also with the resolution by which the Human Rights Council conferred its mandate, there is no impediment that might prevent it from considering individual communications on cases of arbitrary detention in any State Member of the United Nations, even if another treaty body or non-treaty-based mechanism is considering the case, whether under either the individual complaints or communications procedure or the urgent action or precautionary measures procedure, as appropriate.

103. As a matter of priority, in its actions, the Working Group adheres to the rules set out in its methods of work and to practice consistently used and accepted by States for processing individual communications. In its quasi-judicial work, the Working Group acts on the basis of information received through communications submitted by persons directly affected by arbitrary detention, their relatives or their representatives, which are subsequently brought to the attention of the State concerned so that the latter has the opportunity to make comments and observations on both the facts and the applicable legislation. Thus, for the consideration of the present case, the Working Group will analyse the facts described by the source in the communication, which have been made known to the State concerned. The Working Group is satisfied that Peru was made aware of all the key facts outlined by the source and had full opportunity to provide the statements and information it considered pertinent for an effective judicial defence.

104. From the information submitted by the source, which has been either confirmed or at least not denied by the Government, the Working Group has ascertained that, on 15

October 2005, at around 6.00 a.m., Ms. Huamán Quispe was deprived of her liberty by unidentified persons who failed to show an arrest warrant or provide her with information about the reasons for her arrest. On the day in question she was taking her daughter (who has a disability) to seek medical attention. On arrival at their destination they were physically assaulted by a man who had emerged from a white car along with several unidentified men.

105. The Working Group has also learned that it was not until 11.00 a.m. the same day that two police cars arrived at the scene, at which point most of the men in civilian attire disappeared. The victim was taken to a police station where she was informed that she was under investigation at Santa Anita police station in Lima. Several hours later she was transferred to this police station.

106. The source and the Government concur in that the victim was charged with a drug-related offence, in which she had been implicated as a result of a police operation carried out in May 2005. The Government states that there was a court order for the victim's arrest, although official information attesting to its existence was not presented during the initial hours of her detention, and that her right to be informed promptly of the reasons for her arrest, as established in article 9.2 of the International Covenant on Civil and Political Rights, was upheld.

107. In its general comment no. 35 (2014) on liberty and security of person, the Human Rights Committee indicates that: "Paragraph 2 [of article 9 of the Covenant] requires that the arrested person be informed 'promptly' of any charges, not necessarily 'at the time of arrest'. If particular charges are already contemplated, the arresting officer may inform the person of both the reasons for the arrest and the charges, or the authorities may explain the legal basis of the detention some hours later."[1]

108. The Government and the source also concur in that the victim was informed of the reasons for her arrest five hours later, at the first police station to which she was taken; in other words, the provisions of article 9.2 of the Covenant were violated since she was not informed promptly, even orally, of the reasons for her arrest. There was a total delay of two days before the victim was brought before the judicial authority.

109. The Government and the source concur that the alleged victim's arrest took place on Saturday, 15 October 2005 and that her preliminary statement was taken on Monday, 17 October 2005, in the fifty-first criminal chamber of Lima High Court of Justice.

110. Article 9.3 of the Covenant states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee states, "while the exact meaning of 'promptly' may vary depending on objective circumstances [footnote removed], delays should not exceed a few days from the time of arrest [footnote removed]. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances [footnote removed]".[2]

111. With regard to the 48-hour deadline for bringing detained persons promptly before a judge to which the Human Rights Committee refers and which the Government of Peru claims to have respected, this is not a deadline set in stone, the aim being to prevent situations in which the authorities can simply claim compliance with the deadline in order to escape their obligation to take reasonable and immediate steps to bring detainees before a judge. The Working Group considers that the State has a duty to describe in detail all the steps that were taken by the authorities to fulfil this obligation (to bring the detained person promptly before a judge) and to provide a credible account of the events that occurred from the outset of detention until the person appeared in person before the judge. Consequently, the Working Group is not convinced by the Government's claim that every hour, from the moment in which the alleged victim was deprived of liberty, was genuinely taken up in bringing the detained person promptly before the judicial authority.

[1] See CCPR/C/GC/35, para. 30.

[2] Ibid., para. 33.

112. The Working Group has stated that all persons have the right to be informed of the reasons justifying the deprivation of liberty, the possible judicial avenue to challenge the arbitrariness and lawfulness of the deprivation of liberty, and the right to bring judicial proceedings before the court.[3] In addition, detained persons have the right to bring such proceedings from the moment of apprehension.[4] Lastly, persons have the right to legal assistance by counsel of their choice, including immediately after the moment of apprehension.[5]

113. The Working Group was also able to ascertain that Ms. Huamán Quispe's right to have adequate time and facilities for the preparation of her defence and to communicate with counsel of her own choosing, as established in the Covenant, was not respected. The Government itself recognizes that she was not assisted by a defence lawyer of her choosing when she gave her first statement but states that, when giving subsequent statements during the criminal proceedings, she was assisted by such lawyer. The Government of Peru notes that in subsequent statements the victim stood by the version of events she gave in her first statement. For the Working Group, the right to appoint a defence counsel or to have counsel assigned is an obligation of the State that must be guaranteed from the outset of detention, being a prerequisite that is essential in order for persons deprived of their liberty to be able to exercise all the due process rights they enjoy. To guarantee that they have due right to a defence from the outset of detention, detained persons may, for example, exercise the right to bring proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.

114. In addition to the accumulation of violations mentioned, namely, that the victim was informed neither of the reasons for her arrest nor of the grounds for the criminal charges nor of the legal basis for the charges, and that she did not have access to a defence counsel from the moment of her arrest, the victim's right to lodge a court appeal to challenge the lawfulness of her detention was also compromised.

115. As the State did in its response, the Working Group reiterates its established jurisprudence, according to which the individual communications procedure "does not authorize it to act as an additional body for evaluating anew the evidence processed by national courts".[6] It is also of the view that the admissibility and the evaluation of evidence are matters that should be regulated principally by national legislation and that responsibility for assessing evidence should lie with the courts. The Working Group is also of the view that it is not its role to consider whether the evidence, including the witness statements, was properly examined. However, since it is required to assess whether the norms relating to due process of law were observed fully or only partially, the Working Group must consider whether or not the national authorities treated the victim fairly and respected the right of all persons charged with a criminal offence to defend themselves (either in person or through counsel), to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.[7]

116. In the present case, the source indicated in his communication that during the criminal proceedings conducted in Lima fifty-first criminal chamber, the victim submitted evidence that would have proved her innocence and asked the judge to agree to change the order for her detention. The Government provided no information to demonstrate that, in the manner in which they treated the victim, the competent authorities endeavoured to ensure compliance with State obligations relating to the right to a legal defence and the right to examine, or have examined, prosecution and defence witnesses under the same conditions.

[3] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, Principle 7 (Right to be informed) (see A/HRC/30/37, annex, para. 10).

[4] Principle 8 (Time frame for bringing proceedings before a court) (ibid. para. 11).

[5] Principle 9 (Assistance by legal counsel and access to legal aid) (ibid. paras. 12-15).

[6] See opinion No. 10/2000, para. 9.

[7] Article 14, paragraph 3 (d) and (e), of the International Covenant on Civil and Political Rights.

117. Accordingly, the Working Group considers that a number of the rights guaranteed to Ms. Huamán Quispe under articles 9 and 14 of the Covenant were violated, and that the violations were of such gravity as to give the deprivation of liberty an arbitrary character in accordance with category III of the categories established in the Working Group's methods of work.

118. With regard to the source's allegations that the victim received several blows to her body at the time of her arrest, the Working Group is forwarding this communication to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for possible action.

Disposition

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

> The deprivation of liberty of Ms. Edith Vilma Huamán Quispe is arbitrary and falls within category III of the categories established in the Working Group's methods of work.

120. Under applicable international law, victims of arbitrary detention have the right to seek and obtain reparation from the State, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Consequently, the Working Group requests the Government of Peru to immediately release Ms. Huamán Quispe and to afford her appropriate reparation, including compensation.

121. Moreover, the Working Group is referring the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment so that he can conduct a proper investigation.

Follow-up procedure

122. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Ms. Huamán Quispe has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Huamán Quispe;

(c) Whether an investigation has been conducted into the violation of Ms. Huamán Quispe's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Peru with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

123. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

124. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as of any failure to take action.

125. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[8]

[*Adopted on 25 November 2016*]

[8] See Human Rights Council resolution 33/30, paras. 3 and 7.