

HUMAN RIGHTS COMMITTEE

Penarrieta et al. v. Bolivia

Communication No. 176/1984 (1988)

2 November 1987

VIEWS

Submitted by: Juana Penarrieta, Maria Pura de Toro, et al., later joined by Walter Lafuente Penarrieta

Alleged victim: Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres, and Julio Cear Toro Dorado

State party concerned: Bolivia

Date of communication: 2 April 1984 (date of initial letter)

Date of decision on admissibility: 28 March 1985

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 1987,

Having concluded its consideration of communication No. 176/1984, submitted to the Committee by Juana Penarrieta et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party concerned,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication (initial letter dated 2 April 1984 and subsequent letters dated 14 and 18 June 1985, 17 January 1986, 18 March and 19 July 1987) are Rose Mary Garcia, a Bolivian citizen living in the United States of America, and Juana Penarrieta,

Maria Pura de Toro, Nelva B. de Toro, Ety Caceres, Maria Luisa de Ruiz, Aurora de Lafuente and Sofia de Rodriguez, Bolivian citizens residing in Bolivia, on behalf of their relatives Walter Lafuente Penarrieta, Oscar Ruiz Caceres, Julio Cesar Toro Dorado and Miguel Rodriguez Candia, all Bolivian citizens, and on behalf of three other persons, Simon Tapia Chacon, a Bolivian citizen (not related to the authors), Rene Patricio Lizama Lira and Pablo Manuel Zepeda Camillieri, both Chilean citizens (not related to the authors). The authors stated that the alleged victims were being held at the San Jorge Barracks in Bolivia and that they were not in a position to present their own case to the Human Rights Committee. The authors claimed to have authority to represent all seven alleged victims.

1.2 Miguel Rodriguez Candia, Oscar Ruiz Caceres, Simon Tapia Chacon and Julio Cesar Toro Dorado were released on 24 April 1986, Walter Lafuente Penarrieta, Pablo Manuel Zepeda and Rene Patricio Lizama were released on 24 October 1986.

1.3 The authors stated that the alleged victims were arrested on 24 October 1983 in the neighbourhood of Luribay (approximately 70 kilometres from La Paz) by members of the armed forces on suspicion of being "guerrilleros". It is further alleged that during the first 15 days of detention they were subjected to severe torture, including physical beatings, electric shocks (picana) and immersion in water (submarino). They were allegedly kept incommunicado for 44 days. They were allegedly held under inhuman prison conditions, in solitary confinement in very small and humid cells (two meters by two meters), and were denied proper medical attention. Their state of health was very poor. It was not until 10 February 1984 that Pablo Manuel Zepeda Camillieri, who was suffering from a skull fracture, was attended to by a neurologist.

1.4 Concerning the right to legal counsel, guaranteed under article 16 (4) of the Bolivian Constitution, it is alleged that the detainees had no access to a defence lawyer until 44 days after their detention.

1.5 On 16 December 1983, the first public hearing took place. Defence counsel argued that his clients could not be subject to military jurisdiction, since the National Constitution itself clearly established that military jurisdiction could be applied only in times of war or when a criminal act had taken place in a territory under military jurisdiction, and that the case should therefore be transferred to the regular courts.

1.6 On 8 February 1984, defence counsel again requested a change of jurisdiction. He also pleaded that most of the provisions of the Military Penal Code were in fact unconstitutional. On 13 February 1984, the appeal for annulment was presented before the Supreme Tribunal of Military Justice without success. According to the authors, all legal remedies to obtain a change of jurisdiction were turned down by the military authorities.

1.7 The authors state that the relatives of the detainees tried in vain to secure their transfer to San Pedro Prison on the grounds that detention in military barracks was not lawful. They maintained that, owing to the political instability in Bolivia and the arbitrary acts committed by a number of officers, there were no guarantees of security for the seven detainees.

1.8 The indictment against the seven defendants was presented by the Military Prosecutor on 18 July 1984, nine months after their detention. The defendants submitted their plea on 10 August 1984. On 3 October 1984, they began a hunger-strike, which continued until 2 November 1984. On 12 October 1984, the Standing Court of Military Justice (Tribunal Permanents de Justicia Militar) convicted the accused of robbery and illegal possession of weapons and ammunition belonging to the Bolivian army and of the use of false documents.

1.9 The authors stated that Presidential Decree (Decreto Supremo) No. 20,565, of 25 October 1984, ordered unrestricted amnesty (amnestia amplia e irrestricta) for the seven Luribay detainees, but the armed forces refused to comply with the decree. On 30 October 1984, the Standing Court of Military Justice referred the case for ex officio review to the Supreme Court of Military Justice (Tribunal Supremo de Justicia Militar), which, on 1 November 1984, returned the case to the Standing Court for appropriate action, without itself issuing a release order. It is further reported that, on 15 November 1984, the Luribay detainees applied for habeas corpus to the District Court of La Paz (Corte Distrital), a civilian court, which found, on 16 November 1984, that the Presidential Decree of amnesty was constitutional and that the military court should implement it. This decision was reviewed by the highest judicial authority of Bolivia, the Supreme Court of Justice, which found that the amnesty decree was constitutional and that the competent organs of the armed forces were responsible for issuing the release order. Nevertheless, the Luribay detainees were not then released.

2.1 After ascertaining that the cases of the alleged victims had not been registered for examination by the Inter-American Commission on Human Rights, the Working Group of the Human Rights Committee, by its decision of 3 July 1985, transmitted the communication, under rule 91 of the Committee's provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication. The Working Group also requested the State party: (a) to provide the Committee with copies of any orders or decisions relevant to the case; and (b) to inform the Committee of the state of health of the alleged victims.

2.2 The Working Group found that the authors were justified in acting on behalf of Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado. With regard to the other alleged victims, the Working Group requested the authors to provide written evidence of their authority to act on their behalf.

3.1 In its response, dated 22 October 1985, to the Working Group's decision, the State party said that, on 12 October 1984:

"The Standing Court of Military Justice of Bolivia, by virtue of its jurisdiction, handed down a verdict and sentence at first instance against the detainees, who had been charged with robbery and illegal possession of weapons belonging to the Bolivian army, use of false documents and other offences. On 25 October 1984, the Constitutional President of the preceding Government, by Supreme Decree No. 20,565, granted a broad and unrestricted amnesty to the seven detainees, ordering them to be released and the record of the case to be filed.

"On being informed of this Decree, the Standing Court of Military Justice transmitted the 'record of the case to the Supreme Court of Military Justice in order that, through its Appeals and Review Section, by means of interpretation and review as referred to in article 38 (3) of the Military Judicial Organization Act, it may take a decision concerning priority in the application of article 228 of the Constitution, with reference to article 96 (13) of the Constitution, in respect of Supreme Decree No. 20,565 of 25 October 1984, so that as a result of this review the appropriate legal course may be determined'."

3.2 The State party furnished the Committee with copies of Presidential Decree NO. 20,565 of 25 October 1984 and of the decision of the Standing Court of Military Justice, dated 30 October 1984, to refer the case for ex officio review to the Supreme Court of Military Justice.

3.3 The State party further indicated that the detainees were in good health.

3.4 Lastly, the State party requested that the communication be declared inadmissible for non-exhaustion of domestic remedies, since the case was still pending before the Supreme Court of Military Justice.

4.1 In a further submission, dated 31 October 1985, the State party informed the Committee that the Supreme Court of Military Justice had, on 14 October 1985, handed down final sentence in the case:

"amending a previous sentence by the Standing Court of Military Justice, which sentenced the seven detainees, who had been charged with a number of offences, to six, four or two years of imprisonment.

"The decision of the Supreme Court of Military Justice, which is unappealable, amends the sentence through its Cassation and Single-Instance Section, reducing the sentence of imprisonment to three years for the detainees Rene Patricio Lizama Lira, Pablo Manuel Zepeda Camillieri and Walter Lafuente Penarrieta, and to two years and six months for Simon Tapia Chacon, Julio Cesar Toro Dorado, Oscar Ruiz Caceres and Miguel Rodriguez Candia. The latter will have served their sentence on 24 April 1986 and the former on 24 October 1986, since the penalty runs from the first day of detention."

4.2 The State party furnished the Committee with the text of the judgement of the Supreme Court of Military Justice of 14 October 1985 and reiterated its request that the Committee declare the communication inadmissible, this time "on the grounds that the proceedings have been concluded" ("ya que este proceso concluyo").

5.1 In their comments, dated 17 January 1986, the authors noted that the State party in its two submissions made no mention whatever of the decision of the Supreme Court of Military Justice, dated 1 November 1984, which, according to the authors, provided for the implementation of the amnesty decree by the lower court. They further pointed out that the

amnesty decree had not been abrogated and that the alleged victims were still in detention, 15 months after the issuance of the decree.

5.2 With respect to the state of health of the alleged victims, the authors noted that the State party had not submitted any medical certificates nor any information about their psychological state. Furthermore, they claimed that the alleged victims had been deprived of medical attention for the last 18 months.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 Article 5, paragraph 2 (a), of the Optional Protocol precludes the Committee from considering a communication if the same matter is being examined under another procedure of international investigation or settlement. The Committee again ascertained that the case was not under examination elsewhere.

6.3 Article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication unless domestic remedies have been exhausted. In that connection the Committee noted that in its submission of 31 October 1985 the State party had informed the Committee of the conclusion of proceedings against the Luribay detainees. The Committee thus concluded that domestic remedies had been exhausted and that it was not precluded by article 5, paragraph 2 (b), of the Optional Protocol from considering the case.

7. Although the authors did not specify which articles of the Covenant might have been violated, the Committee observed that the allegations raised issues relating to several of the rights guaranteed by the Covenant, including the rights protected by articles 7, 9, 10 and 14.

8. With respect to the standing of the authors, the Committee noted that they had not submitted evidence of their authority to act on behalf of Simon Tapia Chacon, Rene Patricio Lizama Lira and Pablo Manuel Zepeda Camillieri.

9. On 2 April 1986, the Human Rights Committee therefore decided:

(a) That the communication was admissible in so far as it related to Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of the current decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it;

(c) That the State party should be requested (i) to provide the Committee with copies of such court orders or decisions relevant to the case that hitherto had not been furnished, including the judgement of the Standing Court of Military Justice dated 12 October 1984, and (ii) to

inform the Committee of the current state of health of the alleged victims by furnishing relevant medical certificates concerning them.

10.1 In a further submission, dated 30 May 1986, the authors claim that the Bolivian Government has violated articles 3, 6, paragraph 4, 7, 9, 10, 14, 17, paragraph 1, 23 and 26 of the Covenant.

10.2 With regard to article 3, the authors contend:

"In no case has there been equality of rights, on the contrary, rights have been restricted even to the extent of preventing the use of mechanisms recognized by Bolivian laws themselves (Political Constitution of the State)."

10.3 With regard to article 6, paragraph 4, the authors repeat that:

"on 25 October 1984, the Constitutional President of Bolivia, Mr. Hernan Siles Suazo, issued a Supreme Decree (No. 20,565) declaring an amnesty for the seven Luribay detainees. This Decree was issued under the authority provided for in article 96, paragraph 13, of the Bolivian Constitution and with the approval of the entire cabinet of President Siles.

"In this case, because of unknown interests involving the administrators of military justice, the latter have not complied with a decree having the above-mentioned characteristics despite the fact that the relevant military legislation itself states in article 38, paragraph 4, that legal proceedings brought against any person shall cease when an amnesty is decreed."

10.4 With regard to article 7, the authors contend that the medical certificates of the detainees provide "evidence of the torture and degrading treatment to which our relatives were subjected".

10.5 With regard to article 9, the authors claim that:

"All the paragraphs of this article have been violated in that our relatives were arbitrarily arrested; at the time of their arrest, they were in a civilian village and were in no way endangering the country's internal security, let alone external security, since Bolivia was not and is not at war.

"Article 9 of the Bolivian Constitution stipulates that, for a person to be arrested, an order must be issued by a competent authority; in this case the military forces did not have the authority to deprive our relatives of their freedom. The same article 9 states that no one may be held incommunicado, even in obviously serious cases, for more than 24 hours; in violation of this constitutional provision, our relatives were held completely incommunicado without medical attention or proper food for 44 days, and no court was informed of their situation.

"Furthermore, despite our demands and petitions, including those to human rights institutions, our relatives were not told of the reasons for their detention.

"The right of recourse to the courts to redress the illegality of our relatives' arbitrary detention was not made effective, despite an application to have the jurisdiction of the military courts quashed and the case transferred to the ordinary courts."

10.6 With regard to article 10, the authors maintain that:

"The provisions of this article have not been complied with since our relatives have been treated as dangerous criminals without even having been charged. Furthermore, they have been ferried about from one place to another with an escort of 100 or so soldiers, who were pointing their weapons not only at them, but also at us and their defenders."

10.7 With regard to article 14, the authors contend that:

"Once the military trial began - despite everything stated about its lack of competence and jurisdiction - the court was in no way impartial and even disregarded its own regulations, for the sole purpose of securing maximum sentences against our relatives for non-existent offences.

"Choice of defence counsel was also restricted since the Code of Military Justice (Judicial Organization Act, art. 75) stipulates that persons charged with an offence shall have as defence counsel court-appointed military attorneys in cases where the defence counsel freely chosen by the persons charged does not meet the requirements of the Standing Court of Military Justice."

10.8 With regard to article 17, the authors maintain that:

"Our relatives' privacy, honour and reputation have been severely attacked. Our homes have been illegally searched at night (violation of article 21 of the Bolivian Constitution) in an atmosphere of violence and with an excessive display of repressive force, since defenceless women and children were confronted with a group of heavily-armed men."

10.9 With regard to article 23, the authors claim:

"At no time has the State protected the detainees' families. On the contrary, we have been insulted and ill-treated, and in many cases thrown out of offices where we went to request information on the fate of our relatives. Thus, the provisions contained in articles 6 to 21 of the Constitution have also been violated."

10.10 With regard to article 26, the authors add:

"At no time have the detainees been given equal treatment; this is simply because of

their different political ideas, and despite the fact that article 6 of the Constitution guarantees all citizens equality before the law and provides for protection of their rights and guarantees in accordance with the Constitution."

11.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 24 October 1986, the State party argues that the full judicial proceedings, which the State party encloses, establish that "the military laws and the Political Constitution of the State were applied correctly". Thus, the State party contends that there has been no violation of the Covenant by Bolivia and continues:

"The fact is that the defendants were found guilty of various offences which led to sentences in first instance by the Standing Court of Military Justice of six, four and two years' imprisonment on the seven detainees.

"Subsequently, the Appeals Division and Sole Instance of the Supreme Court of Military Justice of the Nation reduced the penalties to three years' imprisonment in the case of Walter Lafuente Penarrieta, Rene Patricio Lizama Lira and Pablo Manuel Zepeda, and to two years and six months' imprisonment for the remaining detainees.

"According to the report of Colonel Rene Pinilla Godoy Dema, Judge Reporter of the Standing Court of Military Justice, Mr. Miguel Rodriguez Candia, Mr. Oscar Ruiz Caceres, Mr. Simon Tapia Chacon and Mr. Julio Cesar Toro Dorado were unconditionally released and are now with their families and in good health, as the Centre for Human Rights may ascertain through the United Nations Resident Representative in Bolivia.

"With regard to the last three detainees, Mr. Walter Lafuente Penarrieta, Mr. Pablo Manuel Zepeda and Mr. Rene Patricio Lizama Lira, the last two of Chilean nationality, they were released on this very day, according to an official communication, in conformity with the judgement of the Appeals Division and Sole Instance of the Supreme Court of Military Justice, which forms part of the Bolivian judicial system and acts independently in accordance with the separation of powers provided for in article 2 of the Political Constitution of the State."

11.2 The State party then requests the Committee to reverse its decision on admissibility and to close the examination of the Luribay case, since "the seven detainees have been unconditionally released and since the legal proceedings have been concluded".

12. In their comments, dated 18 March 1987, the authors contend that the State party has not refuted "in any way the statements by the relatives of the ex-detainees in our note of 30 May 1986, which deals with the problem of substance and not of form, that our children's detention was accompanied by torture, solitary confinement, harassment, partiality, denial of justice and a whole series of violations of the human rights set forth in the International Covenant on Civil and Political Rights".

13. By a letter dated 19 July 1987, one of the seven Luribay detainees, Walter Lafuente

Penarrieta, who was released on 24 October 1986, confirmed the description of the facts set out in paragraphs 1.1 to 1.9, 5.1 and 5.2, and 10.1 to 10.10. Mr. Lafuente also confirmed that it was his wish that the Committee continue consideration of his case.

14. The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. Before adopting its views, the Committee took into consideration the State party's objection to the admissibility of the communication, but the Committee can see no justification for reviewing its decision on admissibility on the basis of the State party's contention that, because the victims have been released, the case should be considered closed.

15.1 The Committee therefore decides to base its views on the following facts, which are either uncontested or are implicitly or explicitly contested by the State party only by denials of a general character offering no particular information or explanations.

15.2 Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado were arrested on 24 October 1983 near Luribay by members of the Bolivian armed forces on suspicion of being "guerrilleros". During the first 15 days of detention they were subjected to torture and ill-treatment and kept incommunicado for 44 days. They were held under inhuman prison conditions, in solitary confinement in very small, humid cells, and were denied proper medical attention. They had no access to legal counsel until 44 days after their detention. On 16 December 1983 the first public hearing took place before a military court. The indictment was framed by the Military Prosecutor on 18 July 1984, charging the accused with robbery and illegal possession of weapons belonging to the Bolivian army and with the use of false documents. On 12 October 1984, they were convicted of those crimes by the Standing Court of Military Justice. On 25 October 1984, the Constitutional President of the Republic, Hernan Siles Suazo, granted a broad and unrestricted amnesty to the Luribay detainees, ordering that they be released and that the record of the case be filed. They were, however, not released. On 30 October 1984 the Standing Court of Military Justice referred the case to the Supreme Court of Military Justice, which did not order the release of the detainees, but handed down a final judgement on 14 October 1985, sentencing the detainees to three and two and a half years of imprisonment. The detainees were released on 24 April and 24 October 1986.

15.3 In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the allegations of torture and ill-treatment of which the authors have complained. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the relevant information where it contests the authors' allegation. In the circumstances, due weight must be given to the authors' allegations.

16. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the

facts as found by the Committee disclose violations of the Covenant with respect to:

Article 7, because Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado were subjected to torture and inhuman treatment;

Articles 9, paragraph 3, and 10, paragraph 1, because they were not brought promptly before a judge, but were kept incommunicado for 44 days following their arrest; and

Article 14, paragraph 3 (b), because during the initial 44 days of detention they had no access to legal counsel.

17. The Committee lacks sufficient evidence to make findings with regard to the other claims made by the authors.

18. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by the victims, to grant them compensation, to investigate said violations, to take action thereon as appropriate and to take steps to ensure that similar violations do not occur in the future.