

HUMAN RIGHTS COMMITTEE

Polay Campos v. Peru

Communication No 577/1994*

6 November 1997

CCPR/C/61/D/577/1994

VIEWS

Submitted by: Mrs. Rosa Espinoza de Polay

Victim: The author's husband, Victor Alfredo Polay Campos

State party: Peru

Date of communication: 5 March 1993 (initial submission)

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

Meeting on 6 November 1997,

Having concluded its consideration of communication No. 577/1994 submitted to the Human Rights Committee by Mrs. Rosa Espinoza de Polay on behalf of her husband, Mr. Victor Alfredo Polay Campos, 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 the State party,

Adopts the following:

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

1. The author of the communication is Rosa Espinoza de Polay, a Peruvian citizen currently residing in Nantes, France. She submits the communication on behalf of her husband, Victor Alfredo Polay Campos, a Peruvian citizen currently detained at the Maximum Security Prison in the Callao Naval Base, Lima, Peru. She claims that he is the victim of violations by Peru of articles 2, paragraph 1; 7; 10; 14 and 16, of the International Covenant on Civil and Political Rights.

Facts as submitted by the author

2.1 The author's husband is the leader of the "Revolutionary Movement Túpac Amaru" (Movimiento Revolucionario Túpac Amaru). On 9 June 1992, he was arrested in Lima. On 22 July 1992, he was transferred to the "Miguel Castro Castro" prison in Yanamayo, near the city of Puno which is situated at an altitude of 4,000 metres. Conditions of detention at this prison are said to be inhuman. The author submits that for a period of nine months her husband was in solitary detention for 23 and a half hours a day, in a cell measuring 2 by 2 metres, without electricity or water; he was not allowed to write or to speak to anyone and was only allowed out of his cell once a day, for 30 minutes. The author further submits that the temperature in the prison is constantly between 0 and minus 5 degrees, and that the food is deficient.

2.2 On 3 April 1993, Victor Alfredo Polay Campos was tried in the Yanamayo prison by a so-called "tribunal of faceless judges" established under special anti-terrorist legislation. Such a body consists of judges who are allowed to cover their faces, so as to guarantee their anonymity and prevent them from being targeted by active members of terrorist groups. Mr. Polay Campos was convicted and sentenced to life imprisonment; it is claimed that his access to legal representation and the preparation of his defence were severely restricted. While the author does not specify the crime(s) of which her husband is convicted, it transpires from the file that he was convicted of "aggravated terrorism".

2.3 On 26 April 1993, he was transferred to the Callao Naval Base Prison near Lima. In this connection, the author forwarded a newspaper clipping showing Victor Polay Campos handcuffed and locked up in a cage. The author claims that, during the journey from Yanamayo to Callao, her husband was beaten and administered electric shocks.

2.4 The author further submits that her husband is held in a subterranean cell where sunlight only penetrates for 10 minutes a day, through a small opening in the ceiling. During the first year of his prison sentence, he was not permitted visits by any friends or relatives, nor was he allowed to write to anyone or to receive correspondence. A delegation of the International Committee of the Red Cross has been allowed to visit him.

2.5 As to the requirement of exhaustion of domestic remedies, the author submits that her husband's lawyer appealed against conviction and sentence, but that the Tribunal's Appeal Section confirmed the decision taken at first instance. The author further submits that the lawyer, Dr. Eduardo Diaz Canales, was himself imprisoned in June 1993 solely for having her husband and that since then "everything has been paralysed". On 3 June 1994, Mr. Polay Campos' mother filed with the Constitutional Court a recurso de amparo (request for habeas corpus) on his behalf with respect to his ill-treatment. This action was dismissed, according to the author, on an unspecified date.

2.6 On 3 August 1993, the Constituent Assembly of Peru re-established the death penalty for acts of terrorism. The author fears that this new provision will be applied with retroactive effect to her husband and that, accordingly, he might well be sentenced to death.

2.7 The author does not state whether the same matter has been submitted to another instance of international investigation or settlement. The Committee has ascertained, however, that another case

concerning the author's husband was submitted to the Inter-American Commission on Human Rights, where it is registered as case 11.048 but is not currently under examination.

The complaint

3. The author submits that the above situation reveals that her husband is a victim of violations by Peru of article 2, paragraph 1, and articles 7, 10, 14 and 16 of the Covenant.

The State party's information and observations and counsel's comments

4.1 By submission of 1 February 1995, the State party asked the Committee to cease considering the communication, observing that the author had been tried in accordance with the legislation relating to acts of terrorism, in total respect of his human rights. It added that the author was being treated correctly by the prison authorities, as attested to by the periodic visits carried out by delegates of the International Committee of the Red Cross.

4.2 The State party further submitted, in a note verbale dated 1 February 1995, that, with respect to the alleged ill-treatment of the author's husband, he had been visited by delegates of the Red Cross and on 20 December 1994 by the District Attorney and a court-registered doctor. Neither had found any traces of ill-treatment of Mr. Polay Campos, and the muscular contraction condition and the emotional stress he was suffering were described as normal symptoms of incarceration.

4.3 In a further submission dated 21 March 1995, the State party stated that the author had not submitted any new arguments and did not challenge the State party's submission. The State party did not, however, specifically address or refute the author's allegations of ill-treatment and torture of her husband.

5. The author commented on this submission but did not provide new evidence.

The Committee's admissibility decision

6.1 During its 56th session in March 1996, the Committee considered the admissibility of the communication. It noted that a case concerning Mr. Polay Campos had been referred to the Inter-American Commission on Human Rights, where it had been registered as case No. 11.048 in August 1992, but that the Commission had indicated that it had no plans to prepare a report on the case within the next 12 months. In the circumstances, the Committee did not find that it was precluded, under article 5, paragraph 2 (a), of the Optional Protocol, from considering the communication.¹

6.2 As to the complaint that Mr. Polay Campos had been tortured and subjected to treatment in violation of articles 7 and 10, the Committee considered that the facts as submitted appeared to raise issues under the Covenant, notably under articles 7 and 10 thereof.

6.3 Concerning the claim that the death penalty might be applied retroactively to Mr. Polay Campos, no evidence had been adduced to the effect that the provisions of new Peruvian legislation expanding the application of the death penalty had been retroactively applied to him. Accordingly, the Committee deemed this allegation inadmissible pursuant to article 2 of the Optional Protocol.

6.4 The Committee noted that the author had formulated detailed allegations about her husband's conditions of detention and the alleged incompatibility of the procedure before the Special Military Tribunal with article 14. It took further note of the State party's contention that the criminal proceedings against Mr. Polay Campos had followed established procedures under current Peruvian anti-terrorist legislation. It concluded that this contention was to be examined on the merits.

6.5 On 15 March 1996, therefore, the Committee declared the communication admissible. The State party was requested, in particular, to forward to the Committee copies of the relevant reports of delegates of the International Committee of the Red Cross on their visits to Mr. Polay Campos and of the District Attorney and the doctor who had visited and examined Mr. Polay Campos on 20 December 1994, as well as reports of subsequent visits. The State party was urged to provide Mr. Polay Campos with adequate medical treatment at his place of detention. The State party was further requested to provide detailed information about the operation of special tribunals established under Peruvian anti-terrorist legislation, and about the victim's current conditions of detention.

The State party's observations on the merits

7.1 In three submissions dated 27 August, 12 and 28 November 1996, the State party provided copies of some of the reports requested by the Committee, as well as information about the medical treatment given to Mr. Polay Campos and his current conditions of detention. It did not, however, provide information about Mr. Polay Campos' conditions of detention at the Castro Castro prison at Yanamayo, or about the allegation that he was ill-treated during his transfer from Yanamayo to the maximum security detention facility at the Callao naval base.

7.2 The State party noted that two documents concerning Mr. Polay Campos had been submitted upon his transfer to the Callao Naval Base. One was a psychological evaluation, done on 23 July 1992 in Puno (close to the Yanamayo prison), in which the alleged victim's appearance and health were described as 'normal'; the other was Mr. Polay Campos' file as prepared by a department of the Ministry of Justice.

7.3 As to Mr. Polay Campos' state of health, the State party forwarded copies of three reports. The first, dated 26 April 1993, concluded that his general appearance and health were normal (apreciación general: ... despierto, ... orientado en tiempo, espacio y persona. Algo ansioso, no refiere molestía ninguna). It also noted that Mr. Polay Campos' body bore no scars or other signs of ill-treatment ("... piel y anexos: no signos de lesiones primarias y secundarias").

7.4 The second report provided by the State party concerned the visit to Mr. Polay Campos on 20 December 1994 by the District Attorney and a court-registered doctor (see paragraph 4.2 above). It noted that Mr. Polay Campos was indeed suffering from muscular contraction, due primarily to the psychological stress caused by the conditions of his incarceration. It further stated that Mr. Polay Campos was experiencing pain in his left shoulder, to be treated with medication (Piroxican). The report observed that the emotional stress to which the author was subjected would require the prescription of sedatives so that Mr. Polay Campos might sleep properly and, ideally, continued psychological treatment. Otherwise, Mr. Polay Campos was described as being in good health, and the clinical tests carried out on him had not revealed any signs of physical abuse or pressure. Mr. Polay Campos had confirmed that he had received medical attention every two weeks, and that on

the last occasion the drug Piroxican had been prescribed; he had further confirmed that every time he experienced health problems he was treated by a doctor and received the appropriate medication. He also received whatever dental treatment was required.

7.5 The third report, drawn up on an unspecified date in 1996, again concluded that Mr. Polay Campos' health was normal (buen estado general, lucido, orientado en espacio, persona y tiempo, comunicativo, entímico asímtomatica - peso 76 kgs), and that there were no signs that, as his mother had reported, his eyesight was deteriorating ("visión y campo visual conservados ..."). This last report includes a summary of all medical visits and lists the medications prescribed for Mr. Polay Campos' treatment. The State party re-emphasized that since his transfer to the Callao naval base, Victor Polay Campos had been receiving medical examinations approximately every two weeks and whenever his condition required. He had received, and continued to receive, psychiatric and dental examinations.

7.6 The State party reiterated that Mr. Polay Campos had also received regular visits from delegates of the International Committee of the Red Cross, who had corroborated the reports on his health given by the doctors of the Callao naval base. It added that it never received any written reports from the Red Cross delegates, as the visits to Mr. Polay Campos were carried out on a confidential basis. According to a list furnished by the State party, Mr. Polay Campos was visited by Red Cross delegates on 21 occasions between early December 1993 and the end of August 1996; from that list, it transpires that the longest lapse of time between two such visits was three months and 28 days (between 25 October 1994 and 22 February 1995).

7.7 As to the current conditions of detention of Victor Polay Campos, the State party provided the following information about his entitlements:

- 30 minutes of daily walk or sport in the prison courtyard;
- One 30-minute visit by two family members per month;
- Three hours weekly to listen to cassettes on a walk-man;
- Laundry once a week;
- One haircut every two weeks;
- Three meals per day;
- Access to reading material and books;
- and possibility to correspond with family members (familiares cercanos).

7.8 The State party did not provide any information about Mr. Polay Campos' trial or about the general procedures followed by the so-called "tribunals of faceless judges". It merely forwarded a copy of the legal opinion of the Prosecutor General (Fiscal supremo) dated 21 April 1993 to the effect that the verdict handed down by the Special Chamber of the Superior Court of Lima (of 3

April 1993) had been arrived at in accordance with procedural requirements, and was therefore valid. The Supreme Court endorsed this conclusion on 24 May 1993. The State party confirmed that the judgment of the Special Chamber of the Superior Court of Lima had become final, and that there was no record of any request for review of the sentence (recurso de revisión) having been filed on behalf of Victor Polay Campos.

Examination on the merits

8.1 The Human Rights Committee has examined the present communication in the light of all the information made available to it by the parties to the case, as provided for in article 5, paragraph 1, of the Optional Protocol.

8.2 Two issues arise in the present case: first, whether the conditions of detention of Mr. Polay Campos, and the ill-treatment he allegedly has been subjected to, amount to a violation of articles 7 and 10 of the Covenant, and, secondly, whether his trial before a panel of anonymous judges ("faceless judges") constituted a violation of article 14, paragraph 1, of the Covenant.

8.3 As to the first issue, the Committee notes that the State party did not provide any information about Mr. Polay Campos' detention at the Castro Castro prison in Yanamayo from 22 July 1992 to 26 April 1993 or on the circumstances of his transfer to the Callao Naval Base, whereas it did provide information on the victim's conditions of detention subsequent to his incarceration at Callao. The Committee deems it appropriate to deal separately with these two distinct periods of detention.

Detention from 22 July 1992 to 26 April 1993 and transfer from Yanamayo to Callao

8.4 The author claims that Victor Polay Campos was detained incommunicado from the time of his arrival at the prison in Yanamayo until his transfer to the Callao Naval Base detention centre. The State party has not refuted this allegation; nor has it denied that Mr. Polay Campos was not allowed to speak or to write to anyone during that time, which also implies that he would have been unable to talk to a legal representative, or that he was kept in his unlit cell for 23 and a half hours a day in freezing temperatures. In the Committee's opinion, these conditions amounted to a violation of article 10, paragraph 1, of the Covenant.

8.5 The author contends that her husband was beaten and subjected to electric shocks during his transfer to the Callao Naval Base facility, and that he was displayed to the media in a cage on that occasion. Although this allegation was not addressed by the State party, the Committee considers that the author did not adequately substantiate her allegation concerning the beating and the administration of electric shocks during the transfer to Callao. It accordingly makes no finding on articles 7 and 10, paragraph 1, of the Covenant on this count. On the other hand, it is beyond dispute that during his transfer to Callao Mr. Polay Campos was displayed to the press in a cage: this, in the Committee's opinion, amounted to degrading treatment contrary to article 7 and to treatment incompatible with article 10, paragraph 1, since it failed to respect Mr. Polay Campos' inherent and individual human dignity.

Detention at Callao from 26 April 1993 to the present

8.6 As to the detention of Victor Polay Campos at Callao, it transpires from the file that he was denied visits by family and relatives for one year following his conviction, i.e. until 3 April 1994. Furthermore, he was unable to receive and to send correspondence. The latter information is corroborated by a letter dated 14 September 1993 from the International Committee of the Red Cross to the author, which indicates that letters from Mr. Polay Campos' family could not be delivered by Red Cross delegates during a visit to him on 22 July 1993, since delivery and exchange of correspondence were still prohibited. In the Committee's opinion, this total isolation of Mr. Polay Campos for a period of a year and the restrictions placed on correspondence between him and his family constitute inhuman treatment within the meaning of article 7 and are inconsistent with the standards of human treatment required under article 10, paragraph 1, of the Covenant.

8.7 As to Mr. Polay Campos' general conditions of detention at Callao, the Committee has noted the State party's detailed information about the medical treatment Mr. Polay Campos has received and continues to receive, as well as his entitlements to recreation and sanitation, personal hygiene, access to reading material and ability to correspond with relatives. No information has been provided by the State party on the claim that Mr. Polay Campos continues to be kept in solitary confinement in a cell measuring two metres by two, and that apart from his daily recreation, he cannot see the light of day for more than 10 minutes a day. The Committee expresses serious concern over the latter aspects of Mr. Polay Campos' detention. The Committee finds that the conditions of Mr. Polay Campos' detention, especially his isolation for 23 hours a day in a small cell and the fact that he cannot have more than 10 minutes' sunlight a day, constitute treatment contrary to article 7 and article 10, paragraph 1, of the Covenant.

The trial of Mr. Polay Campos

8.8 As to Mr. Polay Campos' trial and conviction on 3 April 1993 by a special tribunal of "faceless judges", no information was made available by the State party, in spite of the Committee's request to this effect in the admissibility decision of 15 March 1996. As indicated by the Committee in its preliminary comments of 25 July 1996 on the Third Periodic Report of Peru and its Concluding Observations of 6 November 1996² on the same report,³ such trials by special tribunals composed of anonymous judges are incompatible with article 14 of the Covenant. It cannot be held against the author that she furnished little information about her husband's trial: in fact, the very nature of the system of trials by "faceless judges" in a remote prison is predicated on the exclusion of the public from the proceedings. In this situation, the defendants do not know who the judges trying them are and unacceptable impediments are created to their preparation of their defence and communication with their lawyers. Moreover, this system fails to guarantee a cardinal aspect of a fair trial within the meaning of article 14 of the Covenant: that the tribunal must be, and be seen to be, independent and impartial. In a system of trial by "faceless judges", neither the independence nor the impartiality of the judges is guaranteed, since the tribunal, being established ad hoc, may comprise serving members of the armed forces. In the Committee's opinion, such a system also fails to safeguard the presumption of innocence, which is guaranteed by article 14, paragraph 2. In the circumstances of the case, the Committee concludes that paragraphs 1, 2 and 3 (b) and (d) of article 14 of the Covenant were violated.

9. 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 constitute violations of article 7 and article 10, paragraph 1, of the Covenant as regards Mr. Polay Campos' detention at Yanamayo, public display in a cage during his transfer to Callao and detention in total isolation during his first year of incarceration at Callao and the conditions of his continuing detention at Callao, and of article 14, paragraph 1, as regards his trial by a tribunal of "faceless judges".

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Victor Polay Campos with an effective remedy. The victim was sentenced on the basis of a trial that failed to provide the basic guarantees of a fair trial. The Committee considers that Mr. Polay Campos should be released unless Peruvian law provides for the possibility of a fresh trial that does offer all the guarantees required by article 14 of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

1/ As of October 1997, the situation remained the same.

2/ See the annual report of the Committee for 1996 (A/51/40), paragraphs 350 and 363.

3/ See document CCPR/C/79/Add.72 (18 November 1996), paragraph 11. -----/