

## HUMAN RIGHTS COMMITTEE

### Blanco v. Nicaragua

Communication No. 328/1988

20 July 1994

CCPR/C/51/D/328/1988\*

### VIEWS

*Submitted by: Myriam Zelaya Dunaway and Juan Zelaya, later joined by their brother, the alleged victim*

*Victim: Roberto Zelaya Blanco*

*State party: Nicaragua*

*Date of communication: 20 July 1988 (initial submission)*

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

Meeting on 20 July 1994,

Having concluded its consideration of communication No. 328/1988, submitted to the Human Rights Committee by Ms. Myriam Zelaya Dunaway and Juan Zelaya 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 authors of the communication and the State party,

Adopts its

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

1. The authors of the initial communication are Myriam Zelaya Dunaway and Juan Zelaya, United States citizens of Nicaraguan origin, currently residing in the United States. They submit the communication on behalf and upon the request of their brother, Roberto Zelaya Blanco, a Nicaraguan citizen born in 1935, at the time of submission of the communication detained at the

prison of Tipitapa, Nicaragua. The authors allege that their brother has been a victim of violations by Nicaragua of articles 7, 9, 10, 14 and 17 of the International Covenant on Civil and Political Rights. In March 1989, Roberto Zelaya was released from detention on the basis of a governmental pardon and on 19 June 1992 he confirmed the contents of the communication and joined his sister and brother as co-author. He now resides in the United States together with his wife and son.

The facts as submitted by the authors:

2.1 Roberto Zelaya Blanco, an engineer and university professor, was arrested without a warrant on 20 July 1979, the day after the assumption of power by the Sandinista Government. He was tried by a Peoples' Tribunal (*Tribunal Especial Primero*), on account of his outspoken criticism of the Marxist orientation of the Sandinistas. On 23 February 1980, he was sentenced to 30 years' imprisonment. The *Tribunal Especial Primero de Apelación* confirmed the sentence on 14 March 1980 without an appeal hearing.

2.2 With respect to the issue of exhaustion of domestic remedies, the authors state that because of the political situation in Nicaragua, they were for a long time unable to identify Nicaraguan lawyers willing to take up their brother's case. Only at the beginning of 1989 did Roberto Zelaya inform his family that a lawyer, J.E.P.B., had indicated his readiness to represent him..

2.3 It is submitted that several organizations, including the Inter-American Commission on Human Rights, Amnesty International, the International Commission of Jurists and the International Committee of the Red Cross (Nicaraguan Section), were apprised of Mr. Zelaya's fate and visited him in prison. The authors add that they addressed many written complaints about their brother's fate to various Nicaraguan authorities, including President Daniel Ortega and the prison management, but that they did not receive any reply.

2.4 Upon his release in March 1989, Mr. Zelaya was allegedly threatened by a prison guard, "Comandante Pedro", with the words "Be very careful. If you dare write or speak against the Sandinistas, you will regret it".

The complaint:

3.1 The authors submit that there was no wrongdoing or criminal activity on the part of their brother, and that the accusations formulated against him by the Sandinistas (*apología del delito; instigación para delinquir*) were purely political. It is claimed that Roberto Zelaya was detained arbitrarily from July 1979 to March 1989, that he was denied a fair hearing before an independent and impartial tribunal, that he was tortured and was subjected to pseudo-medical and pharmacological experiments, to inhuman treatment and death threats while in prison, and that the correspondence between Roberto Zelaya and his family was systematically interfered with by the prison authorities.

3.2 The authors submit that their brother's health, already precarious, deteriorated as a result of his detention. They submit that asthma attacks were treated experimentally with cortisone and other drugs. Finally, other inmates and a prison warden A.V.C. are said to have made death threats against Mr. Zelaya on numerous occasions.

The State party's information and the author's comments thereon:

4.1 The State party indicates that Roberto Zelaya Blanco was released from detention pursuant to presidential pardon of 17 March 1989 (Decreto de Indulto No. 044).

4.2 The authors submit that their brother is currently receiving specialized medical treatment for the ailments developed or aggravated during ten years of detention, inter alia, asthma and chronic hepatitis. They add that the treatment requires frequent and prolonged hospitalization.

The Committee's admissibility decision:

5.1 The Committee ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the case was not under examination by another instance of international investigation or settlement. The general investigation, by regional and intergovernmental human rights organizations, of situations affecting a number of individuals, including the author of a communication under the Optional Protocol, does not constitute the "same matter" within the meaning of article 5, paragraph 2(a).

5.2 The Committee interpreted the State party's general submission that Mr. Zelaya Blanco had been released from detention as implying that he had been offered an appropriate remedy. However, the Committee reiterated its position that it is implicit in rule 91 of the rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should make available to the Committee all the information at its disposal; this includes, at the stage of the determination of the admissibility of a communication, the provision of sufficiently detailed information about remedies pursued by, as well as remedies still available, to victims of alleged violations of their rights. The State party did not forward such information. On the basis of the information before it, the Committee concluded that there are no further effective remedies available to Roberto Zelaya in the circumstances of his case.

5.3 The Committee observed that the authorities of any State party to the Covenant are under an obligation to investigate alleged human rights violations and to make available appropriate judicial remedies and compensation to victims of such violations, even if they are attributable to a previous administration.

5.4 The Committee considered that the authors' allegations had been sufficiently substantiated, for purposes of admissibility, and that they raised issues under articles 7, 9, 10, 14 and 17 of the Covenant.

5.5 On 20 March 1992, the Human Rights Committee decided that the communication was admissible in as much as it appeared to raise issues under articles 7, 9, 10, 14 and 17 of the Covenant.

The State party's observations and the author's comments thereon:

6.1 On 27 July 1992 the State party submitted that the new government had embarked in a process of national reconciliation, without revanchism. At the same time, Nicaragua's independent judiciary

now exercises an eminent role in protecting human rights. Since Mr. Zelaya enjoys all civil and political rights in Nicaragua, he is at liberty to demand compensation or any other remedy he may consider appropriate.

6.2 On 5 October 1992 Roberto Zelaya Blanco responded that he could not expect to receive any compensation from ad hoc tribunals in Nicaragua, heirs of the *Tribunales Especiales de Justicia*, which had convicted him and others without due process. In particular, he disputes the State party's submission that the Nicaraguan judiciary is now independent, because many judges, including those sitting in the Supreme Court, are political appointees of the former Sandinista government. Moreover, he contends that if the new government were committed to impartial justice, it would have prosecuted motu proprio those responsible for crimes, corruption and other abuses during the years of the Sandinista administration. He further questions the commitment to human rights of the Government of Violeta Barrios de Chamorro, since she herself, as member of the then Sandinista Government (*miembro de la Junta de Gobierno de Reconstrucción Nacional*), had signed Decree 185 of 29 November 1979, which established the *Tribunales Especiales de Justicia*, which depended directly on the executive (*poder ejecutivo*) and prosecuted many former civil servants for the so-called crime of conspiracy (*delito de asociación para delinquir*) merely because they had been civil servants during the Somoza administration.

6.3 With regard to the confiscation of his property, the author invokes article 17 of the Universal Declaration of Human Rights, which protects the right to property, and points out that the confiscation decrees of the Sandinista government had been signed by many of the current members of government, including the new President, Mrs. Violeta Barrios de Chamorro, in particular Decree No. 38 of 8 August 1979, which provided for the expropriation of former civil servants of the Somoza administration, including the medical doctors and dentists in the service of the Somoza family. The author lists three pieces of real property which he had owned and which were confiscated by the Sandinista Government and subsequently sold to third parties. The author alleges that the new Government is applying dilatory tactics to frustrate the restitution of such property, and rendering the process so complicated that claimants eventually abandon their claims because of the expense involved in attempting to recuperate their property. The author concludes that what was confiscated by way of administrative measures ought to be returned to the rightful owners also by administrative decree. The author further alleges discrimination in that the confiscated property of persons who were United States citizens before 19 July 1979 has been returned, whereas the property formerly owned by Nicaraguan citizens can only be recovered through onerous litigation.

6.4 With regard to his detention, the author claims that it was unlawful and arbitrary, and that he was denied due process by the revolutionary tribunals. He encloses excerpts from the Amnesty International Report entitled Nicaragua: Derechos Humanos 1986-1989, which specifically refers to its own investigation of the Zelaya case. The report concluded: "After examining the judgment and interviewing the prisoner in November 1987, Amnesty International arrived at the conclusion that there was no evidence that could prove the criminal charges against him: no victim had been identified in relation to the accusation of murder, and as to the other charges, the victim had been only referred to as 'the people of Nicaragua'. It would seem that the conviction was predicated on Mr. Zelaya Blanco's open anti-Sandinista position in the pre-revolutionary period, and on his various journalistic publications..."<sup>1</sup>

6.5 The author further describes the torture and ill-treatment to which he was allegedly subjected. On 11 October 1979 he and other detainees were taken out of their cells by mercenaries of Argentinian nationality, Che Walter and Che Manuel. At 9 a.m. they were taken to an office where they were beaten. In particular, he claims that he was handcuffed and hanged with a chain from the roof of the office. He was allegedly asked to sign a confession concerning the assassination of Pedro Joaquin Chamorro, the husband of the current President of Nicaragua. The text of the confession was read out to him by D.M.R., the legal counsel to the Police Commander. He categorically refused to sign any such statement, in spite of threats. At 1 p.m. the interrogators returned with one of the most notorious torturers of the *Dirección General de Seguridad del Estado* (DGSE), but he continued to refuse to sign any confession, whereupon Che Manuel, J.M.S. and R.C.G. proceeded to administer beatings all over his body until 7 p.m. At 11 p.m. the chains were removed, and he fell to the floor, where he was kicked by the same interrogators. He was then driven out of town, where he and fifteen other prisoners were to be executed. Someone read out the death sentences ordered by the *Junta de Gobierno de Reconstrucción Nacional*. Whereas the other fifteen were killed, he was not. Although he does not remember clearly what happened, it appears that he passed out and only regained consciousness sometime after the shooting, when he was lying on the ground and still handcuffed. At 2 a.m. of 12 October 1979 he was taken to Managua to the offices of the DGSE, where he was received by "Compañero Ernesto", who removed his handcuffs. At 6:30 a.m. he was taken to a house that had been used as a dormitory of the former *Oficina de Seguridad Nacional* (OSN) and interrogated there by "Comandante Pedro", whose real name was R.B., who also took his wristwatch Bulova, his wedding ring and his wallet containing 400 cordobas. He names five witnesses who saw him arrive at the offices of the DGSE. At around noon "Comandante Pedro", together with J.R. (Compañero Patricio) and H.I. (Capitán Santiago), came to pick him up, handcuffed and took him to a room where he was again chained, partially suspended from the ceiling. He was told that the academic and administrative cadres of the University of Nicaragua were full of agents of the CIA and that he should endorse a declaration prepared for his signature, denouncing inter alia some of his university colleagues, Professors E.A.C., F.C.G., J.C.V.R. and A.F.V. When he refused to sign the declaration, because he never had any contact or relationship with the CIA, he was beaten by Comandante Pedro, Compañero Patricio and Capitán Santiago. He was then left in peace for a few weeks, but on 7 November 1979 he was again handcuffed, blindfolded and taken by Comandante Pedro to a place where two truckloads of prisoners were being assembled. He was forced to board one of the trucks and driven out of town, where the prisoners were made to climb down and walk to a spot where they were ordered to kneel; approximately thirty of them were shot with a bullet to the back of the head. The surviving ten were taken elsewhere. He was told not to speak of what he had witnessed, because his wife and son would be made to suffer for it.

6.6 On 26 November 1979 the author and 23 other prisoners were taken to a new prison establishment near the international airport of Managua, the *Centro de Rehabilitación Social y Política*, under Comandante V.J.G., who allegedly personally assassinated several guards of the former Somoza government.

6.7 On 7 December, after two months of incomunicado detention, he was allowed to be visited by his wife. He learned from her that their home had been ransacked on 12 October by forces of the DGSE, which beat up his then pregnant wife, causing a miscarriage, and stole jewels and other items of personal property.

6.8 On 26 March 1980 at 11 p.m., he was transferred, together with some 29 other political prisoners, to the *Carcel Modelo*, which was more like a concentration camp where the inmates had been so undernourished, he claims, that they looked like figures from Buchenwald. Because of the torture and the fear of being summarily executed, the prisoners appeared traumatized. Moreover, family visits were not allowed, nor the sending of food packages. Responsible for the abuses were F.F.A., F.L.A., S.A.G. and J.I.G.C. Principal responsibility, however, lay on J.M.A., the Director of the Penitentiary system, under whose orders allegedly more than 100 political prisoners were shot.

6.9 The author claims that these crimes and abuses have not been investigated by the new government of Nicaragua.

6.10 In a further submission of 29 March 1993, the author refers to a book by Dr. Carlos Humberto Canales Altamirano, *Injusticia Sandinista. Carcel y Servicio*, in which his case is frequently mentioned, in particular the inhuman prison conditions leading to his infection with hepatitis and the aggravation of his chronic asthma attacks, and the responsibility of the prison doctor J.A.B. for these conditions.

7. The author's submissions were transmitted to the State party on 5 January 1993 and 26 August 1993. In its observations of 16 July 1993, the State party does not enter the merits of the case but merely refers to article 5, paragraph 2(b), of the Optional Protocol, indicating that the author has not availed himself of local remedies to solicit the return of his property and compensation for his imprisonment.

8.1 In a further submission, dated 6 September 1993, the author comments on the State party's observations, referring to Decree No. 185 of 29 November 1979, pursuant to which the judgments of the *Tribunales Especiales de Justicia* were not subject to appeal or cassation. Thus, the exhaustion of local remedies was completed with the handing down of the thirty-year sentence against him by the revolutionary tribunal. The author's release from imprisonment after ten years of deprivations and abuses does not close the book on the violation of his rights under the Covenant on Civil and Political Rights.

8.2 With regard to the issue of impunity, the author points out that the State party has not initiated any prosecution against named torturers of the prior regime and that these named persons are living in Nicaragua with perfect impunity, although their crimes have been denounced and documented. The author further alleges that the State party has failed to initiate investigation of these cases.

8.3 On 16 June 1994 the State party reiterates its position that the author has not exhausted domestic remedies as required by article 5, paragraph 2(b), of the Optional Protocol. No submissions on the merits of the author's allegations are made.

8.4 With regard to the author's allegations that the ad hoc tribunals in Nicaragua are not impartial, the State party states that the Government has no power to intervene in their deliberations or decisions.

8.5 The State party affirms that human rights are today respected in Nicaragua and refers to the fact

that the 1993 Organization of American States session and the IX Interamerican Indigenous Congress were held in Nicaragua, thus manifesting that the international community recognizes Nicaragua's democratic legal order.

The Committee's Views on the merits:

9.1 The Committee has taken due note of the State party's submission that the author has failed to exhaust domestic remedies, since he can now address his complaints to the competent courts of the present Nicaraguan Government.

9.2 Even though the State party has not specifically invoked article 93, paragraph 4, of the Committee's rules of procedure, the Committee has *ex officio* reviewed its decision of 20 March 1992 in the light of the State party's arguments. The Committee welcomes the State party's readiness to examine the author's complaints and considers that such examination could be seen as a remedy under article 2, paragraph 3, of the Covenant. However, for purposes of article 5, paragraph 2(b), of the Optional Protocol, the Committee considers that the author, who was arrested in 1979 and spent ten years in detention, cannot be at this stage required to engage the Nicaraguan courts of the present administration before his case can be examined under the Optional Protocol. In this context the Committee recalls that the communication was submitted to the Committee in 1988, at a time when domestic remedies were not available or not effective. Even if domestic remedies may now be available, the application of such remedies would entail an unreasonable prolongation of the author's quest to be vindicated for his detention and alleged ill-treatment; the Committee concludes that the Optional Protocol does not require the author, in the circumstances of his case, to further engage the Nicaraguan courts. Moreover, the Committee reiterates its finding that the criteria of admissibility under the Optional Protocol were satisfied at the time of submission of the communication and that there is no reason so set aside the Committee's decision of 20 March 1992.

9.3 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol. The Committee regrets the absence of any submission by the State party concerning the substance of the matter under consideration. Pursuant to article 4, paragraph 2, of the Optional Protocol, a State party should investigate in good faith all the allegations of violations of the Covenant made against it and make available to the Committee all the information at its disposal. In the absence of any State party submission on the merits of the case, due weight must be given to the author's allegations, to the extent that they have been substantiated.

10.1 With regard to the author's allegation concerning the confiscation of his property, the Committee recalls that the Covenant does not protect the right of property, as such. However, an issue under the Covenant may arise if a confiscation or expropriation is based on discriminatory grounds prohibited in article 26 of the Covenant. Although the author has stated that his property was confiscated as a consequence of his belonging to a category of persons whose political views were contrary to those of the Sandinista Government, and in a fashion that could be termed discriminatory, the Committee does not have sufficient facts before it to enable it to make a finding on this point.

10.2 In its prior jurisprudence the Committee has found that interference within a prisoner's

correspondence may constitute a violation of article 17 of the Covenant. However, in the instant case the Committee lacks sufficient information to make a finding concerning a violation of the author's right to privacy under this provision.

10.3 With regard to the author's allegations that he was subjected to arbitrary detention, the Committee notes that the State party has not disputed the author's description of the reasons for his detention, i.e. his political opinions contrary to those of the Sandinista Government. The Committee has also taken note of the many annexes to the author's submissions, including the relevant report from the Nicaraguan *Departamento de Seguridad del Estado* and the evaluation of the case by Amnesty International. In the light of all the information before it, the Committee finds that the author's arrest and detention violated article 9, paragraph 1, of the Covenant.

10.4 As to the author's allegations that he was denied a fair trial, the Committee finds that the proceedings before the *Tribunales Especiales de Justicia* did not offer the guarantees of a fair trial provided for in article 14 of the Covenant. In particular, the Committee observes that the author's allegation that he was repeatedly put under duress to sign a confession against himself, in contravention of article 14, paragraph 3(g), has not been contested by the State party. 10.5 With regard to the author's allegations of having been subjected to torture and ill-treatment, the Committee observes that the author's submissions are very detailed and that he mentions the names of the officers who ordered, participated in or were ultimately responsible for the ill-treatment. Moreover, the author has named numerous witnesses of the alleged mistreatment. In the circumstances and bearing in mind that the State party has not disputed the author's allegations, the Committee finds that the information before it sustains a finding that the author was a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant.

10.6 The Committee considers violations of articles 7 and 10, paragraph 1, of the Covenant to be extremely serious, and requiring prompt investigation by States parties to the Covenant. In this context, the Committee refers to its General Comment No. 20 on article 7<sup>2</sup>, which reads in part:

"Article 7 should be read in conjunction with article 2, paragraph 3... The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective... States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."

In this respect, the State party has indicated that the author may institute actions before the Nicaraguan courts. Notwithstanding the possible viability of this avenue of redress, the Committee finds that the responsibility for investigations falls under the State party's obligation to grant an effective remedy.

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations of articles 7, 9, paragraph 1, 10, paragraph 1, and 14, paragraph 3(g), of the Covenant.

12. The Committee is of the view that Mr. Roberto Zelaya Blanco is entitled, under article 2, paragraph 3(a), of the Covenant to an effective remedy. It urges the State party to take effective



measures (a) to grant appropriate compensation to Mr. Zelaya for the violations suffered, also pursuant to article 9, paragraph 5, of the Covenant; (b) to carry out an official investigation into the author's allegations of torture and ill-treatment during his detention; and (c) to ensure that similar violations do not occur in the future.

13. The Committee would wish to receive information, within 90 days, on any relevant measures adopted by the State party in respect of the Committee's Views.

[Adopted in English, French and Spanish, the English 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.]

#### Footnotes

\*/ Made public by decision of the Human Rights Committee.

1/ Amnistia Internacional. Nicaragua: Derechos Humanos 1986-1989 , published in November 1989 by Amnesty International, London, pp. 13-4.

2/ Adopted at the Committee's forty-fourth session in 1992.