

HUMAN RIGHTS COMMITTEE

Solorzano v. Venezuela

Communication No. 156/1983

26 March 1986

VIEWS

Submitted by: Katy Solorzano de Pena on behalf of her brother, Luis Alberto Solorzano, who later joined as co-author

Alleged victim: Luis Alberto Solorzano

State party concerned: Venezuela

Date of communication: 8 August 1983 (date on which the initial letter was received)

Date of decision on admissibility: 26 October 1984

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

Meeting On 26 March 1986;

Having concluded its consideration of communication No. 156/1983, originally submitted to the Committee by Katy Solorzano de Pena, 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 by the State party concerned;

Adopts the following:

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

1.1 The original author of the communication (initial letter, undated, received on 8 August 1983 and further letters of 9 September 1983 and 16 February 1984) is Katy Solorzano de Pena, a Venezuelan citizen, living in Caracas, Venezuela. She submitted the communication on behalf of her brother, Luis Alberto Solorzano, stating that he was imprisoned at the San

Carlos military barracks (Cuartel San Carlos) in Venezuela and that he was unable to submit the communication himself. Mr. Solorzano was released by virtue of a Presidential Degree of 21 December 1984. In a letter to the Committee (undated), received on 27 June 1985, he joined as co-author of the communication.

1.2 Katy Solorzano stated that her brother (born on 8 November 1952) had been arrested at his home on 28 February 1977 without any warrant of arrest and that his house had been searched without a search warrant. She further stated that he had been subjected to severe torture and gave the names of five officers allegedly responsible, all of them members of the Direccion de los Servicios de Inteligencia y Prevencion (DISIP). These events, as well as some of those described below, occurred before the entry into force of the Covenant and the Optional Protocol for Venezuela (10 August 1978).

1.3 Soon after Mr. Solorzano's arrest, a military tribunal had ordered his detention on charges of having joined in armed rebellion. On 12 December 1977 he had been indicted. In that connection, the prosecutor affirmed the existence of a clandestine armed movement, called "Grupo de Comandos Revolucionarios", aiming at the overthrow of the Government of Venezuela through guerrilla warfare and which 3 responsible for the kidnapping of a citizen of the United States of America, William Frank Niebous, allegedly undertaken to obtain funds for the promotion of e Group's political activities. Katy Solorzano did not contest her brother's ranks with the Group but only his participation in the kidnapping of Mr. Niebous.

1.4 In a summary of the legal issues, Mr. Solorzano's defence lawyer observed that after December 1977, Salom Meza Espinoza and David Nieves, two individuals whose cases were linked with the case of Mr. Solorzano, had been elected deputies to the Venezuelan Congress. On the basis of their new parliamentary immunity, both of them had requested their release, which had been subsequently ordered by a court partial. The military prosecutor had appealed the decision before the Supreme Court of Justice, to which the case had been transferred in mid-1979. All proceedings in the case, including those against Mr. Solorzano, had been adjourned pending a ruling of the Supreme Court on the Question of the legality of the release of the two deputies.

1.5 Katy Solorzano alleged that there had been various irregularities in the proceedings against her brother. She indicated that:

Her brother, a civilian, had been tried by a military tribunal, although that was contrary to the Venezuelan Constitution;

The evidence presented by her brother and his lawyer had been disregarded by the military tribunals in particular, the lawyer could not obtain the attendance and examination of witnesses on her brother's behalf;

Her brother's trial had been defective since, for example, false declarations had been admitted in evidence. In that connection, Mr. Decaril, Mr. Solorzano's lawyer, had stated that, inter alia, his client's detention and the charges against him had been based on

declarations, made by policemen and other witnesses, which for one reason or another should have been considered invalid.

1.6 Katy Solorzano claimed that her brother had been subjected to inhuman prison conditions, that in February 1983 he had been severely beaten at the Cuartel San Carlos (the name of the responsible officer was given), that after those incidents and similar ones in other prisons, Political detainees all over the country, including her brother, had carried out a month-long hunger strike to obtain better conditions of detention, that, due to the above-mentioned events, her brother had required medical treatment and his transfer to a hospital had been recommended, but that the prison authorities had not heeded the recommendation.

1.7 It was claimed that Mr. Solorzano was a victim of violations of articles 7, 9, paragraphs 1 and 4, 10, paragraph 1, and 14, paragraph 3 (c) and (e) of the International Covenant on Civil and Political Rights, and that no domestic remedies were available in the case.

1.8 Katy Solorzano further indicated that the present case was not being examined under another procedure of international investigation or settlement.

2. By its decision of 20 October 1983, the Working Group of the Human Rights Committee, having decided that Katy Solorzano was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the Question of admissibility of the communication. The Working Group also requested the State party to transmit to the Committee copies of court decisions concerning Mr. Solorzano.

3.1 In a submission dated 16 January 1984, the State party informed the Committee that Luis A. Solorzano had been arrested in the course of the criminal proceedings instituted in connection with the kidnapping of a United States citizen, William Frank Niebous, by "an armed movement consisting of a group of persons forming a paramilitary organization known as Grupo de Comandos Revolucionarios, Operacion Argimiro Gabaldon". Following pre-trial detention by the police authorities, as authorized in article 60.1, third paragraph, of the Constitution, an order confirming his detention had been issued on 7 March 1977 by the Permanent Second Military Court of First Instance of Caracas, after the Court had determined the existence of military rebellion and had found that there was firm evidence of Guilt on the part of Mr. Solorzano, as required by article 182 of the Code of Criminal Procedure and article 202 of the Code of Military Justice. The State party submitted that Mr. Solorzano's arrest had been effected in accordance with the Constitution and relevant criminal laws, and therefore it could not be described as arbitrary and that the allocation of violation of article 9, paragraph 4, of the Covenant was similarly inadmissible, "since the remedies of complaint and/or appeal against a detention order are provided for in article 190 of the Code of Criminal Procedure and article 203 of the Code of Military Justice and should have been duly utilized, even if they would have been unsuccessful".

3.2 The State party further submitted that the allegations of torture had not been accompanied by any supporting evidence, while the allegations of maltreatment of detainees "could well refer to acts of prison mutiny, which are Quite outside the scope of the

Covenant". The State party added that it would seem unlikely that those allocations of maltreatment and torture were true, particularly as they had been investigated by the Public Prosecutor's Department.

3.3 The State party observed that the author's allegations regarding irregularities in the proceedings (both, apparently, at the pro-trial stage and after the trial started with the indictment of the alleged victim on 12 December 1977), legal manoeuvres to delay proceedings and obstruction regarding the cross-examination of witnesses could not be taken seriously since Mr. Solorzano's lawyer had stated that "the investigation then proceeded normally until the indictment was made. The period for giving evidence was observed, and some of the witnesses summoned to appear by the court were cross-examined".

3.4 The State party also rejected the allegation that the trial of Mr. Solorzano had been delayed to prevent his release. In that connection, it stated that, in the decision handed down on 22 February 1979, the Court had ordered the unconditional release of Salom Meza Espinoza and David Nieves, who had been charged along with Mr. Solorzano and another person for military rebellion and other offences; that was because they had been elected deputies to the National Congress and consequently enjoyed parliamentary immunity under article 143 of the Constitution. In the same decision, the above-mentioned Military Court had ruled that the Permanent Military Court of Caracas should forward the dossier to the Supreme Court of Justice for the purposes laid down in article 215 (2) of the Constitution, which stated that one of the powers of the Supreme Court of Justice was "to declare whether or not there are Grounds for the trial of members of Congress". The State party had further stated that while the case was being heard by the full Court, a presidential pardon had been granted on 28 November 1983 to Deputy Salom Meza Espinoza, and, on 4 December 1983, David Nieves had been re-elected a deputy to the National Congress.

"At this point, on 16 December 1983, the Government Attorney requested the Supreme Court of Justice to effect a separation of the case and to transfer the dossier to the Permanent Military Court of Caracas for the continuation of the proceedings against Luis A. Solorzano and others for the offences already mentioned. The Supreme Court of Justice acceded to this request in an order dated 21 December 1983 referring the dossier to the Permanent Military Court of Caracas to enable the proceedings in Question to continue

"As far as the allegations considered here are concerned, the most important consideration is that the proceedings against Luis Alberto Solorzano again followed the normal course, once the Question of the special status of his co-defendants had been resolved."

3.5 The State party contended that domestic remedies had not been exhausted "since the trial is entering the phase of summing-up and sentencing at first instance. This leaves all the second instance procedure untouched, as well as the appeal to set aside the judgement, in accordance with the procedural legislation in force".

4.1 In a further submission dated 16 February 1984, Katy Solorzano commented on the State party's submission and reiterated that her brother's detention was unlawful for the following reasons:

"He was arrested more than one year after the kidnapping of the American citizen, so that there is no question of flagrante delicto, which is an exception provided for in article 60, paragraph 1, of the Constitutions

"He is being detained without any written order by the competent official."

4.2 Katy Solorzano alleged that her brother's right to defend himself had not been respected. In particular she mentioned that the right to cross-examine witnesses had been denied (names were given). She added that 'the court failed to take any firm action when the only witness to appear voluntarily, on being cross-examined, admitted that she had made her statement against Luis Alberto Solorzano because OISIP (Political Police) had threatened her with imprisonment if she did not do so, and also retracted her earlier statement against him. The name of this witness is Aurora Alonso de Sanchez, and the text of her statement can be found in the record of proceedings". As to the State party's contention that Mr. Solorzano's lawyer had conceded that procedural guarantees were observed and some witnesses cross-examined, Katy Solorzano stated that that had been done in order to secure her brother's release.

4.3 Katy Solorzano stressed that article 68 of the Venezuelan Constitution stipulated that the right to a defence was an inviolable right at every stage and level of proceedings and she recalled that her brother had been deprived of a trial for more than five years. In that connection she commented:

"While it is proper for the Supreme Court to take the proper time to issue a decision, nevertheless, the fact that this proper time should already have extended over more than five years surely defies all logic."

4.4 The author reiterated that her brother had been subjected to brutal ill-treatment in February 1983 resulting in injuries to the head and other parts of the body and that he - as well as other detainees - had undertaken a hunger strike in protest against the maltreatment inflicted on many of them. In March and April 1983, agreements had been signed by a mediation commission (composed of civilian and military attorneys, members of Parliament and representatives of prisoners - among them Mr. Solorzano) in order "to guarantee and ensure observance of the physical and moral integrity of persons on trial".

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

5.2 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 noted that there was no indication that that applied in the present case.

5.3 Article 5, paragraph 2, (b), of the Optional Protocol precludes the Committee from considering a communication if all available domestic remedies have not been exhausted.

The Committee therefore examined whether the authors' various claims met that requirement.

5.4 As to the claim that Mr. Solorzano was a victim of a violation of article 9, paragraphs 1 and 4, of the Covenant, the Human Rights Committee observed that the arrest had taken place prior to the entry into force of the Covenant and the Optional Protocol for Venezuela. The claim, in so far as it related to the alleged victim's initial arrest and detention was therefore found to be inadmissible ratione temporis. In so far as the communication might be understood as implying that the continued detention of Mr. Solorzano (after 10 August 1978) constituted, as such, a violation of article 9, paragraphs 1 and 4, of the Covenant, the Committee referred to the observations of the State party set out in paragraph 3.1 above and concluded that the issue was also inadmissible, because of non-exhaustid of domestic remedies.

5.5 In so far as the claim concerning the alleged torture and mistreatment of Mr. Solorzano, in violation of articles 7 and 10, paragraph 1, of the Covenant, related to events said to have taken place prior to 10 August 1978, the Committee observed that it was inadmissible ratione temporis. In so far as the claim related to events alleged to have taken place in February 1983 (pars. 1.6 above), the Committee noted the observations of the State party (pars. 3.2 above) and the author's comments thereon (para. 4.4 above). It was established that inquiries into the events in question had taken place and had led to an agreement signed, among others, by Mr. Solorzano. The implications of that agreement, which might have constituted a remedy in regard to the ground of complaint, were not clear. The Committee found that that part of the claim, therefore, belonged to the examination of the case on the merits and was not inadmissible.

5.6 In so far as Katy Solorzano claimed that the prolonged delays in the court proceedings affecting Mr. Solorzano constituted a violation of article 14, paragraph 3 (c), of the Covenant, the Committee observed that the claim also concerned article 9, paragraph 3, of the Covenant (which provided for the right to trial within a reasonable time or to release from detention). The continued detention of Mr. Solorzano since 28 February 1977, without trial, clearly raised a issue under both of those provisions, which had to be examined on the merits. The Committee noted in that connection that the trial of Mr. Solorzano was, according to the State party, entering the phase of summing-up and sentencing at first instance and that that left all the second instance procedure untouched, as well as the appeal to set aside the judgement in accordance with the procedural legislation in force (para. 3.5 above). That seemed to imply that considerable time might still pass until a final judgement was rendered. The Committee noted, furthermore, that in fact the proceedings in the case had been adjourned between February 1979 and December 1983. The Committee finally noted that, in the mean time, a considerable effort, although in vain, had been made to obtain the release of Mr. Solorzano and that no particulars had been submitted by the State party to show that other remedies might have been available, either to expedite the proceedings or to obtain his release. In those circumstances, the Committee concluded that Such remedies either did not exist, or could not be shown to be effective in his situation, and in any event that their application was being unreasonably prolonged. Accordingly, the Committee found that the claim was not inadmissible under article 5, paragraph 2, (b), of the Optional

Protocol.

5.7 As to Katy Solorzano's claim that Mr. Solorzano had been denied the right to examine, or have examined, the witnesses against him in violation of article 14, paragraph 3 (e), of the Covenant, it appeared that she related that claim both to the period of pre-trial investigation (which ended with an indictment on 12 December 1977, i.e., before the Covenant entered into force for Venezuela) and to the trial period which followed thereafter (including some months from the entry into force of the Covenant for Venezuela on 10 August 1978, until the trial proceedings were adjourned in February 1979). Considering that she did not indicate any dates in support of her claim that article 14, paragraph 3 (e), had not been respected and taking into account the other information before it in regard to the claim, the Human Rights Committee concluded that it should be deemed inadmissible. The issue might, however, be seen as subsumed in the claim that Mr. Solorzano was a victim of a breach of article 14, paragraph 3 (c), which was to be considered on the merits.

6. On 26 October 1984, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to alleged ill-treatment of Mr. Solorzano in February 1983 and in so far as it related to the duration of the judicial proceedings;

2. That the communication was inadmissible in respect of the other claims raised by the author.

7. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 25 April 1985, the State party informed the Committee that "Dr. Jaime Lusinchi, President of the Republic of Venezuela, undertook, through Presidential Decree No. 441, of 21 December 1984 ... the dismissal of the proceedings against Lois Alberto Solorzano", and that Mr. Solorzano had been released. The State party thus requested the Committee to close the case.

8.1 Before taking further action, the Committee instructed the Secretariat to ascertain from Mr. Solorzano whether he wished the Committee to continue consideration of the case and, if so, to confirm the facts of the case as presented by his sister and to correct any inaccuracies in that respect.

8.2 In a reply (undated) received on 27 June 1985, Mr. Solorzano requested the Committee to continue consideration of the case, confirmed the information submitted to the Committee by his sister and added the following observations:

"... this dismissal of proceedings against me for military rebellion, which had been continuing since 1977, demonstrates that:

"1. Since there is no judgement against me, no civilian or military entity or authority is legally in a position to take a decision on presumed guilt or innocence.

"2. In other words, I was detained for almost eight years, during which this trial did not

culminate in a judgement, a fact which shows the arbitrary and irregular character of the proceedings to which I was subjected.

"3. Because the same characteristics attached to my release, it may be stated that my country's Government interfered in the proceedings as it pleased, refusing me the right to defence throughout the period when the trial was paralysed."

9. By a note dated 24 September 1985, the State party observed that:

"The Permanent Third Military Court of First Instance of Caracas issued a detention order against Luis Alberto Solorzano, who was presumed to have committed the offence of military rebellion, which is punishable under article 476 of the Code of Military Justice. The fact is that the Venezuelan legal system includes dismissal as one of the means of staying trials or proceedings. In this case, the President of the Republic, pursuant to the terms of article 54, paragraph 3, of the Code of Military Justice and in keeping with Presidential Decree No. 441 of 31 December 1984, published in Official Gazette of the Republic No. 33131 of the same date, ordered dismissal of the proceedings against Luis Alberto Solorzano. In the opinion of the Government of Venezuela, the case brought against Luis Alberto Solorzano has come to a complete end in accordance with the above. In any event, under our legal system, citizen Luis Alberto Solorzano is entitled to bring any legal action he deems appropriate against any person, natural or legal, before the competent courts. In the present instance, his intentions are against the Venezuelan Government, which would, in the event of legal action by Solorzano, be represented by the Attorney-General of the Republic, who, under article 202, paragraph 1, of the Constitution, is assigned the task of court or out-of-court representation and defence of the interests of the Republic."

10.1 The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which are either uncontested or are contested by the State party only by denials of a general character offering no particular information or explanations.

10.2 Mr. Luis Alberto Solorzano was arrested on 28 February 1977 on suspicion of participation in armed rebellion, brought before a military tribunal and kept in detention until his release by virtue of a Presidential Decree of 21 December 1984, that is, after more than seven years of detention. Although he was indicted on 12 December 1977 by the Permanent Military Court of Caracas, proceedings were interrupted in 1979 because two co-defendants had been elected deputies to the National Congress, and their cases remained pending until severed by order of the Supreme Court of Justice in December 1983. At the time of his release in December 1984, no judgement had been passed against Mr. Solorzano. He was subjected to ill-treatment during detention, particularly in February 1983 when he suffered injuries to the head and other parts of the body.

11. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish certain information and clarifications necessary for the Committee to facilitate its tasks, in particular with regard to the treatment in February 1983

of which Mr. Solorzano has complained. In the circumstances, due weight must be given to the authors' allegations. 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 information available to it. In no circumstances should a State party fail to investigate duly and to inform the Committee properly of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. A denial of the authors' allegations in general terms and the reference to an unsubmitted investigation by the Public Prosecutor's Department are not sufficient. The Committee would need precise information and reports, inter alia, on the Questioning of prison officials accused of maltreatment of prisoners.

12. 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 10, paragraph 1, because of the ill-treatment that Mr. Solorzano suffered during detention, in particular in February 1983;

Articles 9, paragraph 3, and 14, paragraph 3 (c), because he was not brought promptly before a judge nor tried within a reasonable time, and because he was kept in detention without judgement for over seven years.

13. 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 that Mr. Solorzano has suffered and to Grant him 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.

Notes

a/ Pursuant to rule 85 of the provisional rules of procedure, Mr. Andres Aquilar did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5, paragraph 4, of the Optional Protocol in this matter.