

HUMAN RIGHTS COMMITTEE

Celis Laureano v. Peru

Communication No. 540/1993

4 July 1994

CCPR/C/51/D/540/1993*/

ADMISSIBILITY

Submitted by: Basilio Laureano Atachahua

Alleged victim: His granddaughter, Ana Rosario Celis Laureano

State party: Perú

Date of communication: 22 October 1992 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 13 May 1993 (not issued in document form)

Date of present decision: 4 July 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Basilio Laureano Atachahua, a Peruvian citizen born in 1920. He submits the communication on behalf of his granddaughter, Ana Rosario Celis Laureano, a Peruvian citizen, born in 1975. He claims that his granddaughter is a victim of violations by Peru of articles 2, paragraphs 1 and 3; 6, paragraph 1; 7; 9; 10 paragraph 1 and 24, paragraph 1, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author is a farmer and lives with his family in the district of Ambar, province of Huaura, Peru. He states that in March 1992 his granddaughter, who was then sixteen years old, was abducted by terrorists. She returned six days later and told the author that the guerrillas had threatened to kill

her if she refused to join them, that she had to carry their baggage and to cook for them, but that she had been able to escape. In May 1992, she was again forced by the guerrillas to accompany them; after a shoot-out between a unit of the Peruvian army and the guerrillas, she again escaped. The author explains that he did not denounce the events to the authorities, firstly because of fear of reprisals from the guerrillas, and secondly because, at the time, the military was not yet stationed in the district of Ambar.

2.2 On 23 June 1992, Ana Rosario Celis Laureano was detained by the military on suspicion of collaborating with the guerrilla movement “Shining Path”. During sixteen days, she was held at the military base in Ambar. The first eight days, her mother was allowed to visit her; during the last eight days she allegedly was kept incomunicado. Upon inquiry for her daughter’s whereabouts, Ana’s mother was told that she had been transferred. The family then requested the provincial prosecutor in Huacho (*Fiscal Provincial de la Primera Fiscalía de Huaura-Huacho*) to assist them in locating Ana. After ascertaining that she was still detained in Ambar, the prosecutor ordered the military to transfer her to Huacho and to hand her over to the specialized police of the National Department Against Terrorism (*Dirección Nacional Contra el Terrorismo; DINCOTE*).

2.3 During the transfer to Huacho, the truck in which Ana Celis Laureano was transported was involved in an accident. Suffering from a fractured hip, she was brought to the quarters of the P.N.P. (*Policía Nacional del Perú*), where she was held from 11 July until 5 August 1992. On 5 August 1992, a judge on the Civil Court in Huacho (*Primer Juzgado Civil de Huaura-Huacho*) ordered her release on the ground that she was a minor. He further appointed the author as her guardian, and ordered them not to leave Huacho, pending the investigation into the charges against her.

2.4 On 13 August 1992, at about 1:00 a.m., Ana Celis Laureano was abducted from the house where she and the author were staying. The author testified that two of the kidnappers entered the building via the roof, whereas the others entered through the front door; he further testified that the men were masked, but that one of them wore a military uniform and that there were other characteristics, e.g. the type of their arms and the van into which they pulled his granddaughter, that indicated that they belonged to the military and/or police forces.

2.5 On 19 August 1992, the author filed a complaint with the prosecutor of Huacho. The prosecutor, together with members of a local human rights organization, helped the author to enquire with the military and the police in the province of Huaura, to no avail.

2.6 On 24 August 1992, the Chief of the Huacho Police Station informed the prosecutor’s office that he had received information from the DINCOTE in Lima, indicating that it suspected Ana Rosario Celis Laureano to be the person in charge of guerrilla activities in the district of Ambar, and that she had participated in the attack on a military patrol in Parán.

2.7 On 8 September 1992, the Centro de Estudios y Acción Para la Paz (CEAPAZ), intervening on behalf of the author, petitioned the Minister of Defence, requesting him to investigate Ana Celis Laureano’s detention and/or her disappearance; it submitted that she was still a minor and invoked, in particular, the Convention on the Rights of the Child, which Peru had ratified in September 1990. By letter of 16 September 1992, the Secretary-General of the Ministry of Defence informed CEAPAZ that he had referred the case to the Armed Forces in order to carry out investigations. No

further information was received.

2.8 CEAPAZ also petitioned the Director of the DINCOTE on 8 September 1992, requesting him to verify whether Ana Rosario Celis Laureano had been detained by its forces and whether she had been brought to one of its quarters. On 15 September 1992, the Director of the DINCOTE replied that her name was not listed in the registers of detained persons.

2.9 A request of information and investigation of the case was sent, on 8 and 9 September 1992, to the Director of the Human Rights Secretariat of the Ministry of Defence, to the Minister of the Interior and to the Commanders of the military bases in Andahuasi and Antabamba. Again, no reply was given to these petitions.

2.10 On 4 September 1992, the author filed a petition for habeas corpus with the Second Criminal Court (*el Segundo Juzgado Penal*) of Huacho. The petition, however, was not admitted by the judge on the ground that “the petitioner should indicate the location of the police or military office where the minor is detained and the exact name of the military officer in charge [of this office]”.

2.11 On 30 September 1992, the author applied for habeas corpus with the presiding judge of the Second Criminal Chamber of the district High Court (*Segunda Sala Penal de la Corte Superior del Distrito Judicial del Callao*), requesting him to admit the application and to direct the judge of the Criminal Court of Huacho to comply with the habeas corpus order. It remains unclear whether any proceedings were instituted by the judicial authorities in respect of this application.

2.12 In light of the above, it is submitted, all available domestic remedies have been exhausted to locate Ana Rosario Celis Laureano and to find out whether she is still alive.

2.13 The case of Ana Rosario Celis Laureano was registered before the United Nations Working Group on Enforced or Involuntary Disappearances as Case No. 015038 and transmitted to the Peruvian Government on 18 September 1992.¹ By notes verbales of 6 and 30 November 1992, the Government of Peru informed the Working Group that the Prosecutor’s Office in Huacho (*Segunda Fiscalía Provincial Mixta de Huacho*) was investigating the case, but that it had not yet located the girl, nor the persons responsible for her disappearance. It had requested information from the Ministry of Defence and the Ministry of the Interior.

The complaint:

3. The unlawful detention of Ana Rosario Celis Laureano, and her subsequent disappearance, which the author attributes to the Peruvian armed forces, are said to amount to violations of articles 6, paragraph 1; 7; 9; and 10, paragraph 1, of the Covenant. Furthermore, it is submitted that the State party violated article 24, paragraph 1, as it failed to provide Ana Celis Laureano with such measures of protection as are required by her status as a minor. The State party’s failure to protect Ana Celis Laureano’s rights, to investigate in good faith the violations of her human rights, and to prosecute and punish those held responsible, is said to be contrary to article 2, paragraphs 1 and 3, of the Covenant.

The State party’s information and observations and the counsel’s comments thereon:

4.1 In its submission of 10 June 1993, the State party draws on information provided by the Peruvian Ministry of Defence. The latter submits that in December 1992, investigations were carried out by the Security and Armed Forces which affirmed that members of the military base in Ambar had arrested Ana Rosario Celis Laureano in June 1992. She had allegedly confessed that she had participated in the attack on a military patrol in Parán on 6 May 1992, and had pointed out where the guerrillas had hidden arms and ammunition. In July 1992, she was handed over to the Chief of the P.N.P. and subsequently to the prosecuting authorities of Huacho; she was charged, *inter alia*, with terrorism. Her case was then referred to the judge of the Civil Court who decided on her provisional release. On 8 September 1992, the Chief of the military base in Ambar enquired with the judge about the status of the case; the judge, on 11 September 1992, informed him that the girl had been abducted one month earlier and that he attributed responsibility for this event to military personnel. On 21 September 1992, the attorney-general of the Second Prosecutor's Office (*Fiscal de la Segunda Fiscalía de la Nación*)² reported on the action taken by his office; he issued a list of 8 police and military offices and concluded that the girl was not detained in these offices.

4.2 The State party concludes that Ana Rosario Celis Laureano was detained because of terrorist activities, and that she was handed over to the competent authorities. It submits that in respect of her alleged disappearance, one should not discard guerilla intervention, for the following reasons: (a) to prevent that she would be brought to justice and reveal the structure of the terrorist branch to which she belonged, or (b) that she was eliminated as a reprisal for pointing out the location where the guerrillas had hidden arms and ammunition after the attack in Parán. Finally, it is submitted that the presumed responsibility of the Peruvian armed forces in this respect can be removed on the following grounds: the enquiries of the Ministry of Public Affairs with the military and police offices in Huacho and Huaura, which confirmed that she was not detained and; the vagueness of the claim in as much the author refers to the "presumed perpetrators" ("la imprecisión de la denuncia por cuanto en ella se hace alusiones vagas sobre los presuntos autores").

5.1 In his comments, dated 19 September 1993, counsel notes that the Ministry of Defence is neither competent, nor is in the position, to draw conclusions on investigations which should be undertaken by the judiciary. He points out that the State party admits the events which occurred prior to Ana's disappearance, i.e. that she had been detained by the military, and that the judge of the Civil Court in Huacho held the military responsible for her abduction. It is submitted that the State party, by merely referring to the negative result of the enquiries of the Fiscal de la Segunda Fiscalía de la Nación, displays its unwillingness to seriously investigate the minor's disappearance, and that it ignores the principal elements inherent to the practice of forced disappearances, i.e. the impossibility to identify the persons responsible because of the way in which security forces operate in Peru. In this context, counsel refers to the author's evidence concerning the type of arms and clothes of the kidnappers, and the way in which the abduction was carried out; he reiterates that the State party itself concedes that one of the organs belonging to the administration of justice has held military personnel responsible for the event.

5.2 As to the contention that Ana Rosario Celis Laureano was detained by the military because of terrorist activities and that the guerrillas may have intervened, counsel notes that the State party is speculating, that it was the military who accused her of belonging to the Shining Path and that she had not yet been found guilty by the courts. Furthermore, counsel forwards a statement from Ana's grandmother, dated 30 September 1992; the latter testifies that prior to, and subsequent to, the

disappearance of her granddaughter, a captain of the military base of Ambar had threatened her and several other members of the family.

5.3 As to the issue of exhaustion of domestic remedies, counsel states that he assumes that the President of the High Court decided on the admissibility of the petition for habeas corpus and referred the petition to the court of first instance which, after having heard the case, concluded that military personnel was involved in the abduction and disappearance. It is submitted that, in spite of these findings, the girl has not been located to date, and no criminal proceedings have been initiated, nor has Ana's family been compensated.

6.1 In a further submission, dated 6 September 1993, the State party contends that the Committee has no competence to consider the communication, since the case is already being examined by the U.N. Working Group on Enforced or Involuntary Disappearances. In this context, the State party refers to article 5, paragraph 2(a), of the Optional Protocol, which provides that the Committee shall not consider any communication unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.2 In reply, counsel points out that the Working Group on Enforced or Involuntary Disappearances has a specific mandate, i.e. to examine questions relevant to the phenomenon of disappearances, receiving information from Governments, non-governmental/intergovernmental/humanitarian organizations and other reliable sources, and making general recommendations to the Commission. He submits that the Working Group's objectives are strictly humanitarian and its working methods based on discretion; it does not identify the responsible persons and it does not deliver a judgement in an individual case, which, according to counsel, is one of the essential elements of a "procedure of international investigation or settlement". He concludes that a procedure which is limited to the examination of the human rights situation in general in a particular country, and which does not provide for a decision on the specific allegations made in an individual case, or for an effective remedy for the alleged violations, is not a procedure of international investigation or settlement within the meaning of article 5, paragraph 2(a), of the Optional Protocol.

Issues and proceedings before the Committee:

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

7.2 As to the State party's argument that the communication is inadmissible because the case has been registered before the Working Group on Enforced or Involuntary Disappearances, the Committee observes that extra-conventional procedures and mechanisms which have been established by the Commission on Human Rights and the U.N. Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2(a), of the Optional Protocol. Moreover, the Committee recalls that the study of a human rights problem of a more global character, although such study may refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within

the meaning of article 5, paragraph 2(a), of the Optional Protocol.³ Accordingly, the Committee finds that the fact that the same case is registered before the U.N. Working Group on Disappearances does not render it inadmissible under article 5, paragraph 2(a), of the Optional Protocol.

7.3 As to the requirement of the exhaustion of domestic remedies, the Committee observes that the State party has not provided any information on the availability and effectiveness of domestic remedies in the case under consideration. On the basis of the information before it, the Committee concludes that there are no effective remedies available to the author which he should pursue on behalf of his granddaughter. Therefore, the Committee is not precluded by article 5, paragraph 2(b), of the Optional Protocol, from considering the communication.

7.4 The Committee considers that the author's claims have been adequately substantiated, for purposes of admissibility, and that, accordingly, they should be considered on the merits.

8. The Human Rights Committee therefore decides:

(a) that the communication is admissible;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it. In particular, the State party is requested to provide detailed information on what investigations have been carried out by the judicial authorities as a result of the author's application for habeas corpus, and what investigations are now being carried out with regard to the finding of the judge of the Court of First Instance in Huacho that military personnel was involved in the abduction. The State party is further requested to forward to the Committee all court documents relevant to the case;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author's counsel.

(Done in English, French, and Spanish, the English text being the original version.)

*/ All persons handling this document are requested to respect and observe its confidential nature.

¹ The Working Group on Enforced or Involuntary Disappearances was established by Commission on Human Rights' resolution 20 (XXXVI) of 29 February 1980.

² This office belongs to the Ministry of Public Affairs.

³ See communications Nos. 148-154/1983/ (Baboeram et al. v. Suriname), Views adopted on 4 April 1985, during the Committee's 24th session, paragraph 9.1.