



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October-3 November 2005

VIEWS

Communication No. 1058/2002

Submitted by: Antonino Vargas Más (not represented by counsel)

Alleged victim: The author

State party: Peru

Date of communication: 14 January 2002 (initial submission)

Document reference: Special Rapporteur's rule 97 decision, transmitted to the State party on 6 March 2002 (not issued in document form)

Date of adoption of Views: 26 October 2005

Subject matter: Trial and conviction of a person under anti-terrorist legislation

Procedural issue: Lack of cooperation by the State party in the consideration of the communication

* Made public by decision of the Human Rights Committee.

Substantive issues: Violation of the right to liberty and security of person and guarantees of due process

Articles of the Covenant: 7, 9, 10 and 14

Articles of the Optional Protocol: 2

On 26 October 2005, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1058/2002. The text of the Views is appended to the present document.

[ANNEX]

Annex

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5,
PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

Eighty-fifth session

concerning

Communication No. 1058/2002*

Submitted by: Antonino Vargas Más (not represented by counsel)

Alleged victim: The author

State party: Peru

Date of communication: 14 January 2002 (initial submission)

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

Meeting on 26 October 2005,

Having concluded its consideration of communication No. 1058/2002, submitted on behalf of Mr. Antonino Vargas Más 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

1.1 The author of the communication, dated 14 January 2002, is Mr. Antonino Vargas Más, a Peruvian national, currently in detention in the Miguel Castro Castro penitentiary in Lima. He

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castellero Hoyos, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Mr. Hipólito Solari Yrigoyen.

alleges a violation by Peru of article 7, article 9, paragraph 1, and article 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. The author is not represented by counsel.

1.2 The Optional Protocol entered into force for Peru on 3 January 1981.

The facts as submitted by the author

2.1 The author was the director of the César Vallejo university preparation school and a teacher of mathematics. On 20 June 1992, he was arrested in his home in Lima by police officers belonging to the Department of Counter-Terrorism (DINCOTE); the officers had no warrant. He states that he was taken to a DINCOTE facility and tortured. In particular, as has occurred with other prisoners, he was subjected to electric shocks and hung with his arms tied behind him. He was also taken to the beach, where he was subjected to mock drownings.

2.2 According to the Supreme Court judgement of 5 September 1996, the arrest was carried out in the context of an operation intended to dismantle the central logistical and financial command of the Sendero Luminoso terrorist group. The police entered the premises of the school on suspicion that the central logistical command was connected with it and that the school functioned as a training centre for Sendero Luminoso recruits. In conducting the operation the police seized subversive documentation and explosives from various premises and arrested a number of people, including the author, on the ground that they collaborated, in the performance of their various duties and functions, with the central logistical command. In the case of the author he was charged, specifically, with handing over money for the financing of terrorist activities. In addition, a typewriter was seized in the Sendero Luminoso central office containing a platen that showed the school's logo. The author denies all the charges.

2.3 The author was convicted of an "offence against the peace - terrorism - and the State" and sentenced to 20 years' imprisonment by the Special Terrorism Division of the Lima High Court (comprising three faceless judges) in a collective judgement of 30 November 1994. He asserts that the judgement did not specify individual criminal conduct but merely formulated vague and imprecise statements, and that the police report was the only evidence on which the prosecution and judgement were based.

2.4 The author filed an appeal for annulment before the Special Criminal Division of the Supreme Court, comprising faceless judges, which confirmed the sentence appealed against on 5 September 1996.

2.5 On 16 August 2001, the Supreme Court found the consequent application for judicial review inadmissible. The author alleges that the court's decision was not substantiated in law.

2.6 On 22 February 1999 the author, together with other co-defendants, filed an appeal for the constitutional remedy of habeas corpus before the Public Law Division of the Lima High Court. They alleged a failure to respect the rules of due process set forth in the Constitution and the Code of Criminal Procedure, including the right to the presumption of innocence and the right not to be tried by courts of special jurisdiction or special commissions. Neither was the evidence for rebuttal taken into account. In addition, the judgement of 30 November 1994 simply reiterated the police analysis and assessment of the events recorded

in the report as constituting fact, and made no mention of the applicable law. The appeal was rejected on 1 March 1999. The author appealed against this decision before the Constitutional Guarantee Court, which confirmed it on 22 June 1999.

2.7 On 27 September 2001, the author applied for a pardon to the Commission on Pardons, Clemency and Commutation in cases of terrorism and treason. The result of the application was negative. In May 2005, the author informed the Committee that, pursuant to new legislation that declares trials by faceless judges null and void, a retrial of his case began in November 2004; the proceedings have not yet concluded.

2.8 The author asserts that he has exhausted all possible domestic remedies available to him and that the case has not been submitted for examination under another procedure of international investigation or settlement.

The complaint

3.1 The author alleges that he was subjected to physical and psychological torture when held by DINCOTE. Although the author makes no specific reference to any provision of the Covenant, these allegations fall under article 7.

3.2 The author alleges a violation of article 9, paragraph 1, of the Covenant, since he was arrested without a warrant and without being caught in flagrante delicto.

3.3 The author also complains of the penal regime under which he is serving his sentence; he has access to the prison yard for only three hours a day, and must remain in a dark, wet cell for the rest of the day, with no access to books or to means of communication. Although the author makes no specific reference to any provision of the Covenant, these allegations fall under article 10.

3.4 The author alleges a violation of article 14, paragraph 1, of the Covenant in that he was tried by faceless judges, and the judgement of 30 November 1994 was based on general and imprecise assertions, which were not applied to him individually to establish responsibility or participation in the events that might give rise to responsibility for the offence.

3.5 The author alleges a violation of article 14, paragraph 2, of the Covenant relating to the right to the presumption of innocence, since the court, comprising faceless judges, viewed his denial of participation in the criminal acts as a presumption of proof of an offence, thus stripping him of any defence.

3.6 The author alleges that he was tried in proceedings that allowed no means of exercising the right to question the evidence, with his right to a defence undermined and with attorneys threatened with being dragged into the trial. Although the author makes no specific reference to any provision of the Covenant, these allegations fall under article 14, paragraph 3.

Lack of cooperation by the State party

4. On 6 March 2002, the State party was asked to submit its observations on admissibility and the substance of the allegations made by the author within six months. In the absence of any reply, reminders were sent to the State party on 15 September 2004 and 18 November 2004. The

Committee notes that the State party's observations have not been received. The Committee regrets the lack of cooperation by the State party and recalls that article 4, paragraph 2, of the Optional Protocol provides that the State party should in good faith examine all accusations brought against it and provide the Committee with any information available to it. Given that the State party has not cooperated with the Committee concerning the issues raised, the author's allegations must be accorded due importance to the extent that they are substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 In conformity with rule 93 of its rules of procedure, before considering any claims made in a communication, the Human Rights Committee must decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With regard to the requirement of exhaustion of domestic remedies, the Committee notes that the author was arrested in 1992 and subsequently tried and convicted in accordance with the legislation then in force in Peru. Prior to submitting his communication to the Committee, the author filed the appeals permitted by law against his conviction. In the absence of information from the State party on this point, the Committee considers that the author has complied with the requirements of article 5, paragraph 2 (b), of the Optional Protocol with regard to his allegations relating to article 9, paragraph 1, and article 14, paragraphs 1, 2 and 3, of the Covenant. The author does not explicitly mention having filed an appeal with regard to his allegations in the context of articles 7 and 10, paragraph 1. However, the Committee observes that these allegations are consistent with the practice that, in the Committee's experience, was common in respect of persons detained on suspicion of being linked to Sendero Luminoso, and against which there existed no effective remedies. Taking this into consideration, and given the absence of a reply from the State party, the Committee considers this part of the communication to be admissible.

5.4 The Committee declares the communication admissible with regard to the alleged violations of article 7, article 9, paragraph 1, article 10, paragraph 1, and article 14, paragraphs 1, 2 and 3, of the Covenant, and will consider it as to the merits in the light of the information furnished by the author, in accordance with the provisions of article 5, paragraph 1, of the Optional Protocol.

Consideration of the merits

6.1 The author alleges that, immediately following his arrest, he was taken to a facility of the Department of Counter-Terrorism (DINCOTE), where he was tortured, and he describes the type of torture to which he was submitted. In view of the State party's failure to adduce any information that might contradict these allegations, due weight must be given to them and it must be assumed that the events occurred as described by the author. Consequently, the Committee finds a violation of article 7 of the Covenant.

6.2 With regard to the author's allegations of a violation of article 9, paragraph 1, of the Covenant, in that he was arrested without a warrant and without being found in flagrante delicto, the Committee considers that, since the State party has not contested these allegations, due weight must be given to them and it must be assumed that the event occurred as described by the author. Consequently, the Committee finds a violation of article 9, paragraph 1, of the Covenant.

6.3 With regard to the author's allegations regarding the hardship inherent in the prison regime applied to him, the Committee also considers that, since the State party has not replied to the allegations, due weight must be given to them and it must be assumed that the events occurred as described by the author. Consequently, the Committee finds a violation of article 10, paragraph 1, of the Covenant.

6.4 With regard to the author's complaints under article 14 of the Covenant, the Committee takes note of the author's allegations that his trial was conducted by a court comprising faceless judges, that he did not have an opportunity to question witnesses and that his lawyer received threats. Given the circumstances of the case, the Committee, recalling all its previous jurisprudence in similar cases, considers that article 14 of the Covenant, which refers to the right to a fair hearing, taken as a whole, was violated.

7. 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 that have been set forth constitute violations of article 7, article 9, paragraph 1, article 10, paragraph 1, and article 14 of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy and appropriate compensation. In the light of the long period he has already spent in detention, the State party should give serious consideration to terminating his deprivations of liberty, pending the outcome of the current proceedings. Such proceedings must comply with all the guarantees required by the Covenant.

9. Bearing in mind that, in acceding to the Optional Protocol, the State party has recognized the Committee's competence to determine whether there has been a violation of the Covenant and that, under 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 applicable remedy in the event that a violation has been found to have been committed, the Committee wishes to receive information from the State party within 90 days on the measures it has adopted to give effect to the Committee's Views. It also requests the State party to publish the Committee's Views.

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