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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 32/00; Case 11.048
Session:	Hundred and Sixth Regular Session (22 February – 10 March 2000)
Title/Style of Cause:	Victor Alfredo Polay Compos v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated:	10 March 2000
Citation:	Polay Compos v. Peru, Case 11.048, Inter-Am. C.H.R., Report No. 32/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999).

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I. SUMMARY

1. On August 1, 1992, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition filed by Mrs. Otilia Campos de Polay (hereinafter "the petitioner") regarding the situation of her son, Mr. Víctor Alfredo Polay Campos (hereinafter "Mr. Polay"), the leader of the armed dissident group "Movimiento Revolucionario Túpac Amaru." The petition alleged that Peru (hereinafter "Peru," "the State," or "the Peruvian State") violated, to the detriment of Mr. Polay, several human rights set forth in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), on subjecting him to various forms of physical, mental, and moral abuse, and to inhuman and degrading conditions of detention that constitute an affront to his human dignity and that seriously endanger his life. The petition further alleged violations of judicial guarantees and judicial protection to the detriment of Mr. Polay, committed in a trial held before and decided by "faceless" judges. The State answered that it has not violated any of Mr. Polay's rights, and that it has provided him adequate medical care. The Commission concludes that the petition is inadmissible as it addresses substantially the same matter as another petition already examined and decided by another international organization.

II. PROCESSING BEFORE THE COMMISSION

2. On August 11, 1992, the Commission opened the case, transmitted the pertinent parts of the petition to the Peruvian State, and requested information, to be submitted within 90 days. Peru answered on September 22, 1992.

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3. On November 25, 1992, the Commission submitted a request for provisional measures to the Inter-American Court of Human Rights in relation to both this and another case before the IACHR. The request was based on the existence of a grave situation that posed an imminent danger to the personal integrity of the persons convicted and prosecuted who were held at the "Miguel Castro Castro" and "Santa Mónica" prisons, in the city of Lima; "Cristo Rey" prison in the city of Ica; and "Yanamayo" prison, in the city of Puno.

4. On April 3, 1997, the Commission received a communication from the Human Rights Committee established under the International Covenant on Civil and Political Rights, in the United Nations system (hereinafter "the Committee" or "the Human Rights Committee")[FN1], in which the Committee informed the IACHR that it had a case before it concerning Mr. Polay. Later, the Commission received the admissibility report adopted by the Human Rights Committee in that case during its 56th session.[FN2] On October 29, 1999, the Commission received the decision on the merits in that case, adopted by the Human Rights Committee at its 61st session.[FN3] Both parties, on several occasions, forwarded several documents to the Commission.

[FN1] The Human Rights Committee was created by the International Covenant on Civil and Political Rights, and its jurisdiction was expanded by the Optional Protocol to the Covenant, both of which were approved by the United Nations General Assembly on December 16, 1966, and entered into force on March 23, 1976.

[FN2] Human Rights Committee, 56th session; Communication Nº 577/1994; CCPR/C/56/D/577/1994/ March 18, 1996.

[FN3] Human Rights Committee; 61st session; Communication Nº 577/1994; CCPR/C/61/D/577/1994/9 January 9, 1998.

III. POSITION OF THE PARTIES

A. The petitioner

5. The petitioner noted that Mr. Polay is a member of a "political-military guerrilla movement that has been operating since 1985" and that Mr. Polay was detained by the Peruvian authorities on June 10, 1992. She indicated that pursuant to the regulations in force of the 1949 Geneva Conventions on the protection of the victims of armed conflicts, Mr. Polay should be treated as a prisoner of war.

6. She stated that while Mr. Polay was detained at the headquarters of the specialized police (DINCOTE), he was confined for 15 days without any respect for his rights: among other things, he was not allowed to communicate with his attorney. She noted that afterwards, once he was transferred to the prison of the Judicial branch, the authorities of the INPE, an agency under the Executive branch, accorded him inhumane treatment, confining him to a punishment cell, one meter by one meter, where he couldn't even sleep. After his attorney lodged a complaint in respect of this situation, Mr. Polay was finally transferred to another cell, three meters by three meters, with a toilet and without a cot, which had no daylight and no electricity. She added that

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Mr. Polay was not allowed to receive any visits, and it was not possible for her to provide him food or medicine.

7. She noted that finally the authorities of the Peruvian State ruled to have Mr. Polay transferred to the prison at Yanamayo, located in the Puno region, 4,000 m above sea level, in one of the coldest parts of the country, where temperatures fall to -10 C. She said that at the Yanamayo prison Mr. Polay does not have a mattress or adequate clothing, and suffers the restrictions of being in a prison with a closed regime, in which he has no right to visitors nor can he speak with any other prisoner; he is practically being held incommunicado. She added that Mr. Polay is only allowed to leave his cell for one-half hour a day, and is locked up in the cell the other 23½ hours. The petitioner noted that all this constitutes cruel punishment and is tantamount to a penalty without any conviction. She alleged that Mr. Polay's conditions of detention were causing him serious health problems; that he was not receiving proper medical care; and that his life is seriously endangered.

8. The petitioner stated:

He is denied access to sunlight, he is only allowed to take in air and sunlight for 30 minutes, and the remaining 23:30 hours of the day he spends in a sewer measuring 2 m x 2 m, in which there is a concrete platform 0.60 m wide, without water, and a sort of drain where he needs to relieve himself, and beg the prison guards (soldiers) to release water to wash down his feces, which they keep there for hours and sometimes for more than a day. They deny him information on his physical and mental health conditions, they do not allow a visit by a private physician to check on his health.

Prior to my son's transfer from the Yanamayo Prison to the Peruvian Naval Base at Callao, he was brutally tortured, both at the Yanamayo prison and on the plane that took him to Callao, to the extreme that his left shoulder was fractured, and he continues to suffer frightful pain (for which he has been given no medical treatment to this day)."

9. She also said that "... for the government to make its spots on television, showing my son wearing a striped prison uniform, it ordered that my son be subjected to cruel torture to put this striped uniform on him; to do so they had to leave him in a semi-conscious state (as can be seen on the TV spots), after having subjected him to cruel physical torture on April 3, 1993, at approximately 3:00 p.m., which consisted in a brutal beating by security personnel at the Yanamayo Prison in Puno, and which concluded with the application of electrical shock to the skull, abdomen, and testicles."

10. She alleged that Mr. Polay was tried by a "faceless" court, and sentenced to life imprisonment, in a secret trial, with no right to defense, in which Mr. Polay's rights to a fair trial and to judicial protection were violated, along with other rights set forth in the American Convention.

11. The petitioner asked that the IACHR see to it that the life of Mr. Polay is respected, and that he be assured his right to defense and to a fair trial.

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B. The State

12. The State argued that it has not violated nor it is violating Mr. Polay's rights. It indicated, with respect to Mr. Polay's health, that "the Superior Prosecutor of Puno has remitted a copy of the forensic certificate issuing a diagnosis of 'healthy.'" It also stated that in the Offices of the 35th Provincial Prosecutor of Lima "one finds, on record, a criminal proceeding against him for the crime of terrorism," and that a final judgment was issued as to Mr. Polay's criminal liability. With respect to the specific statements by the petitioner regarding Mr. Polay's security, the State added that "no inmate has died; in addition, it has been verified that the inmates are being given care for the ailments they suffer to the extent possible, as that prison does not have specialized personnel who provide services on a permanent basis."

13. The State further argued that "it has not received any formal complaint regarding an alleged violation of human rights, though the file does have a formal complaint regarding his sudden transfer to the Yanamayo Prison in Puno," a decision which the State explained as "a security measure adopted by the executive, which has not intervened in the judiciary."

14. With respect to the petitioner's allegations on the absolute isolation experienced by Mr. Polay, the State reported that "he receives periodic visits from the International Committee of the Red Cross, who verify his health, as do the physicians at the Naval Base, and he receives the medicines he requires," and it reiterated "the inmate's generally good health."

15. It alleged that Mr. Polay was convicted by the Special Chamber of the Superior Court of Justice of Lima to life imprisonment, as perpetrator of the crime of terrorism against the State. It added that this verdict was confirmed by the Specialized Chamber for Terrorism of the Supreme Court, by Judgment of May 24, 1993.

IV. ANALYSIS

Petition is substantially the same as one examined by another international organization

16. In the case under study, it is on record that the facts in this case have also been alleged before the Human Rights Committee. The Human Rights Committee, an organ of the universal human rights system, pursuant to Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights, has the authority to examine petitions submitted by individuals when they allege the violation of human rights protected in the Covenant. Considering the foregoing, and as Article 47(d) of the Convention provides that the Commission shall declare any petition that "is substantially the same as one previously studied by the Commission or by another international organization," the IACHR must declare inadmissible any petition before it that is substantially the same as a petition that has been studied by the Human Rights Committee, so long as the facts alleged before the two bodies are substantially the same.[FN4]

[FN4] See, with respect to several aspects of the duplication of procedures referred to at Article 46(1)(c) of the American Convention, applicable mutatis mutandis to the reproduction of a petition referred to in this case: IACHR, Annual Report 1998, Report Nº 96/98, Peter Blaine,

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Case 11.827 (Jamaica). That Report contains several cites from other international human rights organs with respect to the duplication of procedures.

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17. In this respect, it arises, from the above-noted report on the merits issued by the Human Rights Committee, that the petitioner, in that case, set forth the facts outlined by the Committee in the following terms:

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" 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.

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".

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.

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.[FN5]

[FN5] Id., para. 2.1 to 2.4.

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18. In its decision on the merits, the Human Rights Committee decided on the facts transcribed above, similar to those submitted to the IACHR in this case. In effect, the Committee analyzed the conditions of detention of Mr. Polay from July 22, 1992 to April 26, 1993; his transfer from the Yanamayo Prison to the detention center at the Naval Base at Callao; the

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conditions of detention at Callao from April 26, 1993, and the trial to which Mr. Polay was subjected. In this respect, the Human Rights Committee concluded that Peru violated several human rights set forth in the International Covenant on Civil and Political Rights, which sets forth rights similar in content to those guaranteed in the American Convention.

19. By virtue of the foregoing, and pursuant to Article 47(d) of the American Convention, the IACHR must declare this petition inadmissible, as it is substantially the same as another already submitted to, processed, and decided by another international organ for the protection of human rights, the Human Rights Committee, when both have similar legal prerogatives and their decisions have the same scope or are similar in scope.

20. The Commission finally notes that in the case of the Human Rights Committee, the petition was submitted by Mrs. Rosa Espinoza de Polay, Mr. Polay's wife, while the complaint submitted to the IACHR was by Mrs. Otilia Campos de Polay, Mr. Polay's mother. Nonetheless, this does not affect the circumstance that both petitions report basically the same facts, of which the same person is the victim, and for which it is alleged that the Peruvian State bears international responsibility. In this respect, one must bear in mind that Article 47(d) of the American Convention refers to a petition that "is substantially the same as one previously studied by the Commission or by another international organization," without drawing a distinction as to who has submitted the petition.

21. After reaching the conclusion that this petition is inadmissible because it is substantially the same as a petition already examined by the Human Rights Committee, the IACHR refrains from examining other admissibility requirements set forth in the Convention, as it is not a matter properly before it.

V. CONCLUSION

22. The Commission concludes, pursuant to Article 47(d) of the American Convention, that the petition is inadmissible, as it is substantially the same as one already examined and decided on the merits by the Human Rights Committee.

23. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the complaint inadmissible.
2. To notify the petitioner and the State of this decision.
3. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., March 10, 2000. Signed by Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.