

OPINION No. 19/2002 (PERU)

Communication addressed to the Government on 21 August 2002.

Concerning: Rolando Quispe Berrocal.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for its reply but regrets that it was sent after the 90-day deadline provided for in the Working Group's methods of work.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. According to information transmitted by the source, on 8 July 2002 Private Rolando Quispe Berrocal, a regular soldier performing his military service as a recruit at the Domingo Ayarza barracks (formerly "Los Cabitos"), Ayacucho, was on guard at the barracks storehouse, which was under his charge, when he was attacked by three soldiers wearing ski masks. He recognized the voices of two of his assailants. The assailants stuffed a rag into his mouth impregnated with a substance that made him fall asleep and then lose consciousness.
5. On the following morning, when he failed to turn up for drill and breakfast, he was awakened by a superior who, as a punishment for his absence, made him do 20 press-ups. The recruit could do no more than 10, and had to be taken to the barracks infirmary, whence his transfer was ordered to the regional hospital at Huamanga, Ayacucho. At the hospital a specialist found, inserted in his rectum, a container of talcum powder, to which a light bulb, approximately five centimetres in diameter, had been attached. The object measured 18 centimetres overall.
6. The source affirms that while Private Quispe Berrocal was hospitalized he was placed under military custody, which hindered or prevented contact with his family members, lawyers, members of human rights organizations and journalists. Thus isolated, he was interrogated by military personnel and compelled to sign and to record his fingerprints on blank sheets and on written sheets which he was not allowed to read beforehand. It is also reported that a military attorney, to whom, strangely, the guards allowed access to the detainee, sought to impose himself as defence counsel, which the recruit refused.
7. Rolando Quispe Berrocal filed a criminal complaint for torture and injury before the ordinary court. In response, an inquiry was opened under military jurisdiction for filing false complaints. It was claimed that Private Quispe Berrocal was in fact a homosexual who had infiltrated the army, and that he himself had introduced the object found in his body.
8. It is alleged that subsequently Rolando Quispe Berrocal and his family members have suffered from various acts of harassment and coercion, including death threats. Military personnel have reportedly sought to persuade him to withdraw and retract his complaint and modify his version of events. Reportedly he has even received death threats.

9. On 15 July 2002 local media reported as true a false rumour that Private Quispe Berrocal had died. It was claimed that military officers had offered money to his father “to go to Lima to enjoy himself” in exchange for convincing his son to change his version of events and withdraw his complaint. When he refused the offer, military personnel tried to remove him from the hospital by force. A priest, named Zegarra, an army chaplain, and an army lieutenant colonel, named Bernales, rebuked Quispe Berrocal and his family members for making “complaints damaging to the army” that “might cause fathers to leave the army”.

10. On 17 July 2002 a prosecutor denied two military officers access to the hospital room occupied by Private Quispe Berrocal. The private was undergoing psychological evaluation to provide expert judicial testimony. The officers, who represented themselves as lawyers from the Military Legal Service, withdrew, insulting and threatening Private Quispe Berrocal in the presence of the prosecutor, and shouting praises such as “kill the dog and have done with the rabies”. In the circumstances the prosecutor had no choice but to suspend the judicial proceedings.

11. The judicial authorities, on an application for habeas corpus lodged in favour of Private Quispe Berrocal, ordered suspension of his military service. Notwithstanding that, on 2 August 2002 the Ayacucho standing military court found that Private Quispe Berrocal was guilty of falsehood and that he had inflicted wounds on himself; the court sentenced him to 30 days’ imprisonment and a fine of 1,500 soles (approximately 420 United States dollars). Meanwhile, those responsible for the acts of torture and bodily harm suffered by Rolando Quispe Berrocal are free and benefiting from impunity.

12. The source adds that in addition to the detention and sentencing of the victim, who was accused of inflicting wounds on himself, no protective measures have been taken to guarantee the life or physical and psychological integrity and safety of Rolando Quispe Berrocal or of his family members, notwithstanding the death threats made by members of the army regardless of the presence of a prosecutor and even while judicial proceedings were being conducted. Lastly, it is alleged that despite the provisions of Act No. 26999, no judicial proceedings have been initiated before the ordinary courts in respect of the torture suffered by the individual in question.

13. In its reply, the Government of Peru states that this person was convicted by the Supreme Council of Military Justice for the offence of falsehood in that it was held that he himself had caused the injuries. The military prosecutor had sought a sentence of six months’ military imprisonment and payment of 2,000 soles in civil damages. Falsehood is a crime under article 301.4 of the Code of Military Justice.

14. The Government also states that notwithstanding the sentencing of Rolando Quispe Berrocal, the ordinary court has been carrying out the necessary investigations to determine whether any criminal responsibility exists on the part of the three persons named by him as possible authors of an offence against humanity, in the form of torture, and against the system of justice, in the form of material complicity.

15. The Working Group, on the basis of the information available to it, which has not been challenged by the Government, finds that Private Quispe Berrocal had to be taken to hospital and admitted as a result of being subjected to torture and ill-treatment, events which he reported to the ordinary court while in military custody and while the trial begun by the military legal authorities against him for falsehood was under way.

16. It is noted that during the trial Rolando Quispe Berrocal was subjected to serious impediments in exercising his right to defence, and that he was prevented from communicating, among others, with counsel of his choice, and from having adequate means for the preparation of his defence, in that he was threatened, coerced, and forced to sign blank documents and documents that he was not able to read. He was also prevented from exercising his rights as a complainant in a case of aggravated torture.

17. The Working Group has also noted that, notwithstanding express provisions of the law, he was prevented from enjoying access to the benefits of the ordinary system of justice.

18. In the light of these considerations, the Working Group considers that the detention of Private Quispe Berrocal is a serious contravention of international standards relating to an impartial trial of such gravity that it confers on his deprivation of liberty an arbitrary character.

19. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Rolando Quispe Berrocal is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Republic of Peru is party, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

20. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to comply fully with its obligations as a State party to the International Covenant on Civil and Political Rights and to study the possibility of amending its military legislation so as to bring it into conformity with the Universal Declaration of Human Rights and the other relevant international norms accepted by the State.

Adopted on 2 December 2002