

Opinion No. 19/2010 (Peru)

Communication addressed to the Government on 22 February 2010

Concerning 1. Pedro Condori Laurente; 2. Claudio Boza Huanhuayo; 3. Eloy Martín Poma Canchán

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

1. (Same text as paragraph 1 of Opinion No. 19/2009.)
2. The Working Group regrets that the Government did not provide the information requested, despite having been asked to do so in a letter of 22 February 2010.
3. (Same text as paragraph 3 of Opinion No. 19/2009.)
4. According to the source, Mr. Pedro Condori Laurente, a Peruvian national, born on 5 August 1966, Secretary-General of the Casapalca Mining Company Mine Workers' Union, was detained on 9 September 2009 as he was leaving the premises of the Ministry of Labour located at Avenida Salaverry 655, Jesús María, Lima, after taking part in labour negotiations in his capacity as a trade-union leader.
5. Mr. Claudio Boza Huanhuayo, a Peruvian national, Secretary for Safety and Hygiene of the Casapalca Mine Workers' Union, was detained on 23 September 2009.
6. Mr. Eloy Martín Poma Canchán, a leader of the Casapalca Mine Workers' Union, was detained on 23 September 2009.
7. The Working Group was informed that these three persons were detained pursuant to an arrest warrant issued by the Matucana Combined Court. Even though it would have been appropriate for them to be held in a prison in Lima, they were being detained in Aucallama prison in Huaral district, where the physical living conditions for prisoners are poor. As well as affecting their health, their detention in the prison was also affecting their exercise of the right to contact their defence lawyers, to prepare their legal defence, to receive visits from their relatives and to fulfil their trade-union and family commitments.
8. According to the source, these persons were accused of causing the death of Giuliano Villarreal Lobatón, a captain of the Peruvian National Police (PNP), who died after being hit by a rock during a demonstration by Casapalca mine workers at 6.30 a.m. on 24 November 2008 at kilometre 114.850 on the central highway. The judicial charge was based on article 111 of the Criminal Code, which establishes the offence of culpable homicide.
9. The source stated that, on 17 May 2008, the Casapalca Mine Workers' Union signed a document with the Casapalca Mining Company. The company was said to have failed to comply with the terms of the agreements contained in the document and to have refused to engage in dialogue with the Union. In response, the Union declared a work stoppage in November 2008. During one of the demonstrations that took place on 24 November, a group of hot-headed protesters threw rocks from the top of a hill in order to block transit on a roadway. One of the rocks hit Captain Villarreal Lobatón, causing his death. It is not known who was responsible for this act.
10. Despite the fact that the persons detained were trade-union leaders who frequently participated in labour negotiations at the Ministry of Labour, often in the presence of the minister concerned, and who were known to have homes and jobs, the detention measure was said to have been ordered by the judge pursuant to article 135 of the Code of Criminal Procedure, on the basis of an alleged risk that they might abscond.

11. According to the source, the court decision to deprive these persons of liberty was arbitrary because it was not based on the principles of proportionality and reasonableness. Preventive detention should be ordered as a last resort. The judge had the option of ordering other precautionary measures to safeguard due process, taking into account the persons accused, the risk of their absconding and the evidence. These measures included simple summons, restricted summons and house arrest. For these reasons, the defence filed an appeal against the detention order with the Second Criminal Division for Imprisoned Defendants, with a view to having it replaced with a summons. However, the Criminal Division did not rule on the appeal.

12. According to the source, the indictment did not indicate any act or omission on the part of these persons in the incidents which caused the death of Captain Villarreal. There was no evidence, nor were there any witnesses, linking these workers to the policeman's death. It was not even proved that they were at the scene. On the contrary, it was proved that Mr. Pedro Condori was in Lima at the time of Captain Villarreal's death. Mr. Poma Canchán's wife stated that he was at home at the time of Captain Villarreal's death.

13. The source stated that the filing of a labour complaint did not imply endorsement of or support for acts of violence. It was not possible to establish indirect or joint commission of offences that were not intentional. In this case, there was no intention to cause damage.

14. The detention of these persons was not aimed at elucidating and punishing the murder of Captain Villarreal Lobatón, nor at finding the real culprits for his death; rather, it was a case of "criminalization of social protest". All social protest is an inherent part of healthy democratic life and cannot be punished using mechanisms legally established for the punishment of offences and crimes. Citizens see social protest as the only way of asserting their rights when faced with poorly functioning institutional channels.

15. According to the source, after years of negotiations at the Ministry of Labour, practically all the miners working at the Casapalca Mining Company are subcontracted; they receive appalling food and very low wages, despite working for 12 hours consecutively, and do not have adequate cover for workplace accidents or occupational diseases. The Casapalca Mining Company has been given administrative penalties in the past for its practices in dismissing unionized workers.

16. The arbitrary deprivation of liberty of these three persons was also a means of infringing their rights to freedom of opinion, expression and association, their right to exercise their rights as trade-union leaders and their right to participate in the political life of the country.

17. The indictment issued against these three persons led to an infringement of the accusatorial procedure in that it extended the factual basis of the prosecutor's complaint. The latter was limited to arguments relating to the role of the accused persons as leaders of the Union and their supposed role in organizing the protest held on 24 November 2008. However, the indictment issued by the judge extended the factual basis set out in the prosecutor's complaint by referring to the supposed presence of the accused at the scene of the events. The source pointed out that, under the accusatorial procedure, the judge was restricted to the factual basis established by the Public Prosecutor's Office. Pursuant to the Supreme Court Enforceable Decision of 13 April 2007, Complaint No. 1678-2006 Lima, the object of proceedings is determined by the Public Prosecutor's Office. The court decision must absolutely respect the indictment in terms of its factual limits.

18. The facts must be established in the indictment, which sets limits that may not be exceeded by the judge (Plenary Accord No. 11-2005/ESV-22, Court Plenum of the Members of the Criminal Division of the Supreme Court, 2005; Supreme Court Enforceable Decision of 21 April 2005, R.N. No. 224-2005, Sullana).

19. The indictment and the prosecutor's complaint also infringed the principle that the charge must be specified, which is the key to a proper defence. They did not indicate whether the persons in question were accused of being the direct perpetrators of the offence, accomplices or instigators, or of participating in some other form.

20. The indictment also infringed the principle that court decisions must be reasoned, violating the right of defence of the accused persons. The right to reasoned court decisions guarantees that the decision adopted is not arbitrary or based on the whim of the court or the result of an irrational, absurd or manifestly unreasonable process of deduction (Constitutional Court Ruling of 25 September 2001; case No. 458-2001-HC/TC Lima, grounds 1 and 2).

21. The source added that it was unlawful to accuse the persons in question of a crime merely because of their participation in the organization of a social protest.

22. Since the Government did not provide the Working Group with any information, the Group was to render the present Opinion on the basis of the information provided by the source.

23. However, before rendering its Opinion, the Working Group carried out inquiries as to the current situation of the persons whose detention was reported; the three persons were subsequently released by the judges hearing their cases. In the proceedings relating to the police officer's death by culpable homicide, they were released on bail, and the judge eventually dismissed the case. Although the plaintiff – the policeman's widow – appealed, they have not been detained again.

24. In the second case against Pedro Condori Laurente and another person in respect of whom the Working Group has not received any communication, in which the persons in question were accused of obstructing the functioning of public services by blocking a road, and for which Mr. Condori was detained for three months, Mr. Condori was released, and remains, on bail.

25. Under these circumstances, and bearing in mind that neither the Government nor the source has shown a real interest in cooperating with the Working Group by providing the relevant information on the release of the persons referred to in the communication – information which was obtained by the Working Group through its own investigations – the Working Group decides, since the detainees have been released, to file the case in accordance with paragraph 17 (a) of its methods of work. The case is therefore closed, since the persons involved are now at liberty.

Adopted on 1 September 2010