

I. Communication No. 238/1987, Floresmilo Bolaños v. Ecuador
(Views adopted on 26 July 1989 at the thirty-sixth session)

Submitted by: Floresmilo Bolaños
Alleged victim: The author
State party concerned: Ecuador
Date of communication: 13 July 1987
Date of decision on admissibility: 7 April 1988

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

Meeting on 26 July 1989,

Having concluded its consideration of communication No. 238/1987, submitted to the Committee by Mr. Floresmilo Bolaños 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 by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial letter dated 13 July 1987 and further letters of 2 February, 14 March and 22 September 1988) is Floresmilo Bolaños, an Ecuadorian citizen who claims to be a victim of violations of articles 3, 9 and 14 of the International Covenant on Civil and Political Rights by Ecuador.

2.1 He states that he has been detained since November 1982 without bail at the Centro de Detención Provisional in Quito in connection with the investigation of the murder of Mr. Iván Egas, whose body was found on 11 September 1982 in the lions' cage at the zoological garden of the Military Academy where the author had been employed. He claims to be innocent of the crime and that he was arrested without any evidence against him. It is suggested that Iván Egas had been the lover of a colonel's wife, that the colonel had him killed and that the body was subsequently taken by other persons into the lions' cage. He further alleges that his right to be tried within a reasonable time has been violated, in particular, that while Ecuadorian law provides that detention before indictment should not exceed 60 days, he was detained for over five years prior to being indicted in December 1987. The delay in the proceedings is allegedly attributable to the

* Pursuant to rule 85 of the rules of procedure Mr. Julio Prado Vallejo did not participate in the consideration of this communication or in the adoption of the views of the Committee under article 5, paragraph 4, of the Optional Protocol.

involvement of military personnel, who are using the author as a scapegoat to cover the colonel's crime. The author furthermore complains that whereas he has been continuously kept under detention, the other persons accused have been at liberty pending trial.

2.2 With respect of the exhaustion of domestic remedies, the author states that the pre-trial investigation was completed only in December 1987, when the President of the High Court of Justice in Quito indicted him and six other persons. The author appealed without success against the decision of the High Court to indict him as an accomplice.

3. By its decision of 19 October 1987, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the Committee's rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

4.1 The Committee took note of the observations of the State party, dated 2 February 1988, that proceedings against the author were under way in the High Court of Justice in Quito, and of the author's comments thereon, dated 14 March 1988, that, because of the alleged involvement of military figures in the case, proceedings before the High Court had been unreasonably prolonged and that he had already been detained for five years and six months.

4.2 The Committee ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), of the Optional Protocol, concerning the exhaustion of domestic remedies, the Committee noted that the judicial proceedings against Mr. Bolaños had been unreasonably prolonged and that the State party had not indicated that there were effective remedies against such prolongation. In the circumstances, the Committee found that it was not precluded from considering the communication.

5. On 7 April 1988, the Human Rights Committee decided that the communication was admissible.

6.1 By note of 29 July 1988, the State party indicates that on 24 June 1988 a hearing was held at the Superior Court in Quito concerning the murder of Iván Egas. The State party does not provide any explanations or statements concerning the specific violations of the Covenant alleged to have occurred.

6.2 In a letter dated 22 September 1988 the author reiterates his innocence, observing that he has been arbitrarily detained for six years and that no judgement has yet been issued, or is expected in the near future, in his case.

7. The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. In adopting its views, the Committee stresses that it is not making any finding on the guilt or innocence of Mr. Bolaños but solely on the question whether any of his rights under the Covenant have been violated.

8.1 The author of the communication claims that there have been breaches of articles 3, 9 and 14 of the Covenant. In formulating its views the Committee takes

into account the failure of the State party to furnish certain information and clarifications, in particular with regard to the reasons for Mr. Bolaños' detention without bail and for the delays in the proceedings, and with regard to the allegations of unequal treatment of which the author has complained. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities, and to furnish to the Committee all relevant information. In the circumstances, due weight must be given to the author's allegations.

8.2 With respect to the author's allegations concerning a violation of article 3 of the Covenant, it is not clear in what particular respect that article has been invoked and the Committee is unable to make a finding in this regard.

8.3 With respect to the prohibition of arbitrary arrest or detention contained in article 9 of the Covenant, the Committee observes that although the State party has indicated that the author was suspected of involvement in the murder of Iván Egas, it has not explained why it was deemed necessary to keep him under detention for five years prior to his indictment in December 1987. In this connection the Committee notes that article 9, paragraph 3, of the Covenant provides that anyone arrested on a criminal charge "shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial ...". The Committee further observes that article 9, paragraph 5, of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

8.4 With respect to the requirement of a fair hearing within the meaning of article 14, paragraph 1, of the Covenant, the Committee notes that the concept of a fair hearing necessarily entails that justice be rendered without undue delay, and refers in this connection to its prior case law (Muñoz v. Peru, communication No. 203/1986, views adopted on 4 November 1988, para. 11.2). Furthermore, the Committee notes that article 14, paragraph 3 (c), guarantees the right to be tried without undue delay, and concludes that, on the basis of the information before it, the delays encountered by the author in the determination of the charges against him are incompatible with the aforementioned provision.

9. 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 of this case disclose violations of article 9, paragraphs 1 and 3, because Mr. Floresmilo Bolaños was deprived of liberty contrary to the laws of Ecuador and not tried within a reasonable time, and of article 14, paragraphs 1 and 3 (c), of the Covenant, because he was denied a fair hearing without undue delay.

10. The Committee, accordingly, is of the view that the State party is under an obligation, in accordance with the provisions of article 2 of the Covenant, to take effective measures to remedy the violations suffered by Mr. Floresmilo Bolaños, to release him pending the outcome of the criminal proceedings against him, and to grant him compensation pursuant to article 9, paragraph 5, of the Covenant.