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HUMAN RIGHTS COMMITTEE
Fifty-sixth session
(18 March - 4 April 1996)

VIEWS

Communication No. 540/1993

Submitted by:	Basilio Laureano Atachahua
Victim:	His granddaughter, Ana Rosario Celis Laureano
State party:	Peru
Date of communication:	22 October 1992 (initial submission)
Documentation references:	Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 13 May 1993 (not issued in document form) - CCPR/C/51/D/540/1993 (Decision on admissibility, dated 4 July 1994)
Date of adoption of Views:	25 March 1996

On 25 March 1996, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 540/1993. The text of the Views is appended to the present document.

[ANNEX]

*/ Made public by decision of the Human Rights Committee.

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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
- Fifty-sixth session -

concerning

Communication No. 540/1993

Submitted by:	Basilio Laureano Atachahua
Victim:	His granddaughter, Ana Rosario Celis Laureano
State party:	Peru
Date of communication:	22 October 1992 (initial submission)
Date of decision on admissibility:	4 July 1994

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

Meeting on 25 March 1996,

Having concluded its consideration of communication No. 540/1993, submitted to the Committee by Basilio Laureano Atachahua, on behalf of his granddaughter, Ana Rosario Celis Laureano, 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 is Basilio Laureano Atachahua, a Peruvian citizen born in 1920. He submits the communication on behalf of his granddaughter, Ana Rosario Celis Laureano, a Peruvian citizen born in 1975. Her current whereabouts are unknown. The author claims that his granddaughter is a victim of violations by Peru of articles 2, paragraphs 1 and 3; 6, paragraph 1; 7; 9; 10, paragraph 1; and 24, paragraph 1, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as presented by the author

2.1 The author, a farmer, lives with his family in the district of Ambar, Province of Huaura, Peru. In March 1992, his granddaughter, then 16 years old, was abducted by unknown armed men, presumably guerrillas of the Shining Path movement (Sendiero Luminoso). She returned six days later and told the author that the guerrillas had threatened to kill her if she refused to join them, that she was forced to carry their baggage and to cook for them, but that she had finally been able to escape. In May 1992, she was once again forced by the guerrillas to accompany them; after a shoot-out between a unit of the Peruvian Army and the guerrillas, she again escaped. The author did not denounce these events to the authorities, firstly because he feared reprisals from the guerrilla group, and secondly because, at the time, the regular army was not yet stationed in the Ambar District.

2.2 On 23 June 1992, Ana R. Celis Laureano was detained by the military, on the ground of suspected collaboration with the Shining Path movement. For 16 days, she was held at the military base in Ambar (set up in the meantime). For the first eight days, her mother was allowed to visit her; for the remaining eight days, she allegedly was kept incommunicado. Upon inquiry about her whereabouts, Ana's mother was told that she had been transferred. The family then requested the provincial prosecutor of Huacho (Fiscal Provincial de la Primera Fiscalía de Huaura-Huacho) to help them locating Ana. After ascertaining that she was still detained at Ambar, the prosecutor ordered the military to transfer her to Huacho and to hand her over to the special police of the National Directorate against Terrorism (Dirección Nacional Contra el Terrorismo - DINCOTE).

2.3 During the transfer to Huacho, the truck in which Ana Celis Laureano was transported was involved in an accident. As she suffered from a fractured hip, she was brought to the local quarters of the Policía Nacional del Peru (PNP), where she was held from 11 July to 5 August 1992. On 5 August, a judge on the civil court of Huacho (Primer Juzgado Civil de Huaura-Huacho) ordered her release on the ground that she was a minor. He appointed the author as her legal guardian and ordered them not to leave Huacho, pending investigations into the charges against her.

2.4 On 13 August 1992, at approximately 1 a.m., Ms. Laureano was abducted from the house where she and the author were staying. The author testified that two of the kidnappers entered the building via the roof, while the others entered through the front door. The men were masked, but the author observed that one of them wore a military uniform, and that there were other characteristics, e.g., the type of their firearms and the make of the van into which his granddaughter was pulled, which indicated that the kidnappers belonged to the military and/or special police forces.

2.5 On 19 August 1992, the author filed a formal complaint with the Prosecutor of Huacho. The latter, together with members of a local human rights group, helped the author to inquire with the military and police authorities in Huaura province, to no avail.

2.6 On 24 August 1992, the Commander of the Huacho Police Station informed the prosecutor's office that he had received information from the DINCOTE headquarters in Lima according to which Ana Celis Laureano was suspected to be the person in charge of guerrilla activities in the Ambar District, and that she had participated in the attack on a military patrol in Parán.

2.7 On 4 September 1992, the author filed a request for habeas corpus with the Second Criminal Court (Segundo Juzgado Penal) of Huacho. This initial petition was not admitted by the judge, on the ground that the "petitioner should indicate the location of the police or military office where the minor is detained, and the exact name of the military officer in charge [of this office]".

2.8 On 8 September 1992, the Centro de Estudios y Acción para la Paz (CEAPAZ), intervening on behalf of the author, petitioned the National Minister of Defence, requesting him to investigate Ana Laureano's detention and/or her disappearance; it pointed out that she was a minor and invoked, in particular, the United Nations Convention on the Rights of the Child, ratified by Peru in September 1990. On 16 September 1992, the Secretary-General of the Ministry of Defence informed CEAPAZ that he had referred the case to the armed forces, with a view to carrying out investigations. No further information was received.

2.9 On 8 September 1992, CEAPAZ petitioned the Director of DINCOTE, asking him to verify whether Ana Celis Laureano had in fact been detained by its units and whether she had been brought to one of its quarters. On 15 September 1992, the Director of DINCOTE replied that her name was not listed in the registers of detained persons.

2.10 A request for information and an investigation of the case was also sent, on 8 and 9 September 1992, to the Director of the Human Rights Secretariat of the Ministry of Defence, to the Minister of the Interior and the commanders of the military bases in Andahuasi and Antabamba. No reply was given to these petitions.

2.11 On 30 September 1992, the author applied for habeas corpus with the presiding judge of the Second Criminal Chamber of the District High Court (Segundo Sala Penal de la Corte Superior del Distrito Judicial de Callao), asking him to admit the application and to direct the judge of the court in Huacho to comply with the habeas corpus order. It remains unclear whether any proceedings were instituted by the judicial authorities in respect of this application.

2.12 In the light of the above, it is contended that all available domestic remedies to locate Ana R. Celis Laureano and to ascertain whether she is still alive have been exhausted.

2.13 On 18 September 1992, the case of Ms. Laureano was registered before the United Nations Working Group on Enforced or Involuntary Disappearances 1/ (Case No. 015038, transmitted first to the Peruvian Government on

18 September 1992; retransmitted on 11 January 1993). In November 1992, the Peruvian Government notified the Working Group that the Prosecutor's Office in Huacho (Segunda Fiscalía Provincial Mixta de Huacho) was investigating the case, but that it had not yet located Ms. Laureano, nor those responsible for her disappearance. It added that it had requested information from the Ministry of Defence and the Ministry of the Interior. Similar notes dated 13 April and 29 November 1993 addressed to the Working Group reiterate that investigations into the case continue, but that they have been so far inconclusive.

The complaint

3.1 The unlawful detention of Ms. Laureano and her subsequent disappearance, which the author attributes to the armed forces of Peru, are said to amount to violations of articles 6, paragraph 1; 7; 9; and 10, paragraph 1, of the Covenant.

3.2 Furthermore, it is submitted that the State party violated article 24, paragraph 1, as it failed to provide Ana R. Celis Laureano with such measures of protection as are required by her status as a minor. The State party's failure to protect her rights, to investigate in good faith the violations of her rights and to prosecute and punish those held responsible for her disappearance is said to be contrary to article 2, paragraphs 1 and 3, of the Covenant.

State party's information and observations on the admissibility of the case and counsel's comments thereon

4.1 In a submission dated 10 June 1993, the State party draws on information provided by the Peruvian Ministry of Defence. The latter notes that in December 1992 investigations carried out by the security and armed forces confirmed that members of the military base in Ambar had arrested Ana R. Celis Laureano in June 1992. She allegedly had confessed her participation in an armed attack on a military patrol in Parán on 6 May 1992 and pointed out where the guerrillas had hidden arms and ammunition. In July 1992, she was handed over to the Chief of the PNP in Huacho and subsequently to the prosecuting authorities of the same town; she was charged, inter alia, with participation in a terrorist group. Her case was then referred to the judge of the Civil Court, who decreed her provisional release. On 8 September 1992, the commander of the military base in Ambar inquired with the judge about the status of the case; on 11 September 1992, the judge confirmed that the girl had been abducted one month earlier, and that the judicial authorities seized of the matter attributed responsibility for the event to members of the military. On 21 September 1992, the Attorney-General of the Second Prosecutor's Office (Fiscal de la Segunda Fiscalía de la Nación) reported on the action taken by his office until then; he issued a list of eight police and military offices and concluded that Ms. Laureano was not detained in any of these offices.

4.2 The State party reaffirms that Ms. Laureano was detained because of her terrorist activities or affinities, and that she was handed over to the competent judicial authorities. It submits that, in respect of her alleged disappearance, a guerrilla intervention should not be discarded for the following reasons: (a) to prevent her from being brought to justice and revealing the structure of the terrorist branch to which she belonged; and (b) it may have been that she was eliminated as a reprisal for having pointed out the location where the guerrillas had hidden arms and ammunition after the attack in Parán. Finally, it is submitted that any presumed responsibility of the Peruvian armed forces in this respect should be removed on the following grounds: the inquiries of the Ministry of Public Affairs with the military and the police offices in Huacho and Huaura, which confirmed that Ms. Laureano was not detained; and the vagueness of the claim inasmuch as the author only refers to "presumed perpetrators" ("la imprecisión de la denuncia por cuanto en ella se hace alusiones vagas sobre los presuntos autores").

5.1 In comments dated 19 September 1993, counsel notes that the Ministry of Defence is neither competent nor in the position to draw conclusions from investigations which should be undertaken by the judiciary. He points out that the State party admits the events which occurred prior to Ms. Laureano's disappearance, i.e., that she had been detained by the military, and that the judge on the Civil Court in Huacho himself held the military responsible for her abduction. By merely referring to the negative results of inquiries made by the Attorney-General of the Second Prosecutor's Office, the State party is said to display its unwillingness to investigate the minor's disappearance seriously, and to ignore the principal elements inherent in the practice of forced disappearances, i.e., the impossibility of identifying those responsible because of the way in which security forces operate in Peru. Counsel refers to the author's evidence about the type of clothes and arms of the kidnappers, and the way in which the abduction was carried out.

5.2 Counsel contends that the State party merely speculates when it asserts that Ms. Laureano was detained because of her terrorist activities and that the guerrillas themselves may have intervened to kidnap her; he notes that it was the military which accused her of being a member of Shining Path, and that the courts have not yet found her guilty. Counsel further forwards a statement from Ms. Laureano's grandmother, dated 30 September 1992, which states that prior to, and subsequent to, the disappearance of her granddaughter, a captain of the Ambar military base had threatened to kill her and several other members of the family.

5.3 On the requirement of exhaustion of domestic remedies, counsel suggests that the President of the High Court, having decided on the admissibility of the petition for habeas corpus, referred it back to the court of first instance which, after hearing the evidence, concluded that military personnel were involved in the abduction and disappearance of Ana R. Celis Laureano. It is noted that, in spite of these findings, Ms. Laureano has not been located to date, that no criminal proceedings have been instituted and that her family has not been compensated.

6.1 By submission of 6 September 1993, the State party argues that the Committee has no competence to consider the case, which is already under examination by the United Nations Working Group on Enforced or Involuntary Disappearances. In this context, the State party invokes article 5, paragraph 2 (a), of the Optional Protocol.

6.2 In reply, counsel points out that the Working Group on Enforced or Involuntary Disappearances has a specific mandate, i.e., to examine allegations relevant to the phenomenon of disappearances, receiving information from Governments, non-governmental, intergovernmental or humanitarian organizations and other reliable sources and making general recommendations to the Commission on Human Rights. He argues that the Working Group's objectives are strictly humanitarian and its working methods are based on discretion; it does not identify those responsible for disappearances and does not deliver a judgement in a case which, to counsel, is an essential element of a "procedure of international investigation or settlement". He concludes that a procedure limited to the general human rights situation in a particular country, which does not provide for a decision on the specific allegations made in a particular case, or for an effective remedy for the alleged violations, does not constitute a procedure of investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.

The Committee's admissibility decision

7.1 During its fifty-first session, the Committee considered the admissibility of the communication. As to the State party's argument that the case is inadmissible because it is pending before the United Nations Working Group on Enforced or Involuntary Disappearances, it observed that extra-conventional procedures or mechanisms established by the United Nations Commission on Human Rights or the Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations world wide, do not, as the State party should be aware, constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol. The Committee recalled that the study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, could not be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Protocol. Accordingly, the Committee considered that the fact that Ms. Laureano's case was registered before the Working Group on Enforced or Involuntary Disappearances did not make it inadmissible under this provision.

7.2 Concerning the requirement of exhaustion of domestic remedies, the Committee noted that the State party had not provided any information on the availability and effectiveness of domestic remedies in the present case. On the basis of the information before it, it concluded that no effective remedies existed which the author should pursue on behalf of his granddaughter. The Committee therefore was not barred by article 5, paragraph 2 (b), of the Optional Protocol from considering the communication.

7.3 On 4 July 1994, the Committee declared the communication admissible. The State party was requested in particular to provide detailed information on what investigations had been carried out by the judicial authorities as a result of the author's application for habeas corpus, and what investigations are now being conducted with regard to the finding of the judge on the Court of First Instance in Huacho that military personnel were involved in the abduction of Ms. Laureano. The State party was further requested to provide the Committee with all court documents relevant to the case.

Examination on the merits

8.1 The deadline for the receipt of the State party's information under article 4, paragraph 2, of the Optional Protocol expired on 11 February 1995. No information about the results, if any, of further investigations in the case, nor any court documents have been received from the State party, in spite of a reminder addressed to it on 25 September 1995. As of 1 March 1996, no further information on the status of the case had been received.

8.2 The Committee regrets the absence of cooperation on the part of the State party in respect of the merits of the communication. It is implicit in article 4, paragraph 2, of the Optional Protocol that a State party investigate thoroughly, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it, and to make available to the Committee all the information at its disposal. In the instant case, the State party has not furnished any information other than that Ms. Laureano's disappearance is being investigated. In the circumstances, due weight must be given to the author's allegations, to the effect that they have been substantiated.

8.3 In respect of the alleged violation of article 6, paragraph 1, the Committee recalls its General Comment 6[16] on article 6 which states, inter alia, that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. States parties should also take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate and impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

8.4 In the instant case, the Committee notes that the State party concedes that Ms. Laureano remains unaccounted for since the night of 13 August 1992 and does not deny that military or special police units in Huaura or Huacho may have been responsible for her disappearance, a conclusion reached, inter alia, by a judge on the Civil Court in Huacho. No material evidence has been advanced to support the State party's contention that a unit of Shining Path may have been responsible for her abduction. In the circumstances of the case, the Committee finds that Ana R. Celis Laureano's right to life enshrined in article 6, read together with article 2, paragraph 1, has not been effectively protected by the State party. The Committee recalls in particular that the victim had previously been arrested and detained by the Peruvian

military on charges of collaboration with Shining Path, and that the life of Ms. Laureano and of members of her family had previously been threatened by a captain of the military base at Ambar, who in fact confirmed to Ms. Laureano's grandmother that Ana R. Celis Laureano had already been killed. 2/

8.5 With regard to the claim under article 7, the Committee recalls that Ms. Laureano disappeared and had no contact with her family or, on the basis of the information available to the Committee, with the outside world. In the circumstances, the Committee concludes that the abduction and disappearance of the victim and prevention of contact with her family and with the outside world constitute cruel and inhuman treatment, in violation of article 7, juncto article 2, paragraph 1, of the Covenant.

8.6 The author has alleged a violation of article 9, paragraph 1, of the Covenant. The evidence before the Committee reveals that Ms. Laureano was violently removed from her home by armed State agents on 13 August 1992; it is uncontested that these men did not act on the basis of an arrest warrant or on orders of a judge or judicial officer. Furthermore, the State party has ignored the Committee's requests for information about the results of the author's petition for habeas corpus, filed on behalf of Ana R. Celis Laureano. The Committee finally recalls that Ms. Laureano had been provisionally released into the custody of her grandfather by decision of 5 August 1992 of a judge on the Civil Court of Huacho, i.e., merely eight days before her disappearance. It concludes that, in the circumstances, there has been a violation of article 9, paragraph 1, juncto article 2, paragraph 1.

8.7 The author has claimed a violation of article 24, paragraph 1, as the State party failed to protect his granddaughter's status as a minor. The Committee notes that during the investigations initiated after the author's initial detention by the military, in June 1992, the judge on the civil court of Huacho ordered her provisional release because she was a minor. However, subsequent to her disappearance in August 1992, the State party did not adopt any particular measures to investigate her disappearance and locate her whereabouts to ensure her security and welfare, given that Ms. Laureano was under age at the time of her disappearance. It concludes that, in the circumstances, Ms. Laureano did not benefit from such special measures of protection she was entitled to on account of her status as a minor, and that there has been a violation of article 24, paragraph 1.

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 before the Committee reveal violations of articles 6, paragraph 1; 7; and 9, paragraph 1, all juncto article 2, paragraph 1; and of article 24, paragraph 1, of the Covenant.

10. Under article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the victim and the author with an effective remedy. The Committee urges the State party to open a proper investigation into the disappearance of Ana Rosario Celis Laureano and her fate, to provide for

appropriate compensation to the victim and her family, and to bring to justice those responsible for her disappearance, notwithstanding any domestic amnesty legislation to the contrary.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to 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 enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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

Notes

1/ Established by the Commission on Human Rights in its resolution 20 (XXXVI) of 29 February 1980.

2/ This statement, contained in a deposition made by the victim's grandmother on 30 September 1992, indicates in graphic terms that Celis Laureano had in fact been eliminated.
