

ANNEX X

Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant on Civil
and Political Rights

A. Communication No. 162/1983, Omar Berterretche Acosta v. Uruguay
(Views adopted on 25 October 1988 at the thirty-fourth session)

Submitted by: Vicenta Acosta (alleged victim's mother) -
later joined by Omar Berterretche Acosta as
co-author

Alleged victim: Omar Berterretche Acosta

State party concerned: Uruguay

Date of communication: 20 December 1983 (date of initial letter)

Date of decision on admissibility: 11 July 1985

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

Meeting on 25 October 1988,

Having concluded its consideration of communication No. 162/1983, submitted to the Committee by Vicenta Acosta and Omar Berterretche Acosta 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 concerned,

Adopts the following:

Views under article 5, paragraph (4) of the Optional Protocol

1. The original author of the communication (letter dated 20 December 1983) is Vicenta Acosta, a Uruguayan national residing in Uruguay. She submitted the communication on behalf of her son, Omar Berterretche Acosta, a Uruguayan national born on 23 February 1927, who was detained in Uruguay from September 1977 until 1 March 1985. He joined as co-author of the communication by letter received on 3 July 1985.

2.1 It is stated that Omar Berterretche is an architect and meteorologist and that prior to his detention he was employed as sub-director of weather forecasting in Uruguay's Department of Meteorology and as professor of dynamics, aerodynamics, mathematics and physics at various institutions. He was detained for the first time in January 1976 and allegedly subjected to torture; he was released on 25 February 1976 without being charged. He was arrested for the second time on 7 September 1977 at police headquarters in Montevideo, where he had gone to pick up his passport to go abroad. One day later his family learned of his detention, but

he was kept incommunicado for 40 more days. He was taken to the Central Prison in Montevideo, where he stayed until February 1978, when he was transferred to the Punta Carreta Prison in Montevideo. From July 1979 until 1 March 1985 he was detained at Libertad Prison.

2.2 The military judge of first instance imposed on him a term of imprisonment of 24 months, on charges of assisting subversion. The Government prosecutor charged him further with providing military intelligence to the Communist Party and asked for a six-year sentence. The Supreme Military Tribunal sentenced him to 14 years' imprisonment.

3. By its decision of 22 March 1984, the Working Group of the Human Rights Committee, having decided that Vicenta Acosta was justified in acting on behalf of the alleged victim, transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication. The Working Group also requested the State party to provide the Committee with copies of any court orders or decisions relevant to the case and to inform the Committee of the state of health of Omar Berterretche.

4.1 In a submission dated 28 August 1984 the State party informed the Committee that on 5 June 1980 Mr. Omar W. Berterretche was sentenced in second instance to 14 years' imprisonment for committing the offences of "subversive associations", "assault on the material strength of the army, navy and air force by espionage", "espionage" and "attack against the Constitution in the degree of conspiracy, followed by preparatory acts" all covered by the Military Penal Code. Concerning his state of health, the State party declares the following: "patient suffering from gastro-enteritis which is treated and controlled. At present, stabilized."

4.2 The present Uruguayan Government came to power on 1 March 1985. Pursuant to an amnesty law enacted by that Government on 8 March 1985, all political prisoners were released and all forms of political banishment were lifted.

5. In an undated letter received on 3 July 1985, Mr. Berterretche joined his mother as co-author of the communication, indicating that he had been released from imprisonment in March 1985 and requesting the Committee to continue consideration of the communication. He confirmed that the facts as described by his mother were correct and made the following comments on the State party's submission of 24 August 1984:

"It is stated that I am suffering from gastro-enteritis but that this is now stabilized. This is only a half truth since I was only half-treated medically, i.e. in an inadequate manner. The fact is obviously concealed that I am suffering from nervous hypertension, which is of a serious nature because of its extreme variability and which is also inadequately controlled. Also concealed is the cardiac problem which has developed since I was tortured. No reference is made to the fact that, from the time I was first captured and during the interrogations leading to my indictment I was subjected to physical abuse such as beatings, stringing up, asphyxiation, electric shocks and long periods of forced standing in the cold without anything to drink or eat. None of this is mentioned. No reference is made either to the fact that, in the absence of firm evidence to convict me I was declared a 'spy'. On this ground, the procedure was drawn out indefinitely, as I was progressively sentenced to 12 months, then 8 1/2 years and finally 14 years of imprisonment, without any aggravating factor having intervened in the interim.

"The military court did not find any active participation in politics on my part and, acting solely on the basis of my ideology, it imposed on me the heaviest sentence possible, on grounds which were false ...

"Libertad prison, in which I was held, was a place of genuinely repugnant and constant repression, carried out by specialized personnel who were rotated in order that they should not suffer the fatigue which this type of duty inevitably produces.

"The following provides evidence of the pleasure that was taken in carrying out torture at Libertad prison. It was a case of torture of the nerves, practised on me and my family, as on many others. On 7 September 1981, the day on which I had served exactly four years of detention, I was informed that I was to report to the warden's office. Also ordered to report were some of my companions who were informed of several decisions, some of them being told that they were to be released. As for me, I was informed that I had been granted freedom. I was informed of this by a military court established there and I was asked to give my address. This is a normal procedure when release is approved. I informed my family, which, when they sought confirmation of my release, were informed that there had been a mistake.

"In view of the foregoing, I have to make the following statement:

(a) I wish my case to remain open because, in view of the treatment to which I was subjected, it is necessary to measure not only the moral damage caused to me and my family and the damage inflicted on the State by the de facto Government, but also the damage constituted by the fact that despite all the efforts I have made, I am still without work. In other words, I have so far not been reinstated in the School of Meteorology or in the Department of Meteorology and, at the age of 58, it is very difficult for me to obtain a position.

(b) I wish my case to remain open in case it is possible to conduct further inquiries and because I shall continue to fight for the genuine welfare of mankind, for its rights and for the possibility for it to live in peace and freedom, as I believe this to be one of the aims man has always pursued."

6. Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee did not find that any of the procedural obstacles laid down in articles 2, 3 or 5 of the Optional Protocol existed in the present case.

7. On 11 July 1985 the Committee therefore decided: that the communication was admissible in so far as the facts submitted relate to events which allegedly took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay. The State party was requested, in accordance with article 4, paragraph 2 of the Optional Protocol, to submit written explanations or statements clarifying the matter and the measures, if any, that might have been taken by it and, again, to furnish the Committee with copies of all court orders and decisions relevant to the case. The Committee's decision was transmitted to the parties on 1 August 1985, together with an indication that the authors would be

afforded an opportunity to comment on any submission received from the State party, as provided in rule 93, paragraph 3, of the Committee's provisional rules of procedure.

8. By note of 3 January 1986 the State party confirmed its intention to co-operate with the Committee and stated that it would forward copies of the relevant court orders and decisions. On 12 December 1986 the State party transmitted copies of the judgement of the Supreme Military Tribunal, dated 5 June 1980, as well as transcripts of the hearings and decisions of the lower courts.

9. The text of the State party's submissions of 3 January and 12 December 1986 was dispatched to the authors on 18 December 1986 by registered mail. The dispatch was returned by the postal authorities on 1 April 1987 with an indication that the authors had moved, without leaving a forwarding address. Delivery was therefore unsuccessful. By letter of 16 November 1987, Mr. Berterretche Acosta re-established contact with the Committee and indicated that it was his intention to furnish further information in respect of his case. The submissions of the State party of 3 January and 12 December 1986 were thereupon retransmitted to him. Again, he was afforded an opportunity to comment on the State party's submissions. No further information or comments have been received from him, to date.

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol. The Committee observes in this connection that the information provided by the authors in substantiation of the allegations is somewhat limited. In the circumstances, and in the absence of any comments from the authors on the extensive court records submitted by the State party, the Committee will limit itself to pronouncing on the allegations of ill-treatment and torture, which have not been contradicted by the State party.

10.2 The authors' allegations concerning ill-treatment and torture, and the consequences thereof, are basically the following:

(a) Mr. Berterretche Acosta's mother alleges in the initial letter that her son was subjected to torture at the time he was detained for the first time, from January to February 1976. She also states that her son was held incommunicado for 40 days from the time he was arrested for the second time, on 7 September 1977 (para. 2.1 above);

(b) In his comments on the State party's submission of 28 August 1984, Mr. Berterretche Acosta observes that no reference is made in the State party's submission "to the fact that from the time I was first captured and during the interrogations leading to my indictment, I was subjected to physical abuse such as beatings, stringing up, asphyxiation, electric shocks and long periods of forced standing in the cold without anything to drink or eat" (para. 5 above);

(c) As to alleged psychological torture carried out at Libertad prison, Mr. Berterretche Acosta refers to the events on 7 September 1981, at which time he was told that he had been granted freedom, and the subsequent explanation given to his family "that there had been a mistake" (para. 5 above);

(d) As to the consequences of his treatment while in detention, Mr. Berterretche further observes in his comments on the State party's submission

of 28 August 1984: "The fact is obviously concealed that I am suffering from nervous hypertension, which is of a serious nature because of its extreme variability and which is also inadequately controlled. Also concealed is the cardiac problem which has developed since I was tortured" (para. 5 above);

(e) Onar Berterretche further states that as a result of his detention he has lost his employment and has not been reinstated, is without work and that it has been difficult for him to find new employment.

10.3 The Committee observes in this connection, firstly, that the allegations concerning the treatment of Mr. Berterretche Acosta in January and February 1976 fall outside its competence, as they relate to a period of time prior to the entry into force of the Covenant on 23 March 1976. Secondly, the Committee observes that Mr. Berterretche Acosta's allegations of physical abuse, contained in the comments received from him in July 1985, are to some extent unclear. As to when the alleged torture took place he employs the language "from the time I was first captured and during the interrogations leading to my indictment". Read in context, however, and noting that Mr. Berterretche Acosta was not charged at the time he was held in captivity in January and February 1976, it can be assumed that the allegations refer to the period of time from his second arrest, on 7 September 1977, until he was indicted. Mr. Berterretche Acosta does not explain when he was indicted, but from the court records subsequently provided by the State party (see para. 8 above) it transpires that he was indicted on 17 October 1977. This corresponds to the period of 40 days, during which Mr. Berterretche Acosta was allegedly held incommunicado (see para. 2.1 above).

10.4 In formulating its views, the Human Rights Committee notes that the State party has not offered any explanations or statements concerning the treatment of Mr. Berterretche Acosta from 7 September to 17 October 1977 and the circumstances of his detention during that time. Although his description of what allegedly happened is very brief, it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate such allegations in good faith and to inform the Committee of the results. The Committee further notes that the State party has offered no comments in respect of the alleged conditions of detention at Libertad prison and the consequences thereof (para. 10 (2)). In the circumstances, due weight must be given to the authors' allegations.

10.5 The Committee has taken account of the change of Government in Uruguay on 1 March 1985 and the enactment of special legislation aimed at the restoration of rights of victims of the previous military régime. The Committee is also fully aware of the other relevant aspects of the legal situation prevailing now in Uruguay, but it remains convinced that there is no basis to exonerate the State party from its obligation under article 2 of the Covenant to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and to ensure that the competent authorities shall enforce such remedies.

11. 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 events of this case in so far as they occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly of:

Article 7, because Omar Berterretche Acosta was subjected to torture and to cruel, inhuman and degrading treatment and punishment, and

Article 10, paragraph 1, because he was not treated with humanity and with respect for the inherent dignity of the human person during his detention at Libertad prison until he was released on 1 March 1985.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Omar Berterretche has suffered, and to provide him with adequate compensation.