

B. Communication No. 147/1983, Lucía Arzuaga Gilboa v. Uruguay
(Views adopted on 1 November 1985 at the twenty-sixth session)

Submitted by: Felicia Gilboa de Reverdito on behalf of her niece,
Lucía Arzuaga Gilboa, who later joined as co-author

Alleged victim: Lucía Arzuaga Gilboa

State party concerned: Uruguay

Date of communication: 5 July 1983 (date of initial letter)

Date of decision on admissibility: 12 April 1984

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

Meeting on 1 November 1985;

Having concluded its consideration of communication No. 147/1983, originally submitted to the Committee by Felicia Gilboa de Reverdito 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:

IEWS UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL

1. The original author of the communication (initial letter dated 5 July 1983 and further letters of 26 September 1983, 20 March and 15 September 1984) is Felicia Gilboa de Reverdito, a Uruguayan national living in France at the time of submission and now residing again in Uruguay. She submitted the communication on behalf of her niece, Lucía Arzuaga Gilboa, a 26-year-old Uruguayan citizen and university student, who was detained in Uruguay from 15 June 1983 until 3 September 1984 and who was at the time of submission not in a position to present her case herself before the Human Rights Committee. She joined as co-author of the communication after her release (letters of 2 March and 14 October 1985). Felicia Gilboa de Reverdito alleged that her niece was a victim of violations of the following articles of the International Covenant on Civil and Political Rights: 7; 9, paragraphs 1 and 4; 10, paragraphs 1, 2 (b) and 3; 14, paragraphs 1, 2 and 3 (a), (c), (d) and (q); 15, paragraph 1; 17, paragraph 1; 18, paragraph 1; 19, paragraphs 1 and 2; 22, paragraphs 1 and 2; 25 and 26.

2.1 Felicia Gilboa de Reverdito described the relevant facts as follows: her niece was arrested in Montevideo on 15 June 1983. She was kept incommunicado until 30 June 1983 and during that period her whereabouts were unknown. On 30 June 1983 she reappeared at the Police Headquarters in Montevideo, having been brought to trial (procesada) on charges of "subversive association".

2.2 Regarding the circumstances of her niece's arrest, Mrs. Reverdito pointed out that she had been involved in students' activities, that since June 1983 many

arrests of students had taken place in Montevideo, that more than 30 such cases were already known and that it was the Government's policy to suppress any attempt to form students' associations.

2.3 Mrs. Reverdito stated that Lucía Arzuaga Gilboa suffered from the consequences of meningitis contracted in 1982 and required special medical treatment.

2.4 Mrs. Reverdito further claimed that there were no effective domestic remedies available to her niece because:

(a) Habeas corpus was not available for those arrested under the "prompt security measures";

(b) The entire procedure before the military courts was in violation of article 14 of the Covenant and therefore remedies available under criminal military law were equally defective;

(c) The remedy of appeal against the indictment (apelación contra el auto de procesamiento) was in fact inapplicable since the Supreme Court of Justice had never accepted such an appeal.

2.5 Mrs. Reverdito finally stated that her niece's case had not been submitted to another procedure of international investigation or settlement.

3. By its decision of 27 July 1983, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party requesting information and observations relevant to the admissibility of the communication and asking 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 Lucía Arzuaga Gilboa. The author was also requested to furnish detailed information in support of her allegations of violations of the Covenant, including the complaint that "the entire procedure before the military courts is in violation of article 14 of the Covenant and therefore remedies available under military criminal law are equally defective".

4.1 In response to the Working Group's request, Mrs. Reverdito, on 26 September 1983, furnished additional information which she claimed had not been in her possession at the time when she had submitted the initial letter.

4.2 With respect to article 14 of the Covenant, Mrs. Reverdito made detailed submissions on the provisions which she claimed were violated by proceedings before Uruguayan military courts. Moreover, she claimed that pursuant to a decree of June 1973 the publication of any judgements of military courts was expressly prohibited.

4.3 With respect to alleged violations of articles 7 and 10, paragraph 1, of the Covenant, Mrs. Reverdito claimed that her niece had been subjected to torture and various forms of cruel and degrading treatment:

"This happened almost continuously during the period when she was held incommunicado, i.e., from her arrest until the submission of her case to the military court, a period of 15 days. This period was devoted wholly to subjecting the large group of young university students arrested with my niece to the most cruel treatment, with a view to extracting 'confessions' concerning political activities or concerning adherence to persecuted

ideologies. All the interrogations and all the 'documents' which the authorities attempted to force them to sign dealt exclusively with questions of this type.

"I am now in a position to describe in some detail the main types of ill-treatment to which my niece has been subjected.

"(a) Physical violence was a constant part of the treatment, beginning at the time of arrest. My niece was brutally beaten at that time, in the street itself and in full view of passers-by;

"(b) The 'electric prod', particularly in the genital region;

"(c) Stringing up. My niece was strung up, handcuffed, by the chain of her handcuffs. This was carried out in an open yard, in mid-winter, with the victim naked, and happened only once. As a result, she lost consciousness, so that she is unable to say how long she was kept in that position;

"(d) Various forms of continuous degradation and violence, such as always having to remain naked with the guards and torturers, threats and insults and promises of further acts of cruelty.

"I am unable to state specifically the effect and result of this treatment in the case of my niece, because it has not yet been possible to obtain any clinical information or to have her examined by a reliable doctor. However, there are a number of symptoms which give cause for alarm in this regard. After being strung up, as described above, my niece suffered attacks of vomiting and other symptoms, as a result of which she was taken on a number of occasions, after her trial and transfer to her current place of imprisonment, for examinations, the nature and results of which it has not been possible to ascertain. It is known, however, that some of the examinations involved electro-encephalograms. In this regard, it should be borne in mind that, as I stated in my initial communication, my niece contracted meningitis last year. The blows to the head which she received were therefore particularly dangerous in her case."

4.4 Mrs. Reverdito further claimed that her niece was held at the political prison for women at Punta de Rieles (Military Detention Establishment No. 2), 13 kilometres from Montevideo, that the treatment which she was receiving there was in gross violation of the standards provided for in the Covenant (and in the Uruguayan Constitution). The methods used were allegedly intended gradually to destroy the personalities of detainees by continuously assaulting their psychological equilibrium and undermining their physical integrity: "The means employed there do not involve direct brutal torture, but are calculated to work slowly, gradually and cumulatively. They involve deliberately arbitrary treatment, continuous harassment, inadequate nutrition, physical labour and other forms of harsh treatment which produce long-term effects."

5. In its submission under rule 91, dated 31 January 1984, the State party commented on the author's initial communication and also on her further submission of 3 November 1983, and informed the Committee that Lucía Arzuaga Gilboa had been brought to trial for the offence of "subversive association", provided for in article 60 (V) of the Military Criminal Code, and that no judgement had yet been rendered at first instance. "Consequently, the Government of Uruguay, in accordance with article 5, paragraph 2 (b), of the Optional Protocol to the

International Covenant on Civil and Political Rights, opposes the admissibility of the communication in question on the grounds that, given the stage which the trial proceedings have reached, remedies are still available under the relevant internal legislation. The Committee is informed, however, that the state of health of Arzuaga Gilboa is good."

6. In a further letter dated 20 March 1984, Mrs. Reverdito reiterated that there were no internal remedies which could have been applied effectively and that the military criminal proceedings themselves constituted a breach of the guarantees laid down in article 14 of the Covenant.

7.1 When considering the question of admissibility of the communication, the Committee found, on the basis of the information before it, that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as the author's indication that the same matter had not been submitted to another procedure of international investigation or settlement was not contested by the State party.

7.2 With regard to article 5, paragraph 2 (b), of the Optional Protocol, the Committee took note of the State party's assertion that remedies were still available under the relevant Uruguayan legislation. The Committee also noted however, that Mrs. Reverdito's allegations concerned not only possible irregularities in the pending trial proceedings, but also instances of torture and ill-treatment as to which the State party had not contended that there were available remedies. Moreover the Committee had established in numerous other cases that domestic remedies must be effective and "available" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol (R.16/66, R.21/84, etc.). This entails that procedural guarantees for "a fair and public hearing by a competent, independent and impartial tribunal" must be scrupulously observed. With respect to alleged violations of article 14 of the Covenant, the Committee considered the author's submissions in substantiation of her allegation that "the entire procedure before the military courts is in violation of article 14 of the Covenant", but it found that, in view of the fact that the trial proceedings had not yet been completed, it could not be claimed at that stage that Lucía Arzuaga Gilboa had already personally become a victim of violations of that article. With respect to alleged violations of articles 7 and 10, paragraph 1, of the Covenant, the Committee noted that Mrs. Reverdito had made specific allegations as to instances of torture and ill-treatment which Lucía Arzuaga Gilboa had purportedly endured; in this connection the Committee recalled numerous other cases where the authors had made specific allegations of torture and the State party failed to establish that there were effective remedies available. Similarly, in the instant case, the State party had not informed the Committee which were the remedies available to Lucía Arzuaga Gilboa with respect to her allegation of being a victim of torture. The Committee stressed, moreover, that it was implicit in the Covenant and in the Optional Protocol that the State party had the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities. Accordingly, with respect to the allegations of violations of articles 7 and 10, paragraph 1, of the Covenant, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. The Committee observed that its decision could be reviewed in the light of further explanations which the State party might submit under article 4, paragraph 2, of the Optional Protocol, giving specific details of domestic remedies claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be

effective. The Committee also observed that other alleged breaches of various articles of the Covenant had not been satisfactorily substantiated.

8. On 12 April 1984 the Human Rights Committee therefore decided:

1. That the communication was admissible with respect to allegations of violations of articles 7 and 10, paragraph 1, of the Covenant;

2. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter in so far as allegations of violations of articles 7 and 10, paragraph 1, of the Covenant are concerned and the remedy, if any, that may have been taken by it;

3. That the State party be informed that the written explanations or statements submitted by it under article 4, paragraph 2, of the Optional Protocol must relate primarily to the substance of the matter under consideration. The Committee stressed that, in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication and the State party's explanations of the actions taken by it.

9. In a further letter of 15 September 1984, Mrs. Reverdito informed the Committee that her niece had been released from detention in Uruguay on 3 September 1984. She stated, however, that her niece continued to suffer from restrictions upon her rights, in particular her political rights. She requested the Committee to continue consideration of the case and to adopt its views on the substance of the matter.

10. By a letter dated 2 March 1985, Lucía Arzuaga confirmed that it was her wish that the Committee continue consideration of her case. In a further letter, dated 14 October 1985, she confirmed the description of the facts, set out in paragraphs 2.1 to 2.4 and 4.2 to 4.4 above.

11. In its submission under article 4, paragraph 2, of the Optional Protocol dated 28 September 1984, the State party confirmed that Lucía Arzuaga had been provisionally released on 3 September 1984. It offered no further details.

12. When adopting its decision on admissibility on 12 April 1984, the Committee observed that the decision could be reviewed in the light of further explanations which the State party might submit under article 4, paragraph 2, of the Optional Protocol with respect to the allegations of violations of articles 7 and 10, paragraph 1, of the Covenant. The Committee notes in this regard that no details have been furnished to it of any domestic remedies claimed to have been available to the alleged victim at the material time. The Committee therefore sees no reason for reviewing its decision on admissibility.

13.1 The Human Rights Committee, having examined 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, hereby decides to base its views on the following facts, which appear uncontested.

13.2 Lucía Arzuaga Gilboa was arrested in Montevideo on 15 June 1983 and kept incommunicado at an unknown place of detention until 30 June 1983. During this period she was subjected to torture (beatings, "electric prod", strapping up) and

her whereabouts were unknown. On 30 June 1983 she reappeared at the Police Headquarters in Montevideo. She was charged with the offence of "subversive association" and taken to the prison of Punta de Rieles (Military Detention Establishment No. 2). She was released on 3 September 1984.

14. 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 as found by the Committee, disclose violations of the Covenant, in particular:

Article 7, because Lucía Arzuaga Gilboa was subjected to torture and to cruel and degrading treatment in the period between 15 and 30 June 1983; and

Article 10, paragraph 1, because she was held incommunicado for a period of 15 days and subjected to inhuman prison conditions for 14 months until her release in September 1984.

15.1 The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Lucía Arzuaga has suffered and to grant her compensation.

15.2 The State party has provided the Committee with a number of lists indicating the names of persons released from prison since August 1984 and until the newly elected Government came to power on 1 March 1985. The Committee has further learned that, pursuant to an amnesty law enacted by the new Government on 8 March 1985, all political prisoners have been released and all forms of political banishment have been lifted. The Committee expresses its satisfaction at the measures taken by the State party towards the observance of the Covenant and co-operation with the Committee.