

Views of the Human Rights Committee under article 5 (4)
of the Optional Protocol to the International Covenant
on Civil and Political Rights*

concerning

Communication No. 107/1981

Submitted by: María del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf

Alleged victims: Elena Quinteros Almeida and the author of the communication

State party concerned: Uruguay

Date of communication: 17 September 1981 (date of initial letter)

Date of decision on admissibility: 25 March 1982

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

Meeting on 21 July 1983,

Having concluded its consideration of communication No. 107/1981 submitted to the Committee by María del Carmen Almeida de Quinteros 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 (4) OF THE OPTIONAL PROTOCOL

1.1 The author of the communication (initial letter dated 17 September 1981 and further letters postmarked 30 September 1981 and dated 28 September 1982 and 2 May 1983) is a Uruguayan national, residing at present in Sweden. She submitted the communication on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf.

1.2 The author describes the relevant facts as follows:

"My daughter (born on 9 September 1945) was arrested at her home in the city of Montevideo on 24 June 1976. Four days later, while she was being held completely incommunicado, she was taken by military personnel to a particular

* Mr. Walter Surma Tarnopolsky did not participate in the adoption of the views of the Committee under article 5 (4) of the Optional Protocol in this matter.

spot in the city near the Embassy of Venezuela. My daughter would appear to have told her captors that she had a rendezvous at that place with another person whom they wished to arrest. Once she was in front of a house adjoining the Embassy of Venezuela, my daughter succeeded in getting away from the persons accompanying her, jumped over a wall and landed inside the Embassy grounds. At the same time, she shouted out her name so as to alert passers-by to what was happening in case she was recaptured. The military personnel accompanying her then entered the diplomatic mission and, after striking the Secretary of the Embassy and other members of its staff, dragged my daughter off the premises."

1.3 The author alleges that, due to this event, Venezuela suspended its diplomatic relations with Uruguay.

1.4 The author claims that since that day (28 June 1976) she could never obtain from the authorities any official information about her daughter's whereabouts, nor was her detention officially admitted. She further claims that this denial of official information by the authorities of Uruguay was incompatible with the testimony of other persons (the author encloses two testimonies) and also numerous statements made privately by authorities and diplomatic representatives of Uruguay to the author herself and to others. The author, in addition, encloses an extract from a booklet entitled Mujeres y niños Uruguayos desaparecidos ("Missing Uruguayan Women and Children") concerning the case of her daughter, in which it is mentioned in particular that on 2 March 1979, the Ambassador and Representative of Uruguay to the United Nations Commission on Human Rights at Geneva, who was at that time Director of Foreign Policy of the Ministry of Foreign Affairs, told the author that her daughter was alive, that she had been taken from the Venezuelan Embassy by members of the Uruguayan police and army, that she was being kept a prisoner and that efforts were being made to clarify responsibilities.

1.5 The first testimony enclosed by the author, dated January 1981, is from Cristina Marquet Navarro, who states that she personally knew Elena Quinteros. Cristina Marquet Navarro states that she was arrested on 29 July 1976 in Montevideo, that on 8 August 1976 she was taken to a military unit, that there all detainees were kept blindfolded and with their hands tied and that they were systematically subjected to torture. She adds that all detainees received an identification number upon arrival, by which they were addressed, and that her number was 2572. Cristina Marquet further states that during her first night there, she heard "the despairing cries of a woman who kept saying 'why didn't they kill me, why didn't they kill me?' It was definitely the voice of Elena Quinteros. It was clear from the desperation of her cries that she was being brutally tortured". Cristina Marquet alleges that later she was able to establish that Elena Quinteros had been given number 2537. She further alleges that once, her eye-bandage being loose, she could see Elena Quinteros who was lying on a mattress. Elena Quinteros' state of health was extremely poor "as a result of the brutal torture to which she had been and was being subjected daily". Cristina Marquet mentions the names of two male officers and of two female soldiers who were dealing with Elena Quinteros. In October 1976, Cristina Marquet was transferred to another detention place and she was released on 7 December 1978. She adds that after October 1976 she never heard about Elena Quinteros again.

1.6 The second testimony is from Alberto Grille Motta. a/ He states that he and other Uruguayans, among them Enrique Baroni, who had taken refuge at the Embassy of Venezuela in Montevideo, saw a number of Embassy employees running out of the

building on the morning of 28 June 1976; that Enrique Baroni, who had gone up to the first floor, saw a young woman being dragged away by a man whom he recognized as a policeman whom he had known, under a nickname which is given by the author, in Department No. 5 for Intelligence and Information of the Montevideo Police Headquarters when they were held there. Mr. Grille adds that the following day, on 29 June 1976, the parents-in-law of Elena Quinteros came to the Embassy with a picture of their daughter-in-law and her identity was confirmed, in particular, by the Secretary of the Embassy. He further claims that the Ambassador told him some months later that he was in possession of information pointing to a policeman known under the same nickname as the one mentioned by Enrique Baroni and whose real name was ..., who, together with other police personnel, had taken part in the abduction of Elena Quinteros.

1.7 The author, María del Carmen Almeida de Quinteros, states that she has withdrawn her daughter's case from the Inter-American Commission on Human Rights. By a further letter, postmarked 30 September 1981, she enclosed a copy of her withdrawal letter, dated 17 November 1980, addressed to the Inter-American Commission, and the text of a request for confirmation of the withdrawal, dated 28 September 1981.

1.8 The author further states that there are no domestic remedies that could be invoked and have not been exhausted, since her daughter's arrest has always been denied by the Uruguayan authorities and the remedy of habeas corpus is only applicable in the case of detained persons.

1.9 The author claims that the following articles of the Covenant have been violated with respect to her daughter: 7, 9, 10, 12, 14, 17 and 19. She adds that she is herself a victim of violations of article 7 (psychological torture because she does not know where her daughter is) and of article 17 of the Covenant, because of interference with her private and family life.

2. The Human Rights Committee noted, in this connection, that the allegations of violations made by the author on her own behalf raised the question whether she was subject to the jurisdiction of Uruguay, within the meaning of article 1 of the Optional Protocol, at the time of the alleged violations in question. The Committee agreed that this issue would be reviewed, if necessary, in the light of any submission which the State party might make under article 4 (2) of the Optional Protocol.

3. By its decision of 14 October 1981, the Working Group of the Human Rights Committee, having decided that the author of the communication 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 and, the whereabouts of the alleged victim being unknown since 1976, further requesting the State party to confirm that Elena Quinteros was in detention and to make known the place of her detention. No reply was received from the State party to these requests.

4. On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that, in the circumstances of this case, there were effective remedies available to the alleged victim which she had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

5. On 25 March 1982, the Human Rights Committee therefore decided:

(a) That the communication was admissible;

(b) That, in accordance with article 4 (2) of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by it;

(c) That the State party be informed that the written explanations or statements submitted by it under article 4 (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. The State party was requested, in this connection, to enclose copies of any court orders or decisions or reports of inquiries of relevance to the matter under consideration.

6. In its submission under article 4 (2) of the Optional Protocol, dated 13 August 1982, the State party referred to the contents of an earlier note, dated 14 June 1982, which appeared to be a late submission under rule 91 of the provisional rules of procedure. The text of this earlier note read as follows:

"The Uruguayan Government wishes to inform that the person in question (Elena Quinteros) has been sought throughout Uruguay since 8 May 1975. The assertions contained in this communication are therefore rejected as unfounded, since the Government had no part in the episode described."

7.1 In her comments, dated 28 September 1982, the author draws the attention of the Human Rights Committee to the fact that the Government of Uruguay has failed to provide any specific or detailed answers regarding the substance of her daughter's case, despite the express request by the Committee. The author states that:

"The Government simply rejected my assertions as 'unfounded' in purely general terms and, indeed, on the sole ground that it had had no part in the episode which I described. I consider it to be of the utmost importance to point out, in this connection, that the Government does not specifically deny that my daughter was arrested in June 1976 by Government forces, that she was detained by the army in 1976, or that an incident took place at the Venezuelan Embassy on 28 June 1976, in the course of which my daughter was taken from the Embassy grounds. Above all, the Government of Uruguay does not deny that it is holding my daughter. In short, apart from the very general assertion referred to above, the Government has not denied, or even questioned the truth of a single one of the serious events described by me in my communication to the Committee. It is surprising that, despite the gravity of these events, the Government has quite clearly failed to order an investigation into the matter."

7.2 The author urges the Committee to call on the Government of Uruguay to order an investigation. She suggests that specific questions should be put to the State party and that it would be very helpful if the Committee could obtain further details from the Government of Venezuela regarding the incident which took place on 28 June 1976 in the grounds of their Embassy in Montevideo.

7.3 Addressing the question raised by the Committee whether she comes within the jurisdiction of Uruguay as to the violations alleged in her own behalf, the author states that she was in Uruguay at the time of her daughter's arrest in 1976.

"Consequently, both my daughter and I were at the time under Uruguayan jurisdiction. Quite clearly, my daughter remains under Uruguayan jurisdiction and her rights continue to be violated daily by the Government of Uruguay. Since the continued violation of my daughter's human rights constitutes the crucial factor of the violation of my own rights, the Government cannot, in my view, in any way evade its responsibility towards me. I continue to suffer day and night because of the lack of information on my dear daughter, and I therefore believe that, from the moment when my daughter was arrested, I was, and I continue to be, the victim of a violation of articles 7 and 17 of the Covenant."

8. On 15 October 1982, before formulating its views in the light of the information made available to it by the author of the communication and by the State party concerning the alleged arrest, detention and mistreatment of Elena Quinteros, the Human Rights Committee decided to adopt the following interim decision:

"The Human Rights Committee,

Noting that the author of the communication has submitted detailed information, including eyewitness testimonies, concerning the detention of her daughter, Elena Quinteros,

Taking note also of the brief information submitted by the State party on 14 June and 13 August 1982, to the effect that Elena Quinteros had been sought throughout Uruguay since 8 May 1975 and that the Government of Uruguay had no part in the events described by the author of the communication,

Concerned, however, that the State party has made no attempt to address in substance the serious and corroborated allegations made against it, but merely denies any knowledge thereof,

Concluding, that the information furnished by the State party, so far, is insufficient to comply with the requirements of article 4 (2) of the Optional Protocol,

1. Urges the State party, without further delay and with a view to clarifying the matters complained of, to conduct a thorough inquiry into the allegations made and to inform the Human Rights Committee of the outcome of such inquiry not later than by 1 February 1983."

9. In a note dated 12 January 1983, in response to the Human Rights Committee's interim decision, the State party stated the following:

"The Government of Uruguay wishes to reiterate what it said to the Committee in its reply to the note of 4 December 1981 on this case" (see para. 6 above).

10.1 In her comments of 2 May 1983, the author recalls that her daughter was officially arrested at her home in Montevideo, on 24 June 1976, because of her

political opinions, by members of Department No. 5 of the National Directorate for Information and Intelligence of the Montevideo Police Headquarters. She states that her daughter was kept incommunicado on the premises of the police department for four days until the morning of 28 June, although under the Constitution and laws of Uruguay the maximum period during which a person may be held incommunicado is 48 hours.

10.2 The author claims that "there is no possible doubt regarding the central fact which prompted my communication, namely that my daughter Elena was abducted on 28 June 1976 from within the Embassy of the Republic of Venezuela at Montevideo and that this abduction (or arrest carried out in the form of an abduction) was the work and responsibility of Uruguayan official authorities, and since that day Elena has been in the custody of the Uruguayan official military authorities."

10.3 Concerning her daughter's arrest inside the Venezuelan Embassy grounds on 28 June 1976, the author gives the following details:

"Believing that Elena was going to denounce someone, her captors brought her near to the Embassy, allowing her freedom of movement so that she could go to the supposed rendezvous. Elena, who had already given thought to the possibility, went into the house next to the Embassy. From there she managed to jump over the dividing wall, thus landing in Venezuelan territory. She shouted 'Asylum!' and stated her name and occupation. When they realized what was happening, the policemen escorting her came through the gate giving access to the gardens of the Embassy, without being stopped by the four policemen on guard. When they heard Elena shouting, the Ambassador and his secretary, as well as other officials, ran towards her and were able to see her being beaten and dragged by the hair by the policemen who were trying to remove her by force from Venezuelan territory. The Counsellor of the Embassy, Mr. Frank Becerra, and the Secretary, Baptista Olivares, tried to prevent the woman seeking refuge from being removed from the Embassy garden before she could enter the residence itself. While Elena was being dragged outside, the two diplomats were grappling with the police, grabbing hold of Elena's legs. One of the policemen struck Mr. Becerra who fell, thus enabling them to take Elena away and put her in a greenish Volkswagen whose registration number, as was seen by a large number of residents who had observed each stage of the police raid, ended in 714 and which a Police Headquarters communiqué identified on 2 July as the 'car with unidentified suspects who abducted a woman'. In their anger, the police even went to the inhuman lengths of slamming the car door hard against Elena's legs while she was being bundled into the car, certainly causing a fracture. The car then moved off at high speed, with its doors still open, against the oncoming vehicles and despite the heavy traffic to be found at that hour, about 10.30 a.m., in the Bulevar Artigas, where the Embassy is situated, at number 1257, in the 'Pocitos' district, 5 km from the centre of Montevideo."

10.4 The author further states that, according to eyewitness accounts received by the Ambassador of Venezuela, her daughter was transferred from the green Volkswagen to an official Uruguayan army truck. She claims that another significant detail is that when her daughter entered the garden of the Embassy she ran towards the residence crying "Asylum, asylum!", stated her name and occupation and managed to shout "this is '...' from the Department No. 5". The author further submits that "from refugees (five in all) who were in the Embassy awaiting a safe conduct in order to leave Uruguay, and from her (daughter's) statements, it was possible to

ascertain that three of the plain-clothes police officers who entered the Embassy were ..." (names are given).

10.5 Concerning the suspension of diplomatic relations between Venezuela and Uruguay, the author stresses that "as a result of these events of June 1976, Venezuela broke off diplomatic relations with the Government of Uruguay and they have not been restored until this day. The Government of Venezuela has made it absolutely clear that these relations will remain severed until such time as Elena Quinteros is set free and handed over to the Venezuelan authorities and it is given a full explanation of the facts". She adds that "it would not seem logical to think even for a moment that the authorities and various groups in Venezuela would have taken such a serious step as the breaking of diplomatic relations if they had not been convinced that Uruguayan public officials had directly participated in the violation of the Venezuelan Embassy in Uruguay and in the abduction of Elena Quinteros".

10.6 The author refers to the position the Committee has taken, in previous cases, that in the face of specific and detailed complaints, it was not sufficient for the State party to refute these allegations in general terms but that "it should have investigated the allegations". In case R.7/30 Eduardo Bleier v. Uruguay, for example, the Committee came to the conclusion that the person concerned had been "arrested and detained" by the Uruguayan authorities, although officially he had "disappeared", on the basis of statements by witnesses that they had seen him held prisoner in official detention centres.

10.7 To corroborate her allegations concerning the responsibility of the Uruguayan authorities in her daughter's case, the author recalls the testimonies referred to in paragraphs 1.5 and 1.6 above and adds new substantial evidence as follows:

- (i) A letter sent to the author in January 1977 by the Secretary-General of the Office of the Presidency of the Republic of Venezuela, in which he stated that the Government "will continue to press for the release of your daughter, Elena Quinteros Almeida" and expressed the hope that "in the end justice will be done and this wrong will be redressed";
- (ii) A Declaration adopted by the Chamber of Deputies of Venezuela on 26 April 1978, in which it is stated "on 28 June 1976 last, the Uruguayan citizen, Elena Quinteros, was arrested by the Uruguayan police authorities when she was seeking diplomatic asylum in the Venezuelan Embassy at Montevideo", "... not only does this action constitute a flagrant violation of the right of asylum but, in addition, the Uruguayan police authorities assaulted two diplomatic representatives of our country, thus violating the most elementary rules of diplomatic immunity and international courtesy";
- (iii) Statements made to the Working Group on Enforced or Involuntary Disappearances by the representative of Uruguay to the Commission on Human Rights on 1 December 1981. The representative then said: "The disappearance of Elena Quinteros has caused us considerable problems. It led to the severing of our relations with Venezuela. It gave rise to a controversy in the Uruguayan newspapers, some of which asked whether or not the Uruguayan authorities were implicated Miss Quinteros went into the Embassy of Venezuela. Before she was able to go inside and before she could initiate the procedure for applying for asylum, two

persons removed her forcibly from the entrance to the Embassy of Venezuela, put her in a car and took her away. ..." b/

10.8 The author reiterates that "there can be no doubt as to the applicability of the Covenant in my particular case ...". She states that, when her daughter was arrested in June 1976, "she and I were living in Montevideo, that is to say, within the jurisdiction of the Uruguayan authorities. As stated in my original communication, I was and continue to be victim of the violation of articles 7 and 17 of the Covenant".

11. In accordance with its mandate under article 5 (1) of the Optional Protocol, the Committee has considered the communication in the light of the information made available to it by the author of the communication and by the State party concerned. In this connection, the Committee has adhered strictly to the principle audiatur et altera pars and has given the State party every opportunity to furnish information to refute the evidence presented by the author. The State party appears to have ignored the Committee's request for a thorough inquiry into the author's allegations. The Committee reiterates that it is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

12.1 With regard to the identity of the alleged victim, the Committee on the basis of (a) the detailed information submitted by the author, including an eyewitness testimony, and (b) the statement made to the Working Group on Enforced or Involuntary Disappearance by the representative of Uruguay to the Commission on Human Rights, on 1 December 1981, has no doubt that the woman who was able to go inside the Embassy of Venezuela at Montevideo, on 28 June 1976, requesting asylum and who was forcibly removed from the Embassy grounds, put in a car and taken away, was Elena Quinteros.

12.2 In addition, the Committee cannot but give appropriate weight to the following information:

- (i) Mr. Grille Motta in his testimony states that, during the incident of 28 June 1976, Enrique Baroni could identify one of Elena Quinteros' captors as being a policeman, nicknamed ..."; c/
- (ii) Mrs. Marquet Navarro in her testimony asserts that she saw Elena Quinteros in August 1976 in the detention place where she herself was being held and that she could observe that Elena Quinteros had been subjected to severe ill-treatment. Mrs. Marquet also gives the names of two male officers and two female soldiers who were "dealing" with Elena Quinteros.

12.3 The Human Rights Committee, accordingly, finds that, on 28 June 1976, Elena Quinteros was arrested on the grounds of the Embassy of Venezuela at

Montevideo by at least one member of the Uruguayan police force and that in August 1976 she was held in a military detention centre in Uruguay where she was subjected to torture.

13. It is, therefore, the Committee's view that the information before it reveals breaches of articles 7, 9 and 10 (1) of the International Covenant on Civil and Political Rights.

14. With regard to the violations alleged by the author on her own behalf, the Committee notes that, the statement of the author that she was in Uruguay at the time of the incident regarding her daughter, was not contradicted by the State party. The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.

15. The Human Rights Committee reiterates that the Government of Uruguay has a duty to conduct a full investigation into the matter. There is no evidence that this has been done.

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, therefore concludes that responsibility for the disappearance of Elena Quinteros falls on the authorities of Uruguay and that, consequently, the Government of Uruguay should take immediate and effective steps (a) to establish what has happened to Elena Quinteros since 28 June 1976, and secure her release; (b) to bring to justice any persons found to be responsible for her disappearance and ill-treatment; (c) to pay compensation for the wrongs suffered; and (d) to ensure that similar violations do not occur in the future.

Notes

a/ On 29 July 1980, the Committee adopted views in case No. R.2/11 (11/1977) concerning Alberto Grille Motta v. Uruguay.

b/ See E/CN.4/1492, annex XVI.

c/ Same nickname and name as referred to in paras. 1.6 and 10.4 above.