

**Ann Maria Garcia Lanza de Netto v. Uruguay, Communication No. 8/1977,
U.N. Doc. CCPR/C/OP/1 at 45 (1984).**

Submitted by: Ann Maria Garcia Lanza de Netto on 20 February 1977, Beatriz Weismann on 28 September 1979 and Alcides Lanza Perdomo on 15 February 1980

Alleged victims: Beatriz Weismann and Alcides Lanza Perdomo

State party: Uruguay

Date of adoption of views: 3 April 1980 (ninth session)

Standing of author to act on behalf of alleged victims--Submission to IACHR--Same matter--Exhaustion of domestic remedies--Review of decision on admissibility--Joinder of subsequent communication--Arbitrary arrest--Detention incommunicado --Habeas corpus--Access to counsel-- Torture--Delay in proceedings--Fair trial--Continued detention after serving sentence--Freedom of expression--Right of State party to derogate from Covenant--Burden of proof

Articles of Covenant: 4, 7, 9 (1j, (3j and (4j, I0 (1), 14 (1j, (2) and (3) and 19 (2) and r3)

Article of Optional Protocol: 5 (2) (a) and (b)

Views under article 5 (4J of the Optional Protocol

1. The initial author of this communication, Ann Maria Garcia Lanza de Netto (initial letter dated 20 February 1977) is a Uruguayan national, residing in Mexico. She submitted the communication on behalf of her aunt, Beatriz Weismann de Lanza, a 35-year-old Uruguayan citizen, and her uncle, Alcides Lanza Perdomo, a 60-year-old Uruguayan citizen and a former trade union leader, alleging that both had been arbitrarily arrested and detained in Uruguay.

2. Ann Maria Garcia Lanza de Netto claimed that her uncle had been arrested early in February 1976 in the streets of Montevideo by the occupants of an army vehicle and that until the end of September 1976 his family was unable to locate him. She alleged that Alcides Lanza Perdomo was detained at various places, including the naval air base at Laguna del Sauce in the Department of Maldonado and that during this period of initial detention he had to be admitted to the Central Hospital of the Armed Forces four times, on one occasion almost completely suffocated. She further alleged that there were two months about which her uncle remembers absolutely nothing and that he supposes he was unconscious all that time. She claimed that as a consequence of the mistreatment received, her uncle's hearing was seriously impaired and that he had difficulties moving about because of injuries which were caused to one hip, probably a fracture.

It is submitted that Alcides Lanza Perdomo was later held in the army barracks of the School of Weapons and Services, 14 kilometres along Camino Maldonado, where he was allegedly housed in a railway wagon together with 16 other prisoners, and that he was forced to work in the fields.

In respect of her aunt, Beatriz Weismann de Lanza, the initial author submitted that she had been arrested shortly after her husband by army personnel entering her home early one morning and taking her away together with her two small sons, who were handed over some hours later to their grandmother. The author claimed that her aunt's family and friends were unaware of her place of detention until late in 1976. She claimed that her aunt had been in good health until her disappearance in February 1976 but that due to torture inflicted upon her, she had no feeling from the waist downwards and could not move without the help of two female prisoners. She stated that Beatriz Weismann de Lanza had nevertheless been obliged to work.

Finally, Ann Maria Garcia Lanza de Netto submitted that proceedings had been initiated with regard to her uncle before a military court, but that it was not clear whether her aunt had appeared before a court.

These submissions have later been supplemented by the alleged victims, as set out in paragraphs 9, 10 and 11 below.

3. On 26 August' 1977, the Human Rights Committee decided to transmit the communication to the State party under rule 91 of the provisional rules of procedure, requesting information and observations relevant to the question of admissibility. By that same decision the Committee requested Ann Maria Garcia Lanza de Netto to furnish detailed information on the grounds and circumstances justifying her acting on behalf of the alleged victims.

4. By letter dated 21 October 1977 the initial author explained that the alleged victims were unable to act on their own behalf and that she was acting on their behalf as their close relative, believing, on the basis of her personal acquaintance with them, that the alleged victims would agree to lodging a complaint.

5. By letter dated 27 October 1977 the State party objected to the admissibility of the communication on two grounds:

(a) That the same matter was already being examined by the Inter-American Commission on Human Rights;

(b) That the alleged victims had not exhausted all available domestic remedies.

6. On 1 February 1978, the Human Rights Committee,

(a) Having ascertained that the case concerning Beatriz Weismann de Lanza, which had been before the Inter-American Commission on Human Rights, had been withdrawn and was no longer under active consideration by that body,

(b) Having further ascertained that the cases concerning Alcides Lanza Perdomo were submitted to the Inter-American Commission on Human Rights in November 1974 and February 1976 respectively,

(c) Concluding that these two cases cannot relate to events alleged to have taken place on or after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay),

(d) Further concluding that, with regard to exhaustion of domestic remedies, on the basis of the information before it, there were no further remedies which the alleged victims should or could have pursued,

Therefore decided:

(a) That the author of the communication was justified by reason of close family connection in acting on behalf of the alleged victims;

(b) That the communication was admissible;

(c) That the text of this decision be transmitted to the State party together with the text of the relevant documents and to the author;

(d) That, in accordance with article 4 (2) of the Optional Protocol, the State party 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.

With regard to the exhaustion of domestic remedies the Committee said that its decision "may be reviewed in the light of any further explanations which the State party may submit giving details of any domestic remedies which it claims to have been available to the alleged victims in the circumstances of their cases, together with evidence that there would be a reasonable prospect that such remedies would be effective".

7. By its decision of 18 April 1979, the Committee:

(a) Informed the State party of the Committee's concern that the State party had failed to fulfil its obligation to submit written explanations or statements under article 4 (2) of the Optional Protocol;

(b) Requested the State party, although the sixmonths' time-limit, established by article 4 (2) of the Optional Protocol, had expired on 3 September 1978, that a submission from the State party pursuant to that article should be made without further delay and should, in any event, reach the Human Rights Committee not later than six weeks from the date of the transmittal of the decision.

8. The time-limit set by the Committee in its decision of 18 April expired on 2 July 1979, at which time no further submission had yet been received. However, in a note dated 8 October 1979 the Government submitted, in the first place, that the Committee should review its decision regarding the admissibility of the communication, because domestic remedies had not been exhausted. It attached a summary of available remedies, noting that the authors had not indicated that they had actually applied for any remedies; furthermore, the Government stated that the effectiveness of the remedies was not for the Government to prove and that it could not be argued hypothetically that they were ineffective. Notwithstanding these contentions, however, the Government gave the following information:

Mr. Alcides Lanza was arrested for investigation on 2 February 1976 and detained under the prompt security measures. Subsequently, on 21 September 1976, he was charged by the

military examining judge of fifth sitting with the offence of 'subversive association' referred to in article 60 (VI) of the Military Penal Code.

On 26 October 1977 he was sentenced to three years' severe imprisonment less the period spent in custody pending trial. On completion of his sentence, he was granted unconditional release on 2 February 1979 and left Uruguay for Sweden on 1 July 1979.

It should be noted that the appropriate legal assistance was available to Mr. Kanza at all times, his defence counsel being Dr. Juan Barbe.

Mrs. Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures. Subsequently, on 28 September 1976, she was charged by the military examining judge of first sitting with the offence of 'assistance to association' referred to in article 60 (VI) of the Military Penal Code.

She was sentenced on 4 April 1978. Her offence was deemed to have been purged by the period spent in custody pending trial, and she was released. She left Uruguay for Sweden on 11 February 1979.

It stated that it was clearly demonstrated by the plain statement of facts given above that the accusations of violations of the Covenant were "fallacious". "Although such accusations, being groundless, irresponsible and unaccompanied by the least shred of evidence, are not worthy of any further comment" some were referred to by way of example:

It is obvious that both of these persons were afforded all guarantees of due process, for they were brought before a competent judge in public proceedings, had the appropriate legal assistance from their defence counsel and were presumed innocent until proved guilty {article 14, paragraph 1, paragraphs 3 (b) and 3 (e) and paragraph 2}.

The charges of alleged ill-treatment and torture suffered by the detainees are mere figments of the author's imagination; she is apparently unaware of Uruguay's long tradition in the matter, which has, throughout its history, earned it the recognition of the international community. Only someone who is completely ignorant of the facts or is acting in obvious bad faith can conceivably accuse Uruguay of violating articles 7 and 10 (1) of the Covenant and article 5 of the Universal Declaration of Human Rights. Detainees are not subjected to any kind of torture or physical coercion in any detention establishment.

The Government of Uruguay trusts that the foregoing explanations will provide a sufficient basis for the Committee, on this occasion, to reject once and for all the communication under consideration, which is merely another instance of the campaign of defamation conducted against our country with the intention of discrediting its image abroad; none the less, it remains at the disposal of the Committee for any further clarification it may require.

9. Meanwhile, one of the alleged victims, Beatriz Weismann de Lanza, after arriving in Sweden, had submitted a communication (received on 28 February 1979 and first registered as No. 48/1979) on behalf of the other alleged victim, her husband Alcides Lanza Perdomo, containing further and detailed particulars about his case. In a further letter (of 30 April 1979) including a detailed statement of her own case, she requested to be regarded as co-sponsor and co-author of the present communication, and that her own communication (No. 48/1979) be regarded as part thereof and added thereto as further information.

She stated, inter alia, that her husband had been kept in different military quarters and prisons, held incommunicado for nine months and subjected to torture, such as electric shocks, hanging by his hands, immersion of his head in dirty water, near to asphyxia, submarino seco. She stated that her husband suffered from several serious health problems (hypertension, permanent trembling in his right arm and sometimes in his whole body and loss of memory due to brain damage) due to the treatment he was subjected to. He was tried on 21 September 1976 and sentenced to three years' imprisonment by a military court, and she claimed that he continued to be kept in detention in spite of having served his sentence. With regard to herself she described in detail her experience from the date of her arrest of 17 February 1976 until her release and departure from Uruguay in 1979. She said that after her arrest she was first detained in the barracks of unit No. 13 of the Armed Forces, called "El infierno" by prisoners. Almost constantly kept blindfolded and with her hands tied, she allegedly was subjected to various forms of torture, such as caballete, submarino seco, picanas and plantón, which she describes in detail. On 29 July 1976, she was transferred to the barracks of the 6th Cavalry Unit where she was kept in a dirty cell in miserable hygienic conditions and without adequate clothes to protect her against the cold, still blindfolded most of the time. She stated that in those barracks the preliminary investigation took place on 26 August 1976. When she complained to the military judge about the torture which she had been subjected to, he advised her not to pursue her denunciation which could not be proven because otherwise she would probably end up again in "El infierno". On 25 September 1976 she was transferred to the barracks of Infantry Unit No. 1 on Camino Maldonado where she was at first confined to an individual cell measuring 2 by 1.5 m. During the day, prisoners were forced to remain seated without being allowed to speak to each other. She received the first visit by a member of her family on 30 October 1976. Shortly afterwards, on 3 November 1976, she was transferred to the prison of Punta de Rieles where she was kept together with eleven other female prisoners in a cell designed for four prisoners only. Even female prisoners were forced to perform hard work in the fields suitable only for men. She stated that she was charged on 15 October 1976 with "assisting a subversive association", that in April 1977 the prosecutor asked for a sentence of 32 months, that one year later, in April 1978, a judge pronounced a sentence of 24 months, taking into account the time of her detention, and ordered her release, but that nevertheless her detention continued under the "prompt security measures" until she was released early in 1979.

10. The Committee decided to regard the information referred to in paragraph 9 above as relating to the present communication as requested by the author and therefore to discontinue its consideration of communication No. 48/1979 as a separate communication. This information was transmitted to the Government on 18 September 1979, as noted in the Government's submission dated 8 October 1979 (see para. 8 above).

By a further letter dated 28 September 1979, Beatriz Weismann informed the Committee that her husband had been expelled from Uruguay and that he obtained political asylum in Sweden on 2 July 1979.

11. In response to further inquiries from the Committee, Beatriz Weismann and Alcides Lanza, in a letter dated 15 February 1980, submitted the following additional information and observations:

(a) They stated that they had no legal assistance prior to their trial, at which time they were afforded the possibility to choose either a private lawyer or an officially appointed lawyer for their defence. Beatriz Weismann stated that she opted for a private lawyer, but that she never

saw him, was never able to communicate with him and that she was never informed of her rights, possible remedies or recourses. Alcides Lanza stated that he opted for an officially appointed lawyer and that Dr. Antonio Seluja, whom he saw on that occasion, but was never able to speak with, was assigned as his defence lawyer. Alcides Lanza further stated that his defence counsel was later succeeded by Dr. Pereda and Dr. Juan Barb6, neither of whom he could ever communicate with. As they had no contact with lawyers, they were unable to appeal because they did not know what their rights were and had no one to assist them in exercising them.

(b) Beatriz Weismann was kept in detention until 11 February 1979, although her release had been ordered on 14 April 1978, at which time she was requested to place her signature on the release order. Alcides Lanza, having served his sentence on 2 February 1979, was nevertheless kept detained at various places of detention (the names of the places of detention are specified), until he was released on 1 July 1979.

(c) They confirmed, as true, the information previously submitted with regard to their treatment while in detention, including the various forms of physical and mental torture to which they were allegedly subjected. They stated that due to the treatment which he had received, Alcides Lanza's state of health was still poor and, as evidence of this, they submitted a medical report dated 19 February 1980, from a doctor in Stockholm, together with copies of hospital and laboratory records relating thereto. They also enclosed several photographs showing scars on Alcides Lanza's legs, allegedly caused by cigarette burns as a means of torture. The doctor's report shows that Alcides Lanza continues to suffer from auditory disturbances, a tremor of his right hand and inability to use it properly and symptoms of mental depression.

12. The Committee has noted that the submissions of the Government of 8 October 1979 were received after the expiry of the time-limit imposed by article 4 (2) of the Optional Protocol and even after the time-limit following the Committee's renewed request of 18 April 1979. Nevertheless the Committee has considered the present communication in the light of all information made available to it by the parties, as provided for in article 5 (1) of the Optional Protocol.

13. With regard to the exhaustion of domestic remedies, the Committee notes that the submissions and explanations of the Government still do not show in any way that in the particular circumstances of the two individuals concerned at the time of the events complained of, there were remedies available which they should have pursued. The Committee has been informed by the Government in another case (No. 9/1977) that the remedy of habeas corpus is not applicable to persons arrested under prompt security measures. Moreover, Beatriz Weismann and Alcides Lanza have explained that they had no effective contact with lawyers to advise them of their rights or to assist them in exercising them.

14. The Committee therefore decides to base its views on the following considerations:

(i) Alcides Lanza Perdomo was arrested for investigation on 2 February 1976 and detained under the "prompt security measures" as stated by the Government. He was kept incommunicado for many months. It is not in dispute that he was kept in detention for nearly eight months without charges, and later for another 13 months, on the charge of "subversive association" apparently on no other basis than his political views and connections. Then, after

nearly 21 months in detention, he was sentenced for that of fence by a military judge to three years severe imprisonment, less the period already spent in detention. Throughout his period of detention and during his trial he had no effective access to legal assistance. Although he had served his sentence on 2 February 1979, he was not released until 1 July 1979: His present state of physical and mental ill-health for which no other explanation has been offered by the Uruguayan Government, confirms the allegations of ill-treatment which he suffered while under detention.

(ii) Beatriz Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures, as stated by the Government. She was kept incommunicado for many months. It is not in dispute that she was kept in detention for more than seven months without charges, and later, according to the information provided by the Government, she was kept in detention for over 18 months (28 September 1976 to April 1978) on the charge of "assisting a subversive association", apparently on similar grounds to those in the case of her husband. She was tried and sentenced in April 1978 by a military judge, at which time her offence was deemed to be purged by the period spent in custody pending trial. She was, however, kept in detention until 11 February 1979. Throughout her period of detention and during her trial she had no effective access to legal assistance. With regard to her allegations that during her detention she was subjected to ill-treatment and to physical and mental torture, she states that she complained to the military judge, but there is no evidence that her complaints have been investigated.

15. The Human Rights Committee has considered whether acts and treatment, which are *prima facie* not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, in particular the "prompt security measures". However, the Covenant (art. 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

As regards the observations of the Government quoted above (para. 8) it appears from the above findings of the Committee (para. 14) that various guarantees of due process have not been effectively observed, and that a number of quite specific allegations of ill-treatment and torture have only been deemed by the Government "not worthy of any further comment". In its decision of 26 October 1979 concerning case No. 9/1977, the Committee has emphasized that denials of a general character do not suffice. Specific responses and pertinent evidence (including copies of the relevant decisions of the courts and findings of any investigations which have taken place into the validity of the complaints made) in reply to the contentions of the author of a communication are required. The Government did not furnish the Committee with such information. Consequently, the Committee cannot but draw appropriate conclusions on the basis of the information before it.

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts set out above (para. 14), in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose, for the reasons set out above (para. 15) violations of the International Covenant on Civil and Political Rights, with respect to both Alcides Lanza Perdomo and Beatriz Weismann de Lanza, in particular of:

Article 7 and article 10 (1), because of the treatment which they received during their detention;

Article 9 (I), because they were not released, in the case of Alcides Lanza Perdomo, for five months and, in the case of Beatriz Weismann de Lanza, for 10 months, after their sentences of imprisonment had been fully served.

Article 9 (3), because upon their arrest they were not brought promptly before a judicial officer and because they were not brought to trial within a reasonable time;

Article 9 (4), because they were unable effectively to challenge their arrest and detention;

Article 14 (1), (2) and (3), because they had no effective access to legal assistance, they were not brought to trial within a reasonable time, and further because they were tried in circumstances in which irrespective of the legislative provisions they could not effectively enjoy the safeguards of fair trial;

Article 19 of the Covenant provides that everyone shall have the right to hold opinions without interference and that the freedom of expression set forth in paragraph 2 of that article shall be subject only to such restrictions as are necessary (a) for respect of the rights and reputations of others and (b) for the protection of national security or of public order (ordre public), or of public health or morals. The Government of Uruguay has submitted no evidence regarding the nature of the political activities in which Beatriz Weismann and Alcides Lanza were alleged to have been engaged and which led to their arrest, detention and trial. Information that they were charged with subversive association is not in itself sufficient. The Committee is therefore unable to conclude on the information before it that the arrest, detention and trial of Beatriz Weismann and Alcides Lanza were justified on any of the grounds mentioned in article 19 (3) of the Covenant.

17. Accordingly, while the Committee notes with satisfaction that Beatriz Weismann and Alcides Lanza have now been released, it is nevertheless of the view that the State party is under an obligation to provide them with effective remedies, including compensation, for the violations which they have suffered and to take steps to ensure that similar violations do not occur in the future.