

HUMAN RIGHTS COMMITTEE

Burgos v. Uruguay

Communication No. 52/1979

29 July 1981

VIEWS

Submitted by: Delia Saldias de Lopez on 6 June 1979

Alleged victim: Sergio Ruben Lopez Burgos (author's husband)

State party: Uruguay

Date of adoption of views: 29 July 1981 (thirteenth session)

Views under article 5 (4) of the Optional Protocol¹

1. The author of the communication is Delia Said/as de Lopez, a political refugee of Uruguayan nationality residing in Austria. She submits the communication on behalf of her husband, Sergio Ruben Lopez Burgos, a worker and trade-union leader in Uruguay.

2.1 The author states that mainly because of the alleged victim's active participation in the trade union movement, he was subjected to various forms of harassment by the authorities from the beginning of his trade union involvement. Thus, he was arrested in December 1974 and held without charges for four months. In May 1975, shortly after his release and while still subjected to harassment by the authorities, he moved to Argentina. In September 1975 he obtained recognition as a political refugee by the Office of the United Nations High Commissioner for Refugees.

2.2 The author claims that on 13 July 1976 her husband was kidnaped in Buenos Aires by members of the "Uruguayan security and intelligence forces" who were aided by Argentine para-military groups, and was secretly detained in Buenos Aires for about two weeks. On 26 July 1976 Mr. Lopez Burgos, together with several other Uruguayan nationals, was illegally and clandestinely transported to Uruguay, where he was detained incomunicado by the special security forces at a secret prison for three months. During his detention of approximately four months both in Argentina and Uruguay, he was continuously subjected to physical and mental torture and other cruel, inhuman or degrading treatment.

2.3 The author asserts that her husband was subjected to torture and ill-treatment as a

consequence of which he suffered a broken jawbone and perforation of the eardrums. In substantiation of her allegations the author furnishes detailed testimony submitted by six exdetainees who were held, together with Mr. Lopez Burgos, in some of the secret detention places in Argentina and Uruguay, and who were later released (Cecilia Gayoso Jauregui, Alicia Cadenas, Monica Solino, Ariel Soto, Nelson Dean Bermudez, Enrique Rodriguez Larreta). Some of these witnesses describe the arrest of Mr. Lopez Burgos and other Uruguayan refugees at a bar in Buenos Aires on 13 July 1976; on this occasion his lower jaw was allegedly broken by a blow with the butt of a revolver; he and the others were then taken to a house where he was interrogated, physically beaten and tortured. Some of the witnesses could identify several Uruguayan officers: Colonel Ramffe, Major Gavazzo (directly in charge of the torture sessions), Major Manuel Cordero, Major Mario Martinez and Captain Jorge Silveira. The witnesses assert that Mr. Lopez Burgos was kept hanging for hours with his arms behind him, that he was given electric shocks, thrown on the floor, covered with chains that were connected with electric current, kept naked and wet; these tortures allegedly continued for ten days until Lopez Burgos and several others were blindfolded and taken by truck to a military base adjacent to the Buenos Aires airport; they were then flown by an Uruguayan plane to the Base Aerea Militar No. 1, adjacent to the Uruguayan National Airport at Carrasco, near Montevideo. Interrogation continued, accompanied by beatings and electric shocks; one witness alleges that in the course of one of these interrogations the fractured jaw of Mr. Lopez Burgos was injured further. The witnesses describe how Mr. Lopez Burgos and 13 others were transported to a chalet on Shangrila Beach and that all 14 were officially arrested there on 23 October 1976 and that the press was informed that "subversives" had been surprised at the chalet while conspiring. Four of the witnesses further assert that Lopez Burgos and several others were forced under threats to sign false statements which were subsequently used in the legal proceedings against them and to refrain from seeking any legal counsel other than Colonel Mario Rodriguez. Another witness adds that all the arrested, including Monica Solifio and Ines Quadros, whose parents are attorneys, were forced to name ex officio defense attorneys.

2.4 The author further states that her husband was transferred from the secret prison and held "at the disposition of military justice", first at a military hospital where for several months he had to undergo treatment because of the physical and mental effects of the torture applied to him prior to his "official" arrest, and subsequently at Libertad prison in San Jose. After a delay of 14 months his trial started in April 1978. At the time of writing, Mr. Lopez Burgos was still waiting for final judgement to be passed by the military court. The author adds in this connection that her husband was also denied the right to have legal defense counsel of his own choice. A military ex officio counsel was appointed by the authorities.

2.5 Mrs. Saldias de Lopez states that the case has not been submitted to any other procedure of international investigation or settlement.

2.6 She also claims that the limited number of domestic remedies which can be invoked in Uruguay under the "prompt security measures" have been exhausted and she also refers in this connection to an unsuccessful resort to arnparo by the mother of the victim in Argentina.

2.7 She has also furnished a copy of a letter from the Austrian Consulate in Montevideo,

Uruguay, mentioning that the Austrian Government has granted a visa to Mr. LOPEZ Burgos and that this information has been communicated to the Uruguay Ministry of Foreign Affairs.

2.8 She alleges that the following articles of the Covenant on Civil and Political Rights have been violated by the Uruguayan authorities in respect of her husband: articles 7, 9 and 12 (1) and article 14 (3).

3. By its decision of 7 August 1979 the Human Rights Committee:

- (1) Decided that the author was justified in acting on behalf of the alleged victim;
- (2) 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 indicating that if the State party contended that domestic remedies had not been exhausted, it should give details of the effective remedies available to the alleged victim in the particular circumstances Of his case.

4. The State party, in its response under rule 91 of the provisional rules of procedure, dated 14 December 1979, states "that the communication concerned is completely devoid of any grounds which would make it admissible by the Committee since, in the course of the proceedings taken against Mr. Lopez Burgos he enjoyed all the guarantees afforded by the Uruguayan legal order". The State party refers in this connection to its previous submissions to the Committee in other cases citing the domestic remedies generally available at present in Uruguay. Furthermore the State party provides some factual evidence in the case as follows: Mr. Lopez Burgos was arrested on 23 October 1976 for his connection with subversive activities and detained under prompt security measures; on 4 November 1976, the second military examining magistrate charged him with presumed commission of the offence of "subversive association" under section 60 (V) of the Military Penal Code; on 8 March 1979, the court of first instance sentenced him to seven years' imprisonment for the offences specified in section 60 (V) of the Military Penal Code, section 60 (I) (6) in association with 60 (XII) of the Military Penal Code and sections 7,243 and 54 of the Ordinary Penal Code; subsequently, on 4 October 1979, the Supreme Military Court rendered final judgement, reducing his sentence to four years and six months. It is further stated that Mr. LOPEZ Burgos' defense counsel was Colonel Mario Rodriguez and that Mr. Lopez Burgos is being held at Military Detention Establishment No. 1. The Government of Uruguay also brings to the attention of the Committee a report on a medical examination of Mr. Lopez Burgos, stating in part as follows:

Medical history prior to imprisonment (Antecedentes personales anteriores a su "recusión"): operated on for bilateral inguinal hernia at the age of 12; (2) history of unstable arterial hypertension; (3) fracture of lower left jaw.

Family medical history: (1) father a diabetic.

Medical record in prison (Antecedents de "recusión"): treated by the dental surgery service

of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the Establishment. Discharged from the Armed Forces Central Hospital on 7 May 1977 with the fracture knitted and progressing well; subsequently examined for polyps of larynx on left vocal cord; a biopsy conducted

5. In a further letter dated 4 March 1980 the author, Delia Saldias de Lopez, refers to the Human Rights Committee's decision of 7 August 1979 and to the note of the Government of Uruguay dated 14 December 1979, and claims that the latter confirmed the author's previous statement concerning the exhaustion of all possible domestic remedies.

6. In the absence of any information contrary to the author's statement that the same matter had not been submitted to another procedure of international investigation or settlement and concluding, on the basis of the information before it, that there were no unexhausted domestic remedies which could or should have been pursued, the Committee decided on 24 March 1980:

(1) That the communication was admissible in so far as it relates to events which have allegedly continued or taken place after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay):

(2) 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;

(3) That the State party be informed that the written explanations or statements submitted by it under article 4 (2) of the Optional Protocol must primarily relate to the substance of the matter under consideration, and in particular the specific violations of the Covenant alleged to have occurred. The State party is requested, in this connection, to give information as to the whereabouts of Lopez Burgos between July and October 1976 and as to the circumstances in which he suffered a broken jaw and to enclose copies of any court orders or decisions of relevance to the matter under consideration.

7.1 In its submission under article 4 (2) of the Optional Protocol, dated 20 October 1980, the State party asserts that Mr. Lopez Burgos had legal assistance at all times and that he lodged an appeal; the result of the appeal was a sentence at second instance that reduced the penalty of seven years to four years and six months of rigorous imprisonment. The State party also rejects the allegation that Lopez Burgos was denied the right to have defense counsel of his own choice, asserting that he was not prevented from having one.

7.2 As to the circumstances under which Mr. Lopez Burgos' jaw was broken, the State party quotes from the "relevant medical report":

On 5 February 1977 he entered the Armed Forces Central Hospital with a fracture of the lower left jaw caused when he was engaged in athletic activities at the prison (Military Detention Establishment No. 1). He was treated by the dental surgery service of the hospital

for the fracture of the jaw with which he entered the hospital. He was discharged on 7 May 1977 with the fracture knitted and progressing well.

7.3 Whereas the author claims that her husband was kidnaped by members of the Uruguayan security and intelligence forces on 13 July 1976, the State party asserts that Mr. Lopez Burgos, was arrested on 23 October 1976 and claims that the whereabouts of Mr. Lopez Burgos have been known since the date of his detention but no earlier information is available.

7.4 As to the right to have a defense counsel, the State party generally asserts that accused persons themselves and not the authorities choose from the list of court-appointed lawyers.

8.1 In her submission under rule 93 (3) dated 22 December 1980 the author indicates that since accused persons can only choose their lawyers from a list of military lawyers drawn up by the Uruguayan Government, her husband had no access to a civilian lawyer, unconnected with the Government, who might have provided "a genuine and impartial defense" and that he did not enjoy the proper safeguards of a fair trial.

8.2 With regard to the State party's explanations concerning the fractured jaw suffered by Lopez Burgos, the author claims that they are contradictory. The transcript of the medical report in the State party's note of 14 December 1979 lists the fracture in the paragraph beginning "Medical history prior to 'recursion'" and goes on to the paragraph beginning "Medical record 'de reclusion'" to state that Lopez Burgos was "treated by the dental surgery service of the Armed Forces Central Hospital for the fracture of the jaw with which he entered the establishment". In other words, the fracture occurred prior to his imprisonment. However, the note of 20 October 1980 states that he entered the hospital with a fractured jaw caused "when he was engaged in athletic activities at the prison". She reiterates her allegation that the fracture occurred as a consequence of the tortures to which Lopez Burgos was subjected between July and October 1976, when he was in the hands of the Uruguayan Special Security Forces.

9. The State party submitted additional comments under article 4 (2) of the Covenant in a note dated 5 May 1981, contending that there is no contradiction between the medical reports, because the State party used the term ' 'recursion" to mean "internacion en el establecimiento hospitalario" (hospitalization), and reasserts that the fracture occurred in the course of athletic activities in the prison.

10.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol. The Committee bases its views inter alia on the following undisputed facts:

10.2 Sergio Ruben Lopez Burgos was living in Argentina as a political refugee until his disappearance on 13 July 1976; he subsequently reappeared in Montevideo, Uruguay, not later than 23 October 1976, the date of his purported arrest by Uruguayan authorities, and was detained under "prompt security measures". On 4 November 1976 pre-trial proceedings

commenced when the second military examining magistrate charged him with the offence of "subversive association", but the actual trial began in April 1978 before a military court of first instance, which sentenced him on 8 March 1979 to seven years' imprisonment; upon appeal the court of second instance reduced the sentence to four years six months. Lopez Burgos was treated for a broken jaw in a military hospital from 5 February to 7 May 1977.

11.1 In formulating its views the Human Rights Committee also takes into account the following considerations:

11.2 As regards the whereabouts of Lopez Burgos between July and October 1976 the Committee requested precise information from the State party on 24 March 1980. In its submission dated 20 October 1980 the State party claimed that it had no information. The Committee notes that the author has made precise allegations with respect to her husband's arrest and detention in Buenos Aires on 13 July 1976 by the Uruguayan security and intelligence forces and that witness testimony submitted by her indicates the involvement of several Uruguayan officers identified by name. The State party has neither refuted these allegations nor adduced any adequate evidence that they have been duly investigated.

11.3 As regards the allegations of ill-treatment and torture, the Committee notes that the author has submitted detailed testimony from six ex-detainees who were held, together with Lopez Burgos, in some of the secret detention places in Argentina and Uruguay. The Committee notes further that the names of five Uruguayan officers allegedly responsible for or personally involved in the ill-treatment are given. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol. As regards the fracture of the jaw, the Committee notes that the witness testimony submitted by the author indicates that the fracture occurred upon the arrest of Lopez Burgos on 13 July 1976 in Buenos Aires, when he was physically beaten. The State party's explanation that the jaw was broken in the course of athletic activities in the prison seems to contradict the State party's earlier statement that the injury occurred prior to his "recursion". The State party's submission of 14 December 1979 uses "recursion" initially to mean imprisonment, e.g. "Establecimiento Militar de Reclusión". The term reappears six lines later in the same document in connection with "Antecedentes personales anteriores a su reclusión". The Committee is inclined to believe that "reclusión" in this context means imprisonment and not hospitalization as contended by the State party in its submission of 5 May 1981. At any rate, the State party's references to a medical report cannot be regarded as a sufficient refutation of the allegations of mistreatment and torture.

11.4 As to the nature of the judicial proceedings against Lopez Burgos the Committee requested the State party on 24 March 1980 to furnish copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes that the State party has not submitted any court orders or decisions.

11.5 The State party has also not specified in what "subversive activities" Lopez Burgos was allegedly involved or clarified how or when he engaged in these activities. It would have been the duty of the State party to provide specific information in this regard, if it wanted to refute the allegations of the author that Lopez Burgos has been persecuted because of his

involvement in the trade-union movement. The State party has not refuted the author's allegations that Lopez Burgos was forced to sign false testimony against himself and that this testimony was used in the trial against him. The State party has stated that Lopez Burgos was not prevented from choosing his own legal counsel. It has not, however, refuted witness testimony indicating that Lopez Burgos and others arrested with him, including Mónica Solifio and Inés Quadros, whose parents are attorneys, were forced to agree to ex officio legal counsel.

11.6 The 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 of the case. The Government of Uruguay has referred to provisions, in Uruguayan law, of "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 in relation thereto. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

11.7 The Human Rights Committee notes that if the sentence of Lopez Burgos ran from the purported date of arrest on 23 October 1976, it was due to be completed on 23 April 1981, on which date he should consequently have been released.

11.8 The Committee notes that the Austrian Government has granted Lopez Burgos an entry visa. In this connection and pursuant to article 12 of the Covenant, the Committee observes that Lopez Burgos should be allowed to leave Uruguay, if he so wishes, and travel to Austria to join his wife, the author of this communication.

12. I The Human Rights Committee further observes that although the arrest and initial detention and mistreatment of Lopez Burgos allegedly took place on foreign territory, the Committee is not barred either by virtue of article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of article 2 (1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

12.2 The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

12.3 Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to article 5 (1) of the Covenant:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

In line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.

13. 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 communication discloses violations of the Covenant, in particular of:

Article 7, because of the treatment (including torture) suffered by Lopez Burgos at the hands of Uruguayan military officers in the period from July to October 1976 both in Argentina and Uruguay;

Article 9 (1), because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention;

Article 9 (3), because Lopez Burgos was not brought to trial within a reasonable time;

Article 14 (3) (d), because Lopez Burgos was forced to accept Colonel Mario Rodriguez as his legal counsel;

Article 14 (3) (g), because Lopez Burgos was compelled to sign a statement incriminating himself;

Article 22 (1) in conjunction with article 19 (1) and (2), because Lopez Burgos has suffered persecution for his trade union activities.

14. The Committee, accordingly, is of the view that the State party is under an obligation, pursuant to article 2 (3) of the Covenant, to provide effective remedies to Lopez Burgos, including immediate release, permission to leave Uruguay and compensation for the violations which he has suffered, and to take steps to ensure that similar violations do not occur in the future.

1. The text of an individual opinion submitted by a Committee member is appended to these views.

Appendix

Individual opinion submitted by a member of the Human Rights Committee under rule 94 (3) of the Committee's provisional rules of procedure
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Individual opinion appended to the Committee's views at the request of Mr. Christian Tomuschat:

I concur in the views expressed by the majority. None the less, the arguments set out in paragraph 12 for affirming the applicability of the Covenant also with regard to those events which have taken place outside Uruguay need to be clarified and expanded. Indeed, the first sentence in paragraph 12.3, according to which article 2 (1) of the Covenant does not imply that a State party "cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State", is too broadly framed and might therefore give rise to misleading conclusions. In principle, the scope of application of the Covenant is not susceptible to being extended by reference to article 5, a provision designed to cover instances where formally rules under the Covenant seem to legitimize actions which substantially run counter to its purposes and general spirit. Thus, Governments may never use the limitation clauses supplementing the protected rights and freedoms to such an extent that the very substance of those rights and freedom would be annihilated: individuals are legally barred from availing themselves of the same rights and freedoms with a view to overthrowing the regime of the rule of law which constitutes the basic philosophy of the Covenant. In the present case, however, the Covenant does not even provide the pretext for a "right" to perpetrate the criminal acts which, according to the Committee's conviction, have been perpetrated by the Uruguayan authorities.

To construe the words "within its territory" pursuant to their strict literal meaning as excluding any responsibility for conduct occurring beyond the national boundaries would, however, lead to utterly absurd results. The formula was intended to take care of objective difficulties which might impede the implementation of the Covenant in specific situations. Thus, a State party is normally unable to ensure the effective enjoyment of the rights under the Covenant to its citizens abroad, having at its disposal only the tools of diplomatic protection with their limited potential. Instances of occupation of foreign territory offer another example of situations which the drafters of the Covenant had in mind when they confined the obligation of States parties to their own territory. All these factual patterns have in common, however, that they provide plausible grounds for denying the protection of the Covenant. It may be concluded, therefore, that it was the intention of the drafters, whose sovereign decision cannot be challenged, to restrict the territorial scope of the Covenant in view of such situations where enforcing the Covenant would be likely to encounter exceptional obstacles. Never was it envisaged, however, to grant States parties unfettered discretionary power to carry out wilful and deliberate attacks against the freedom and personal integrity of their citizens living abroad. Consequently, despite the wording of article 2 (1), the events which took place outside Uruguay come within the purview of the Covenant.