

HUMAN RIGHTS COMMITTEE

Izquierdo v. Uruguay

Communication No. R.18/73

1 April 1982

VIEWS

Submitted by: Ana Maria Teti Izquierdo on behalf of her brother, Mario Alberto Teti Izquierdo

Alleged victim: Mario Alberto Teti Izquierdo

State party concerned: Uruguay

Date of communication: 7 July 1980

Date of decision on admissibility: 27 July 1981

The Human Rights Committee, established under article 25 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 1982,

Having concluded its consideration of communication No. R.18/73 submitted to the Committee by Ana Maria Teti 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. The author of this communication (initial letter dated 7 July 1950 and further letters dated 26 December 1980 and 16 January, 8 June and 12 September 1951) is Ana Maria Teti, an Uruguayan national residing in France. She submitted the communication on behalf of her brother, Mario Alberto Teti Izquierdo, 37 years old, holding dual nationality (Uruguayan and

Italian), detained in Uruguay.

1.2 The author stated in her submission of 7 July 1980 that her brother, a medical student, was arrested in Uruguay, on 24 May 1972, allegedly for belonging to a youth movement opposed to the regime. She alleged that for two months after his arrest he was held incommunicado and tortured several times, that for this purpose he was removed from the Libertad prison to an unknown place, and that as a result he suffered serious physical and psychological injury, which led him to attempt suicide in 1974. The author further stated that from the time of her brother's arrest in 1972 until October 1976 he had access to three lawyers, Dr. Wilmar Olivera, Dr. Alba Dell'Acqua and Dr. Mario Dell'Acqua, each one for a short period of time only, because they were harassed and persecuted and finally had to leave the country on account of their defence of political prisoners such as Marie Teti. Thereafter it was impossible for Marie Teti himself to appoint a lawyer to act in his defence and Colonel Barbe, a military defence counsel, was officially appointed by the court to act in the case. (The author added, in her further submission of 16 January 1981, that since October 1976, her brother had been deprived of the rights of an accused person to prepare his defence, to have adequate means to do so and to have a defence counsel of his choice.)

1.3 The author further claimed that her brother was brought to trial towards the end of 1972 and that he was sentenced, in a final judgement by the Supreme Military Tribunal in 1978, to 10 years' imprisonment. She mentioned that in May 1982 her brother will have served the whole of his sentence. She also mentioned that, on the ground of good conduct and because of his advanced studies in medicine, he was allowed to give medical treatment to his fellow prisoners, a task which he performed for several years and which earned him the recognition and esteem of the other prisoners.

1.4 With regard to her brother's more recent treatment, the author alleged that, in March 1980, Marie Teti was held responsible by Major Mauro Maurino (a member of the Prison Administration who took part in the torture sessions during the two months following his arrest in 1972) for having instigated statements made by prisoners to the Red Cross mission which visited the prisoners in the Libertad prison in February/March 1980. In consequence, measures of reprisal consisting of threats of death and physical attacks were inflicted on a group of prisoners which included Marie Teti. In August 1980, he was moved to a punishment cell where he was deprived of any kind of physical exercise and held in total isolation from the other prisoners.

1.5 Concerning the allegations of ill-treatment, the author enclosed inter alia (i) a letter dispatched by a relative of a prisoner on 2 June 1980 and (ii) the testimony of a former detainee, Charles Serralta, released in April 1980. The latter states, inter alia, in his testimony:

"I was arrested in July 1972 and expelled to France in April 1980. I spent six months in a barracks and the rest in Libertad Prison. It was there that I met Marie Teti. We spent several years together on the same floor. Me prey iced the prisoners on that floor with medical attention.

"It was towards the end of 1979 that Major Maurino took over the post of Prison Director. He questioned Marie several times. The Major knew him already because he was the officer who had tortured him during the interrogations.

"After the Red Cross delegation left, Marie was once again questioned by Major Maurino. The latter accused Marie of being responsible for the complaints allegedly made by the prisoners to the Red Cross that he was a torturer. Until the day I left, Marie was constantly harassed and threatened."

1.6 The author stated that, on 26 September 1980, her brother was moved from the Libertad prison. In her letter of 16 January 1981 she complained that, after his removal from the Libertad prison, neither his relatives nor the international agencies nor the Italian Embassy in Uruguay had managed to see him or to obtain any definite information regarding his situation and place of detention; the information obtained from the Uruguayan military authorities was vague, contradictory and impossible to verify. She added that, on 11 November 1980, in response to a request by the International Red Cross for information, the military authorities said only that he had been moved so that he could be interrogated in connexion with the review of his trial and that he would be returned to the Libertad prison on 20 November 1980. He was not, however, returned to the Libertad prison until towards the end of May 1981, that is, after being kept incommunicado for eight months. At that time (27 May 1981) his wife and his father were allowed to visit him.

1.7 The author alleged that in June 1980 her brother was forced to sign a statement in connexion with new charges which were brought against him and which were to be added to the charges for which he had already been sentenced in 1978. She further alleged, in her submission dated 26 December 1980, that the new charges against her brother, were revealed to the press by General Rafela (communique published on 28 November 1980 by the Uruguayan daily El Dia). In this connexion she stated:

"On 27 November, General Julio Cesar Rafela, Chief of No. 2 Regional Military Headquarters, denounced an alleged invasion plan, organized from Libertad Prison. Several charges were brought against Mario Teti in this connexion which were said to justify a retrial; but no mention was made of his whereabouts nor was he allowed any contact with his defence lawyer or his relatives. It is no mere chance that, like Mario Teti who was due to be released in May 1982, other prisoners who were nearing the end of their full sentences were also charged by the military authorities. This was the case with Professor Raul Martinez, sentenced to 9-1/2 years of imprisonment, who was due to be released in April 1981, and also the psychologist Orlando Pereira, who was due to be released in August 1981 on completion of his nine-year sentence. It is no mere chance, either, that the statements in question were made only three days before the constitutional referendum. The obvious purpose was to sway public opinion' so as to secure a vote in support of the draft constitution submitted by the military Government. The conditions at Libertad Prison, which is known to be one of the penal establishments with the most efficient security systems, totally belie the statements made by General Rafela."

The author also mentioned that, at the start of the new proceedings against her brother in

June 1980, her relatives were informed that another lawyer, in addition to Colonel Barbe, would act in the case. This lawyer was Dr. Amilcar Perea.

1.8 In her letter of 16 January 1981, the author also alleged that, in the period prior to his move from the Libertad prison, Mario Teti was in a very poor physical and psychological state and she believed that this must have been due to the persecution and physical and psychological pressure to which he was subjected after the Red Cross mission left, as the medical report which the mission made at the time it interviewed him did not indicate any serious disturbance or disorder. In her letter of 8 June 1981 she said that she was extremely alarmed about her brother's health - when he was transferred from the Libertad prison he weighed 80 kilograms and after his return only 60 kilograms; she feared that, if he continued to be subjected to unsatisfactory conditions of imprisonment, his health might suffer even more to the point where his life might be in danger. In her letter of 12 September 1981, the author stated that as soon as her brother returned to Libertad, he was given an electrocardiogram, which revealed that the heart attack he had suffered in October 1980 had resulted in a blockage of the left artery. She pointed out that as her brother suffered from chronic asthma, treatment of his cardiac disease was very difficult and that, in addition, her brother was suffering from thrombophlebitis in both legs. She claimed that these facts confirmed the seriousness of her brother's situation.

1.9 The author claimed that her brother was a victim of violations of articles 7, 9 (2), (3) and (4) and 14 of the International Covenant on Civil and Political Rights. She asserted that no domestic remedies are applicable in her brother's present situation and added *that* the same matter has not, to her knowledge, been submitted to another procedure of international investigation or settlement.

2. On 24 October 1980, 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 of the communication. The Committee also requested the State party to furnish without delay information concerning the whereabouts and state of health of Mario Alberto Teti Izquierdo.

3.1 By a note dated 10 December 1980, the State party objected to the admissibility of the communication on the ground that it did not fulfil the requirements of article 5, paragraph 2 (b), of the Optional Protocol, since domestic remedies had not been exhausted. The State party submitted that the Uruguayan Code of Military Penal Procedure, in articles 489 and 507 respectively, provided for the remedies of appeal for annulment and review in respect of final sentences and in addition that, since Mario Alberto Teti Izquierdo underwent two trials and the decision in one of them was submitted to the Supreme Military Tribunal on appeal only on 30 June 1980, it was evident that domestic remedies had not been exhausted.

3.2 In a further submission dated 3 March 1981, the State party provided additional information concerning the case of Mario Alberto Teti Izquierdo as follows:

"The accused, Mario Alberto Teti Izquierdo, was arrested on 7 December 1970. He took part in the escape from the Punta Carretas prison and was also involved in the attack on the

notary's office in Calle Treinta y Tres and in the attack on the Union Branch of the Pan de Azucar Bank. On 11 December 1970, he was committed for trial by the first examining magistrate on a charge of having committed the offences of 'conspiracy to commit an offence', 'attempts to overthrow the Constitution' and 'being in possession of explosives', contrary to articles 150, 152 (6) and 197 of the Ordinary Criminal Code. His defence counsel was Dr. Wilmar Olivera. On 3 May 1971, he was freed under the system of 'provisional release' and left the country - making use of the option afforded by article 168 (17) of the Constitution - for Chile. On 1 October 1976, his case came up before the third military examining magistrate. On 24 May 1976*, he was arrested for alleged involvement in subversive activities. A second case was brought against him on 15 September 1972 and he was committed for trial by the third military examining magistrate on a charge involving a series of offences, namely, 'attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts', 'conspiracy to commit an offence' and 'use of a fraudulent public document', contrary to article 132, subparagraph (vi), in conjunction with articles 137, 150 and 243 of the Ordinary Criminal Code. His defence counsel was Dr. Juan Barbe. In a judgement at first instance, he was sentenced to nine years' rigorous imprisonment less the time spent in preventive detention. On 12 May 1976, the case came up on appeal before the Supreme Court of Military Justice. On 3 November 1977, the judgement at first instance was set aside and the accused was instead sentenced, as a principal offender, to 10 years' rigorous imprisonment, less the time spent in preventive detention, for a combination of principal and secondary offences, namely 'attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts', 'conspiracy to commit an offence', 'use of a fraudulent public document', 'accessory after the fact' and 'escape from custody'.

"On 21 April 1980, in a judgement delivered in the first of the cases, he was sentenced at first instance to eight years' rigorous imprisonment for a series of offences ('conspiracy to commit an offence', with aggravating circumstances, 'attempt to overthrow the Constitution amounting to conspiracy followed by preparatory acts', with aggravating circumstances, 'use of explosive bombs' and 'failure to disclose personal particulars' in which connexion he was declared to be a habitual offender) and to two to four years' precautionary measures, without prejudice to such final combined sentence as might be deemed appropriate. On 30 June 1980, this case came up on appeal before the Supreme Court of Military Justice. The defence counsel magistrate is now Dr. Amilcar Perea. Subsequently, the fourth military examining magistrate ordered another inquiry to be made as further evidence had come to light that would warrant new proceedings. When the authorities learnt of the so-called 'six-point' plan that was being plotted outside the prison, they again investigated that establishment with the result that new ringleaders of the 'Tupamaros' extremist movement were identified there, among them Mario Teti, who was responsible for conducting operations to reactivate the subversive organization in question. He was moved from Military Detention Establishment No. 1 to another detention establishment, with the agreement and knowledge of the competent court, for the purpose of the requisite investigation, interrogation and inquiries, and also for reasons of security, with a view to dismantling the said plan. His state of health is good."

3.3 In a further submission of 6 May 1981 the State party stated that:

"After the authorities learned of the so-called 'six-point' plan which was being devised by subversive elements outside Military Detention Establishment No. 1 with the participation of similar elements confined in the prison, a further investigation was carried out within the prison.

"This investigation led to the identification of new ringleaders/of the extremist 'Tupamaros' movement who were operating there and among whom Mario Teti was found to be responsible for the conduct of operations aimed at reactivating the above-mentioned subversive organization.

"The fourth Military Court of Investigation ordered that he should be further questioned because of this new evidence, which would appear to constitute grounds for holding another trial.

"Mario Teti was moved from Military Detention Establishment No. 1 to another detention establishment with the agreement and knowledge of the competent court, for the purposes of the necessary investigation, questioning and inquiries, and for reasons of security in order to disrupt the above-mentioned subversive plan.

"The prisoner's state of health is good."

4.1 The Human Rights Committee noted the assertion of the State party, in its first submission, that further remedies were available to Mario Teti Izquierdo. Nevertheless, in other cases the State party has described these remedies by way of appeal for annulment or review as being exceptional in character. No grounds had been adduced to show that these exceptional remedies were applicable in the present case. They could not, therefore, be regarded as, in effect, being "available" within the meaning of article 5 (2) (b) of the Optional Protocol. The Committee noted that an appeal against the judgement of 21 April 1980 came before the Supreme Court of Military Justice on 30 June 1980 and the Committee had not been informed of the conclusion of these proceedings. However, if no decision had yet been reached the Committee could not but conclude that, in so far as the appeal was relevant to the matters complained of, the proceedings in this case had been unreasonably prolonged. The Committee was therefore of the view that there were no further domestic remedies which had to be exhausted before the communication was declared admissible.

4.2 With regard to article 5 (2) (a), the author's assertion that the same matter had not been submitted to any other procedure of international investigation or settlement had not been contested by the State party.

5. On 27 July 1981, 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 be requested to submit to the Committee, within six months of the date of the transmittal to it of its decision, written explanations or statements clarifying the matter and the remedy, if

any, that may have been taken by it; the State party is requested, in this connexion, to enclose copies of any court orders or decisions of relevance to the matter under consideration;

...

(d) That barring regard to the concern expressed in Ana Maria Teti Izquierdo's letter of 8 June 1981, the State party is requested again to inform the Committee of Mario Teti's state of health and to ensure that he was given suitable medical treatment.

6. The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 19 February 1982. No submission has been received from the State party, in addition to those received by the Committee prior to the decision on the admissibility of the communication.

7.1 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 on the following facts which are not in dispute or which are unrepudiated or uncontested by the State party except for denials of a general character offering no particular information or explanation:

Events prior to the entry into force of the Covenants

7.2 First case: Mario Alberto Teti Izquierdo was arrested by 7 December 1970. 11 December 1970 he was committed for trial by the first examining magistrate on charges of "conspiracy to commit an offence", "attempts to overthrow the Constitution" and "being in possession of explosives". On 3 May 1971 he was provisionally released.

7.3 Second case: On 24 May 1972 Mario Alberto Teti Izquierdo was rearrested for alleged involvement in subversive activities. He was kept incommunicado for two months and subjected to ill-treatment. On 15 September 1972 he was again committed for trial by the third military examining magistrate on charges involving a series of offences, namely "attempts to overthrow the Constitution amounting to conspiracy followed by preparatory acts", "conspiracy to commit an offence" and "use of a fraudulent public document". From 1972 to 1976 Mario Alberto Teti Izquierdo had access to three defence lawyers of his choice, Dr. Wilmar Olivera in 1972, Dr. Alba Dell'Acgua from January 1973 to December 1975 and Dr. Mario Dell'Acgua from January 1976 to October 1976. All these lawyers left Uruguay, allegedly because of harassment by the authorities.

Events subsequent to the entry into force of the Covenant:

7.4 Concerning the second cases The military court of the first instance sentenced him to nine years' rigorous imprisonment less the time spent in preventive detention. On 12 May 1976 the case came up on appeal before the Supreme Court of Military Justice. In October 1976 Mario Alberto Teti Izquierdo was assigned a court-appointed military defence counsel, Dr. Juan Barbe. On 3 November 1977 Mario Alberto Teti Izquierdo was sentenced to 10

years' rigorous imprisonment less the time spent in preventive detention. It would appear that he would have served the whole of this sentence in May 1982.

7.5 Concerning the first case: On 21 April 1980 he was sentenced at first instance to eight years' rigorous imprisonment and to two to four years' precautionary measures. On 30 June 1980 this case came up on appeal before the Supreme Court of Military Justice.

7.6 In June 1980 Mario Alberto Teti Izquierdo was forced to sign a statement in connexion with new charges which were brought against him.

7.7 Since October 1976 he has been unable to have the assistance of counsel of his own choice.

7.8 After a visit of the International Red Cross to Libertad prison in February/March 1980, Mario Alberto Teti Izquierdo was subjected to physical attacks and threats of death. In August 1980 he was moved to a punishment cell and held in solitary confinement. He was then in a very poor physical and psychological state of health.

7.9 On 26 September 1980 he was moved to another detention establishment for interrogation in connexion with his alleged involvement, together with other detainees, in operations aimed at reactivating a subversive organization (the "Tupamaros" movement) from within the Libertad prison. In this connexion Mario Alberto Teti Izquierdo faces new charges. His family was unable to obtain information about his whereabouts until May 1981, when he was brought back to Libertad. From September 1980 to May 1981 he was held incommunicado. When Mario Alberto Teti Izquierdo was transferred from Libertad he weighed 80 kilograms, and after his return only 60 kilograms.

8. As regards the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been investigated.

9. 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 as found by the Committee, 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 the following violations of the International Covenant on Civil and Political Rights: of articles 7 and 10 (1), because of the ill-treatment which Mario Alberto Teti Izquierdo has been subjected;

of articles 9 (3) and 14 (3) (c), because his right to trial within a reasonable time has not been respected;

of article 14 (3) (b) and (c), because he was unable to have the assistance of counsel of his own choice and because the conditions of his detention, from September 1980 to May 1981, effectively barred him from access to any legal assistance;

of article 14 (3) (g) , because he was forced to sign a statement in connexion with charges

mace against him.

10. The Committee, accordingly, is of the view that the State party is under an obligation to take immediate steps to ensure strict observance of the provisions of the Covenant and to provide effective remedies to the victim and, in particular, in view of the fact that Mario Alberto Teti Izquierdo is facing new charges, to give him all the procedural guarantees prescribed by article 14 of the Covenant. The State party should also ensure that Mario Alberto Teti Azquierdo receives promptly all necessary medical care.

*/ This would appear to be a typographical error; the correct date seems to be 24 May 1972.