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**Raúl Cariboni v. Uruguay, Communication No. 159/1983, U.N. Doc. CCPR/C/OP/2 at 189 (1990).**

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**Communication No. 159/1983**

*Submitted by:* Ruth Magri de Cariboni (victim's wife) on 18 October 1983, later joined by Raul Cariboni as co-author

*Alleged victim:* Raul Cariboni

*State party:* Uruguay

*Date of adoption of views:* 27 October 1987 (thirty-first session)

*Subject matter:* Detention of Uruguayan citizen by military authorities

*Procedural issues:* Confirmation of allegations by victim after release-Events prior to entry into force of the Covenant

*Substantive issues:* Detention incommunicado-Fair and public hearing-Fair trial-Ill-treatment of detainees-Torture-State of health of victim-Confession under duress-Delays in proceedings-Equality of armsPolitical rights-Heavier sentence upon appeal

*Articles of the Covenant:* 7, 10 (1), 14 (1) and (3) (c) and (g)

*Article of the Optional Protocol:* 4 (2)

1. The original author of the communication (initial letter dated 18 October 1983 and further submission dated 10 July 1984), Ruth Magri de Cariboni, is a Uruguayan national residing in Uruguay. She submitted the communication on behalf of her husband, Radl Cariboni da Silva, a Uruguayan national born on 22 December 1930, former professor of history and geography, who was detained in Uruguay from 1973 until 13 December 1984. He joined as co-author of the communication after his release (letter of 26 August 1985).

2.1. Ruth Magri de Cariboni states that her husband was arrested on 23 March 1973 and alleges that he was subjected to torture. Confessions obtained under torture were allegedly later used in the penal proceedings leading to his conviction. On the fourth day after his arrest he suffered a heart attack. Subsequent to the entry into force of the Optional Protocol for Uruguay on 23 March 1976, Mr. Cariboni was allegedly again subjected to torture (in April and May 1976) and suffered a second heart attack.

2.2. Mrs. Cariboni also states that on 4 May 1973 Mr. Cariboni's case was submitted to the military judge of first instance, who ordered his preventive detention. He was kept incommunicado for 42 days with no access to counsel. On 25 May 1973, he was transferred to Libertad Prison. On 4 May 1973, Mr. Cariboni was charged with "subversive association" and "attempts against the Constitution in the degree of conspiracy, followed by preparatory acts". Proceedings against him lasted for six years and the Supreme Military Tribunal sentenced him in 1979 to 15 years' imprisonment on the basis of confessions that had been extracted by torture. No further remedies were available to Mr. Cariboni following the sentence of the Military Tribunal, since the extraordinary review by cassation can only examine errors of law, but not reopen the case to verify the facts. Mrs. Cariboni draws attention to the irregularities in the proceedings which were instituted against Mr. Cariboni by the military courts, in which violations of his right to a fair and public hearing allegedly took place with regard to his right to an independent and impartial tribunal, since military courts during the years of military dictatorship were neither independent nor impartial, his right to be presumed innocent until proven guilty, because he was presumed guilty as of the arrest and treated as such, his right to be tried without undue delay, because the sentence was pronounced six and a half years after the arrest, his right to counsel, because he had no legal assistance while he was incommunicado, and the sentence was based on confessions obtained under torture during that period and his right not to be compelled to testify against himself or to confess guilt, since he was tortured to obtain a confession against himself in 1973 and in 1976. Mrs. Cariboni states that all these alleged violations of his right to a fair hearing made possible his arbitrary 15-year sentence.

2.3. Mrs Cariboni further states that the conditions under which her husband served his sentence were cruel, inhuman and degrading. The prison was used exclusively for political offenders and it was administered by military personnel on short-term service and not by specialized personnel. Prisoners remained in their small cells for 23 hours a day; the one-hour "recreation" was allegedly afforded arbitrarily and in an unpredictable manner. Prisoners were allowed to read only certain books and many had been withdrawn or even destroyed (books donated by the International Committee of the Red Cross (ICRC) were openly burnt in February 1983). Visits from relatives were frequently cancelled arbitrarily; prisoners were isolated from the outside world and kept under constant psychological pressure. Allegedly, the purpose of detention in Libertad Prison was thus not to rehabilitate the prisoner but to break him physically and psychologically. The goal was to depersonalize prisoners, to keep them in uncertainty, to deprive them of routine and an orderly schedule of activities, to intimidate them by unannounced raids on their cells.

2.4. Mrs. Cariboni expressed deep concern about her husband's state of health. She mentioned that he had suffered two heart attacks during torture. He was examined in December 1976 at the Central Hospital of the Armed Forces and the medical board concluded that only heart surgery could save him. He was examined again in December 1978 and in 1982 at a private clinic and advised to have special examinations (phonocardiograms) every six months, but such examinations were not made possible in the prison. Mrs. Cariboni also stated that her husband was listed by ICRC among the prisoners in the most precarious state of health, after visits made in 1980 and in 1983, and that he was in danger of dying suddenly unless he received adequate medical attention and could enjoy conditions of life different from those he was subjected to in prison.

2.5. Mrs. Cariboni indicated that the same matter had been submitted to the Inter-American Commission of Human Rights (IACHR) but that the case had been withdrawn by letter of 23 August 1983. The secretariat of IACHR confirmed that the case of Raul Cariboni da Silva was not before that body.

3.1. By its decision of 22 March 1984, the Working Group of the Human Rights Committee decided that Mrs. Cariboni was justified in acting on behalf of her husband and 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 the admissibility of the communication. The Working Group also requested the State party to provide the Committee with information on the state of health of Raul Cariboni da Silva.

3.2. Under cover of a note dated 6 February 1985, the State party furnished the Committee with a list of names of persons who had been released from prison since August 1984. The list contained the name of Mr. Cariboni da Silva, and gave the date of his release as 13 December 1984. No further information has been received from the State party concerning his case.

4. By a letter of 26 August 1985, the alleged victim himself, Rutil Cariboni da Silva, requested the Human Rights Committee to continue consideration of the case against the State of Uruguay, although the current Government of Uruguay, which took office on 1 March 1985, should not be held morally responsible for the violations of the International Covenant on Civil and Political Rights which he had suffered. He confirmed the information submitted by his wife, but added the following details and clarifications concerning his trial and treatment while in detention:

In the communication it is stated that I was apparently convicted on the basis of statements extracted from me under torture in Mechanized Cavalry Regiment No. 4, the unit where I was detained. I confirm this, with the following clarification. In the light of the statements in question, the Office of the Prosecutor requested a sentence of nine years' imprisonment and

then, on the basis of the same charges, without further judicial investigation, without any further charges and hence without further evidence, I was sentenced on first instance to 13 years' imprisonment and on final instance by the Supreme Military Court, to 15 years' imprisonment. Of this 15 years' sentence, I served 11 years and 8 months in prison.

It is thus apparent that, on the same charge, I was sentenced to six years more than the penalty requested by the Office of the Prosecutor.

From the foregoing, it will be clear that the effects of the violations of human rights prior to the entry into force of the International Covenant on Civil and Political Rights in connection with my arrest, interrogation and trial in March/April 1973 extended well beyond the date of the entry into force of the Covenant. The legal irregularities mentioned (increasing the sentence from 9 to 15 years' imprisonment without any further evidence) occurred subsequent to the entry into force of the Covenant: the sentence on first instance was handed down in 1977 and the sentence on second instance in 1979.

The statements which were extracted from me under torture do not include any reference to a classifiable offence or any act of violence and relate solely to participation in political, ideological and trade union activities considered as offences by virtue of the rules enacted under the state of emergency and applied during that period by the military courts. Thus, even under torture, not a shred of evidence was obtained to substantiate the penalty requested by the Office of the Prosecutor and still less the heavier penalties handed down by the courts of first and final instance.

With regard to the torture to which I was subjected subsequent to the entry into force of the International Covenant on Civil and Political Rights, I wish to state the following:

On 4 April 1976, I was unexpectedly taken from Libertad Prison early in the morning. My head was covered with a hood and I was taken, lying on the floor of a military vehicle, to the headquarters of a military unit which I am now able to identify as one of the places of interrogation of the Antisubversion Commandos Organization (OCA) at the barracks of Mechanized Infantry Battalion No. 13, at Avenida de las Instrucciones No. 1933.

There I was kept hooded and sitting up straight day and night ("*platon de silla*" or "*cine*", in the jargon of the torturers) until 11 April 1976. I was not allowed to move, and the little food I was given had to be eaten by kneeling on the floor and using the same chair as a table.

We were given the food-usually a very hot clear soup with hardly anything in it-in a tin bowl and nothing else, so that we had to use our fingers. Under the hood, I had been blindfolded with towelling material which made my eyes inflamed and purulent, something that continued for a number of days even after the blindfold was removed when I left OCOA on 1 April 1976. My wrists were bound with wire all the time and I was taken only twice a day to the bathroom.

The only opportunity I had to sleep was on the cement floor when I fell unconscious from the chair, fainting from exhaustion or overcome by sleep. I was roused with kicks, even to my head, and only when I fell down repeatedly, thus showing that I had no strength to stay seated in the chair, was I permitted to lie on the floor. I was then allowed to sleep, for periods I cannot estimate precisely. I was not given any regular medical care, and was watched over only by a male military nurse who was on guard all the time.

I fainted on several occasions and for two of them I have definite reason to believe I was injected with substances about which I was not told anything. There is no doubt that I was given hallucinogenic substances, but I do not know whether this was done orally (with the food) or by injection. Drugs of this kind were certainly used, because their effects were clearly perceptible.

The method chiefly used in my case was mental torture. For many hours at a time I could hear piercing shrieks which appeared to come (and perhaps did come) from an interrogation under torture; the shrieks were accompanied by loud noises and by music played at a very high volume. I was repeatedly threatened with torture and on several occasions I was abruptly transferred to other places, amid threats and illtreatment.

I lost any notion of time because I was hooded for such a prolonged period, and it was impossible to keep count of day or night. I suffered a feeling of oppression and persistent pain in the chest. On two occasions, I experienced suffocation and acute pain in the chest and shouted out to the guard. The result was that I was made to swallow pills, but was still kept sitting up straight, with the hood on.

On one occasion, I fainted with breathing trouble; while I was semiconscious and in acute pain, I realized I was being given an injection and I heard someone say that it was a "heart attack". After that incident (perhaps on the Thursday or Friday of that week), I was allowed to lie longer on the floor, but after auscultation by somebody (as I said, the hood was never removed), I was taken back to the chair.

Two, perhaps three days later, I was sent to the prisoner's depot at Infantry Battalion No. 4, which had its headquarters in Colonia; there I was examined, on admission to the depot, by the unit's Army Medical Corps doctor. He ordered that I should be provided with pillows and that my hood should be lifted while I was in the cramped space (a stable box without doors) where I was to stay for approximately one and a half months, after which I was once again transferred to Libertad Prison. I was taken back to the prison at the end of May 1976.

5.1. Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether the communication is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

5.2. The Human Rights Committee therefore ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement. As regards the requirement of prior exhaustion of domestic remedies, the Committee concluded, based on the information before it, that there were no further domestic remedies that the author could have resorted to in the particular circumstances of his case.

6. On 22 October 1985, the Committee therefore decided that the communication was admissible in so far as it related to events said to have occurred on or after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force for Uruguay.

7. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 24 July 1986, the new Government of the State party observed:

1. The unfortunate events which occurred in Uruguay in 1973 led to a breakdown in the rule of law. This state of affairs lasted until the year 1985, when the authorities elected democratically in 1984 took over.

2. On 8 March 1985, the democratic Government of Uruguay promulgated Act No. 15,737 for the purpose of ensuring national reintegration and peace. In this context, among other measures, a broad and generous amnesty was promulgated in respect of all political offences, as well as all ordinary military offences connected with political offences, committed since 1 January 1962.

3. Pursuant to the above-mentioned Act, prisoners covered by it were released, budgetary allocations for prisons were cancelled, all restrictive measures still pending with regard to the property of the amnestied persons were lifted and all sums of money deposited as bail were returned.

4. As for public officials dismissed on ideological, political or trade-union grounds, or in a purely arbitrary fashion, Act No. 15,783 of 28 November 1985 acknowledged their right to be reinstated in their respective posts, with restoration of their career rights.

5. Since neither the original author of the communication, Mrs. Ruth Magri de Cariboni, nor Mr. Raul Cariboni da Silva, seem to have appeared before the democratic authorities of Uruguay to claim their rights, it would be appropriate for the person concerned to be informed that all the procedures provided for in the Constitution and laws of the Republic of Uruguay are available to him for the submission of his case.

8. The State party's submission together with the text of Act No. 15,737 were forwarded to the authors for comments on 4 September 1986. No further comments from the authors have been received.

9.1. The Human Rights Committee, having examined the present communication in the light of all the information made available to it by the parties as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

9.2. Radl Cariboni was arrested on 23 March 1973, charged with "subversive association" and "attempts against the Constitution in the degree of conspiracy, followed by preparatory acts". He was forced to make a confession, which was later used as evidence in the military penal proceedings against him. Proceedings against him lasted six years. Although the prosecutor requested a sentence of nine years' imprisonment, he was sentenced in 1979 to 15 years' imprisonment by the Supreme Military Court, partly on the basis of his forced confession. He served 11 years and eight months of his sentence before his release on 13 December 1984. From 4 to 11 April 1976, he was subjected to torture for the purpose of extracting information with regard to his ideological convictions, and political and trade-union activities. His treatment during detention at Infantry Battalion No. 4 and at Libertad Prison was inhuman and degrading.

9.3. In formulating its views, the Committee has taken account of the change of government in Uruguay on 1 March 1985 and the enactment of special legislation aimed at the restoration of rights of victims of the previous military regime.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee, in so far as they occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly of:

Article 7, because Radl Cariboni was subjected to torture and inhuman and degrading treatment;

Article 10, paragraph 1, because he was subjected to inhuman prison conditions until his release in December 1984; and

Article 14, paragraph 1, paragraph 3 (c) and paragraph 3 (g), because he was compelled to testify against himself and was denied a fair and public hearing, without undue delay, by an independent and impartial tribunal.

11.1. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations which Raul Cariboni has suffered and, in particular, to grant his adequate compensation.

11.2. The Committee expresses its appreciation for the measures taken by the State party since March 1985 to ensure observance of the Covenant and co-operation with the Committee.