

HUMAN RIGHTS COMMITTEE

Manera v. Uruguay

Communication No. 123/1982

6 April 1984

VIEWS

Submitted by: *Gabriel Manera Johnson on behalf of his father, Jorge Manera Lluberas*

Alleged victim: *Jorge Manera Lluberas*

State Party concerned: *Uruguay*

Date of communication: *10 June 1982 (date of initial letter)*

Date of decision on admissibility: *25 March 1983*

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

Meeting on 6 April 1984;

Having concluded its consideration of communication No. R. 26/123 submitted to the Committee by Gabriel Manera Johnson 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 the communication (initial letter dated 10 June 1982 and further letter dated 11 February 1983) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his father, Jorge Manera Lluberas, alleging that he is imprisoned in Uruguay and that he is a victim of a breach by Uruguay of several articles (specified by the author) of the International Covenant on Civil and Political Rights.

2.1 The author describes the background to the case as follows: Jorge Manera Lluberas (born on 18 November 1929), a civil engineer, was a principal founder of the Movimiento de Liberacion Nacional-

Tupamaros (MLN-T).

2.2 Jorge Manera Lluberias was arrested in Uruguay for the third time in July 1972. He was kept incommunicado during the first 195 days of his detention and allegedly subjected to severe torture. The author further states that in September 1973 his father was transferred as "hostage" from Libertad prison to the Batallon de Ingenieros No. 3 in Paso de los Toros and he alleges that up to the present his father continues to be held as "hostage". This status has caused him to be transferred 17 times from one prison to another, to be detained under extremely harsh prison conditions and to live under the continuous fear of being executed if MLN-T takes any action. In this connection the author encloses a statement from Elena Curbelo, a former hostage.

2.3 Concerning the events that took place after 1976, the author states that from January to September 1976 his father was held at the Pavilion of Cells at the Batallon de Infanteria No. 4 'Colonia'. He states that the cells measured 1.60 x 2 m, that the electric light was continuously on, that the only piece of furniture was a mattress provided at night and that detainees had to remain in the cells 24 hours per day in solitary confinement.

2.4 From September 1976 to August 1977, Mr. Manera was held at Trinidad prison. Concerning this period of imprisonment, two statements are enclosed: (a) from David Campora who alleges that he was held at Trinidad from March 1975 to August 1977 and (b) from Waldemir Prieto, allegedly held there from June 1976 to March 1977. They both state that prison conditions were inhuman (dirty cells, without light, without furniture, extreme temperatures, very hot in the summer, very cold in the winter, lack of food, no medical attention). In particular, they state that Jorge Manera was in poor health (glaucoma, infected tooth) and that he did not receive adequate medical treatment. They point out that Manera, even more than other detainees, was continuously subjected to harassment by the guards and they give the names of several prison officials. For instance, they mention that Manera's cell was searched almost every night by the prison guards. W. Prieto adds that detainees were often beaten by the guards without any reason or subject to 'plantones' for 10 to 12 hours.

2.5 From August 1977 to April 1978, Jorge Manera was kept at the Regimiento de Infanteria No. 2 Durazno. The author mentions that he has no first-hand information (by former detainees) on his father's conditions of imprisonment for the last five years. In April 1978, Jorge Manera was transferred to Colonia where he remained until March 1980. The author alleges that at Colonia his father was again subjected to torture, that he was kept for six months in complete isolation and that between May and November 1980 he was not allowed to sleep more than two hours at a time. In May 1980, Jorge Manera was transferred to the Batallon de Ingenieros No. 3 in Paso de los Toros where he is detained at present. The author states that his father is kept 24 hours a day in a cell with electric light only, without any daylight, and that his state of health is extremely poor. (He lists his father's illnesses.)

2.6 With respect to the judicial proceedings against his father, the author states that on 12 January 1973 his father was brought before a military judge and charged with the following offences: attempt to subvert the Constitutions production, trading in and storage of explosive substances; manslaughter; association to break the law and escape from prison. He further states that six years later, in 1979, his father was sentenced to the maximum penalty of 30 years of imprisonment and 15 additional years of precautionary detention (medidas de seguridad eliminativas) by a military tribunal of first instance. The author claims that his father's trial was not public and that he was not given the opportunity to call his own witnesses. In his further submission of 11 February 1983, the author mentions that his father has been sentenced by the court of second instance, without giving further details.

2.7 Concerning his father's defence, the author alleges that from 1969 to 1971 Alejandro Artucio

defended Manera; Dr. Arturo Dubra was his second defence lawyer; and then in March 1975, Dr. Jose Corbo became Manera's third defence lawyer. In mid-1977 Dr. Corbo had to leave Uruguay. He had never been allowed to see his client. The author encloses a statement from Dr. Corbo. The author maintains that the present official lawyer assigned to his father has never done anything on his behalf.

2.8 The author 'claims that his father is a victim of violations of the following articles of the International Covenant on Civil and Political Rights: of articles 2 and 26, because he was discriminated against and treated worse than a common criminal because of his political ideas; of article 6, because he is held as a 'hostage' and his life is in danger} of articles 7 and 10, because he has been subjected to torture, he has been detained under inhuman prison conditions and he is denied proper medical attention; and of article 14, because he did not have a fair and public hearing by a competent, independent and impartial tribunal since a military tribunal does not fulfil these criteria; he was not presumed innocent; he could never communicate with counsel of his own choosing and he had no facilities for the preparation of his defence; he was not tried without undue delay and he was denied the 'opportunity to obtain the attendance and examination of witnesses on his own behalf or to dispute the evidence against him, often obtained under torture.

2.9 The author claims that domestic remedies have been exhausted. He maintains that the domestic remedies which are provided for in the Uruguayan legislation cannot protect his father, because none of them is allegedly applicable in practice, if the human rights violation has been committed by military personnel or by members of the police in connection with State security as interpreted by the' military forces.

2.10 The author states that the same matter is not being examined under another procedure of international investigation or settlement. He encloses a copy of a letter dated 9 February 1982 addressed by Olga Johnson de Manera to the Executive Secretary of the Inter-American Commission on Human Rights (IACHR), requesting that consideration of case No. 1872 concerning Jorge Manera Lluberas should be discontinued before that body.

3. By its decision of 7 July 1982 the Working Group of the Human Rights Committee decided that the author was justified in acting on behalf of the alleged victim' 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 admissibility of the communication. The Working Group also requested the State party to transmit to the Committee any copies of court decisions against Jorge Manera Lluberas, to give the Committee information on his state of health and to ensure that he receives adequate medical care.

4. By a note dated 11 October 1982 the State party informed the Committee that, notwithstanding the fact that it remained to be determined whether the communication was admissible, the Government of Uruguay wished to make the following comments with respect to Mr. Manera Lluberas:

'This communication is further proof that, even today, instead of the truth about the situation in Uruguay gaining ground, the real situation remains unknown, with a distorted picture prevailing in the international sphere, where there has been exploitation of manifestly untrue and ill-intentioned information, such as the information which has been used to depict Mr. Manera Lluberas as a 'victim of political repression'. Political opinions have not been suppressed in Uruguay; rather, steps have been taken to punish criminal acts which are duly defined in Uruguayan law and which have been committed by those who would replace the traditional means of expressing the views and wishes of the people through direct and secret balloting in free elections by organized violence which serves the interests of groups that are by no means representative of the people on whose behalf they claim to be acting and for

whose supposed happiness they do not shrink from committing outrages and heinous crimes, which are universally repudiated in the country. The declared 'devotion' of such groups to the people's causes had not kept them from attempting to create the conditions for an insurrection by means of assault, robbery, kidnapping, murder, etc., crimes for which much of the blame belongs to Mr. Manera Lluberas in his capacity as a leader of MLN Tupamaros.

"Mr. Manera Lluberas is described in the communication as a 'hostage'. The Government of Uruguay rejects the use of that term to describe someone who has treacherously indulged in the kidnapping of foreign diplomats and in depriving them of their liberty in an attempt to put pressure on the legitimate Government of the Republic in order to attain his objectives, and has thereby jeopardized the lives of the human beings taken as hostages and undermined the relations of sincere friendship and co-operation with countries which are traditionally friends of Uruguay. Mr. Manera Lluberas is not in any-sense of the term a hostage, since he enjoys the same rights as any other prisoner. The only circumstance which distinguishes his situation from that of others imprisoned for crimes of subversion is that he is being held in a different place of detention, a matter with regard to which the Government of Uruguay reserves the right of decision since it falls exclusively within its domestic jurisdiction.

"...

"The Government of Uruguay rejects the whole series of accusations contained in the communication, such as the allegations of torture and ill-treatment, failure to provide medical care, inadequate food, lack of medicines and so on. It should be emphasized in this connection that Mr. Manera Lluberas, like all prisoners, is subjected to periodic medical examinations and that, in the specific case of the urinary infection and bilateral lumbar myalgia from which he has recently suffered, he was given adequate medical care and the necessary medicines by the official health services; he is at present in good health.

"The author of the communication has resorted to false evidence to assemble a set of truthless accusations with the aim of compiling a document that, by its excessive length, would impress the Committee and lead it astray in its decisions. Moreover, the similarities between paragraphs contained in the communication to which this reply relates and expressions used in other communications provide clear proof of the existence of an apparatus which has been established for the sole purpose of drawing up complaints to be submitted for the consideration of relevant international organizations."

5. Commenting on the State party's submission, the author reiterates, in his letter of 11 February 1983, that his father has been subjected to torture and inhuman treatment for the last 10 years, that his trial of both first and second instance were a travesty of justice and that his father received the inhuman sentence of 45 years' imprisonment. The author further alleges that because of his father's status as "hostage" he has been kept incommunicado from time to time and this has amounted to approximately 21 months during which his relatives could not visit him. The author also argues that the State party "confirmed" in fact that his father is held in solitary confinement since it has admitted that he was being held "in a different place of detention". The author informed the Committee that since June 1982 (the date of his initial letter) his father's state of health has deteriorated. In particular he states that owing to inadequate medical attention and lack of medicines his father was urgently taken to the Central Hospital of the Armed Forces in December 1982 to be operated on again. The author, who has often referred in his submission to the views adopted by the Human Rights Committee in the case of Raul Sendic (R.14/63), explains that he does so mainly because both of them are considered as "hostages" and because he wishes to rely on the jurisprudence of the Human Rights Committee.

6.1 The Committee has noted that the observations submitted by the State party on 11 October 1982 did not affect the question of the admissibility of the communication under the terms Of the Optional

Protocol.

6.2 On the basis of the information before it, the Committee found that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication, as the case submitted to IACHR on behalf of Jorge Manera had been withdrawn and the same matter was not being examined under any other procedure of international investigation or settlement. The Committee was also unable to conclude that in the circumstances of this case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b) of the Optional Protocol.

7. On 25 March 1983, the Human Rights Committee therefore decided:

1. That the communication was admissible in so far as it related to events which all godly continued or took place after 23 March 1976, the date on which the Covenant and the Optional Protocol entered into force 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 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 relate primarily to the substance of the matter under consideration. The Committee stressed that in order to perform its responsibilities, it required specific responses to the allegations which had been made by the author of the communication, and the State party's explanations of the actions taken by it. The observations contained in the State party's note of 11 October 1982, to the extent that it contained only refutations of these allegations in general terms, were deemed insufficient for this purpose;

4. That the State party again be requested to furnish the Committee with (a) information on the present state of health of Jorge Manera and (b) copies of any court decisions taken against Jorge Manera, including the decision of the military court of first and second instance.

8.1 By a note dated 9 June 1983, the Government of Uruguay reiterates what it had stated in its submission of 11 October 1982. Regarding the state of health of Mr. Manera, the State party adds that

"on 27 December 1982 an internal urethrotomy was performed on him, with satisfactory results. It is intended to check his condition by means of a urethrocystoscopy to be carried out by the urological service of the Armed Forces Central Hospital. He is also being treated for lumbalgia, which has responded to oral medication."

8.2 The time-limit for the State party's submission under article 4 (2) of the Optional Protocol expired on 28 October 1983. The Committee has not received any further explanations or specific responses to the author's allegations, as requested in operative paragraph 3 of the Committee's decision on admissibility. Moreover, the State party has not furnished the Committee with copies of any relevant court decisions, as requested in operative paragraph 4 of the decision on admissibility.

8.3 No further submissions have been received from the author.

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 (1) of the Optional Protocol,

hereby decides to base its views on the following facts, which appear uncontested, except for denials of a general character offering no particular information or explanations.

9.2 Jorge Manera Lluberias was a civil engineer and a principal founder of the Movimiento de Liberacion Nacional-Tupamaros (MLT-T). He was arrested in July 1972; from January to September 1976 he was held at the Pavilion of Cells at the Batallon de Infanteria No. 4 'Colonia', where cells measure 1.60 x 2 m, electric lights were kept continuously on, the only piece of furniture was a mattress provided at nights and where detainees had to remain in the cells 24 hours per day in Solitary confinement. From September 1976 to August 1977 he was held at Trinidad prison, where prison conditions were described by two witnesses as being characterized by dirty cells without light, without furniture, very hot in the summer and very cold in the winter. In April 1978, he was transferred to Colonia, where he was kept in complete isolation for six months; in May 1980 he was transferred to the Batallon de Ingenieros No. 3, where he is detained at present.

9.3 Mr. Manera was indicted on 12 January 1973. Six years later, in 1979, he was sentenced to the maximum penalty of 30 years' imprisonment and 15 additional years of precautionary detention (medidas de seguridad eliminativas) by a military tribunal of first instances he was subsequently sentenced by the court of second instance. From March 1975 to mid 1977 Mr. Manera was not allowed to see his defence lawyer.

10. 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 violations of the International Covenant on Civil and Political Rights, particularly of:

- Article 10 (1), because Jorge Manera Lluberias has not been treated with humanity and with respect for the inherent dignity of the human person;
- Article 14 (3) (b), because he was not allowed adequate facilities to communicate with his counsel;
- Article 14 (3) (c), because he was not tried without undue delay.

11. The Committee, accordingly, is of the view that the State party is under an obligation to provide Jorge Manera Lluberias with effective remedies and, in particular, to ensure that he is treated with humanity, and to transmit a copy of these views to him.