

**Hiber Conteris v. Uruguay, Communication No. 139/1983, U.N. Doc.
CCPR/C/OP/2 at 168 (1990).**

Communication No. 139/1983

Submitted by: Ilda Thomas (victim's mother)-later joined by Hiber Conteris as co-author on 16 March 1983

Alleged victim: Hiber Conteris

State party: Uruguay

Date of adoption of views: 17 July 1985 (twenty-fifth session)

Subject matter: Detention and trial of Uruguayan civilian by military authority- Tupamaros

Procedural issues: Confirmation of allegations by victim after release-Failure of investigation of allegations by State party-Sufficiency of State party's reply under article 4 (2)-Withdrawal of communication from IA CHR-Burden of proof

Substantive issues: Arbitrary arrest and detention-Detention incommunicado-Access to counsel-Ex officio counsel-Delays in proceedings-Fair trial-Fair and public hearing-Trial in absentia Equality of arms-Habeas corpus-Ill-treatment of detainees-Torture-Prison conditions-Confession under duress-Amnesty-Release of victim from imprisonment

Articles of the Covenant: 4, 7, 9 (1), (2), (3) and (4), 10 (1), 14 (1) and (3) (b), (c), (d) and (g)

Articles of the Optional Protocol: 4 (2), and 5 (2) (a)

1.1. The author of the communication (initial letter dated 16 March 1983 and further letters dated 12 May and 8 November 1983 and 12 March, 14 June and 1 July 1985) is Ilda Thomas, the alleged victim's sister, at present residing in the United States of America. She is legally represented. She submits the communication on behalf of her brother, Hiber Conteris, a Uruguayan national born on 23 September 1933, who was detained at Libertad Prison in Uruguay until 10 March 1985.

1.2. The author stated that Hiber Conteris worked as pastor for the Methodist Church from 1955 to 1965 and that for many years he was a staff writer for *Marcha*, a weekly magazine banned in 1974. He was a professor of the History of Ideas at the National University of Uruguay's School of Law and Social Sciences from 1968 to 1972. In the late 1960s Mr. Conteris was a member of the Movement for National Liberation (Tupamaros), but the author claims that he completely disassociated himself from them in 1970 as political and economic tensions rose and the Tupamaros turned to progressively more violent means.

1.3. On 2 December 1976, Mr. Conteris was arrested by the security police, allegedly without a warrant, at Carrasco Airport, Montevideo, upon returning from a Christian Peace Conference held in Brno, Czechoslovakia. He was taken to the intelligence service headquarters in the city. Two weeks later when his family went to these offices to bring him food, they were given his belongings and told that he had been transferred to "an army establishment". This was the last they heard of him for three months. On 4 March 1977, his daughter was allowed to see him for 15 minutes under strict supervision. He was in a deplorable physical condition and had lost 20 kilos in weight. His arms were scarred. The family later learned that he had been moved between

several military establishments, including the most notorious centre known as "El Infierno"-the 13th Armoured Infantry Battalion. He was also held at the Sixth Cavalry Headquarters and, during the initial two weeks at the intelligence service headquarters (DINARP) in Montevideo.

1.4. During this three-month period of detention, incommunicado, Mr. Conteris was allegedly tortured. He was hanged by the wrists for 10 days and was subjected to burnings and repeated "submarino"-immersing the head of the victim in water fouled by blood, urine and vomit almost to the point of drowning. Under these conditions of extreme ill-treatment Mr. Conteris was forced to sign a confession that he had been an active guerrilla, taking part in kidnapping and/or murder. Approximately four months after his arrest, Mr. Conteris was taken to Libertad Prison.

1.5. The author also alleged that, since his arrest in 1976, Mr. Conteris was never brought before a judge or granted a public hearing at which he could defend himself. No judgement against him has ever been made public. It is also alleged that Mr. Conteris had been detained for over two years before he was informed of the charges against him. The date of Mr. Conteris' first trial is unclear. He was convicted and sentenced in absentia by a military court of the first instance, for "subverting the Constitution", "criminal and political association", "unlawful entry" and "kidnapping". Although a civilian, he was tried by a military court under the Law of National Security enacted in 1972 because he was charged with subversive activities. Mr. Conteris was assigned "legal counsel" (*abogado de oficio*), designated by the military as Dr. Alcimar Perera (see footnote 1). Mr. Conteris never saw Dr. Perera before the trial. It was only after the proceedings that Mr. Conteris had a brief meeting with him. Mr. Conteris never heard from him again. Mr. Conteris submitted his own statement to the military court of first instance but this statement was ignored and not included in the record. He was sentenced to 15 years' imprisonment and in addition to one to five years' precautionary detention (*medidas de seguridad eliminativas*). Without the assistance of legal counsel, he appealed against the decision of the court of first instance to the Supreme Military Tribunal in August 1980. In a letter dated 24 May 1981, he described the appeal as follows:

. . . I had hoped to be able to speak to the lawyer assigned to me, to know his defence in my case, to ask for clarification of the charges formulated by the judge of the first instance who took no notice of my statements, nor did these appear in the instructions for the hearing, and I hoped to have the opportunity to reply to the charges before the members of the Supreme Military Tribunal. None of this happened. My lawyer never came to see me, I did not appear in person before the members of the Tribunal, a junior functionary confined himself to reading the sentence and asking for my signature, and the whole hearing took no more than three or four minutes. So there I am, after the higher appeal in my case with a sentence of 15 years' imprisonment and one to five years' precautionary detention without having been able to articulate my defence with the assistance of a lawyer who took my case seriously, or having personally appeared before any judge in any of the three instances (see footnote 2).

1.6. The author stated that since Mr. Conteris' transfer to Libertad Prison, he did not report the kind of severe torture he experienced in the Sixth Cavalry Headquarters and the 13th Armoured Infantry Battalion. He did, however, experience other forms of physical and psychological abuse. Mr. Conteris was repeatedly subjected to solitary confinement and was held in the coldest part of the prison, the first floor. He was plagued with severe rheumatism in his spine, which often prevented him from leaving his cell for a few minutes' exercise when allowed. Periodically, he

was transferred from one floor to another, a method used to increase the prisoner's feelings of distrust and insecurity.

1.7. It was alleged that at the time of submission no effective legal remedy existed for Hiber Conteris or his family under Uruguayan law since the writ of *habeas corpus* and the basic guarantees against arbitrary arrest and for fundamental fairness and due process set forth in the 1967 Constitution had been totally denied in virtually every case of a person held under the prompt security measures or the Law of National Security. In the case of Hiber Conteris the Supreme Military Tribunal was the court of last instance.

1.8. A case concerning Mr. Conteris, which had been submitted to the Inter-American Commission on Human Rights (IACHR) by an unrelated third party, was withdrawn at the request of the Conteris family dated 12 May 1983.

1.9. The author claims that the above facts reveal breaches by Uruguay of a number of articles of the International Covenant on Civil and Political Rights, including articles 7, 9, 10 and 14. It is also alleged that articles 4, 12, 15, 18 and 19 have been violated.

2. By its decision of 6 April 1983, the Working Group of the Human Rights Committee 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 copies of any court orders or decisions relevant to this case.

3. In a submission dated 27 September 1983 the State party informed the Committee that Mr. Conteris was arrested on 2 December 1976 because of his connection with the kidnapping of the former Consul of Brazil, Mr. Aloisio M. de Diaz Gomide, as well as for having taken part in the meeting of the Tupamaros National Liberation Movement at which the decision was taken to assassinate Mr. Dan Mitrione, a United States citizen. He was tried and subsequently sentenced to 15 years' rigorous imprisonment and 5 to 8 years' precautionary detention measures for "criminal conspiracy", "conspiracy to undermine the Constitution followed by criminal preparations", "usurpation of functions" and "theft and co-perpetration of kidnapping, with a combination of principal and secondary offences". Mr. Conteris was not persecuted for his political opinions, but, rather, tried for committing acts which constitute offences under existing legislation. The procedure followed for his trial took place in accordance with the existing legal rules and at no time was he subjected to any kind of physical or psychological coercion.

4.1. On 8 November 1983, the author submitted comments on the State party's submission under rule 91 and forwarded a copy of the transcript of the indictment of the Fourth Military Court of Investigation, dated 1 March 1977, and of the judgement of the Supreme Military Tribunal, dated 5 August 1980, obtained by Mr. Conteris' lawyer.

4.2. She stated that the crimes her brother was accused of having committed occurred after he had disassociated himself from the Movement for National Liberation (Tupamaros). Even while he was a member, there is no indication that Mr. Conteris took any active role. The Uruguayan Government has never alleged that he was one of their leaders, and therefore would have been privy to high-level decision-making such as plans to kidnap. In fact, he was hardly a leader. He

was a professor, a writer, a former minister. The extent of his involvement in the Tupamaros was to meet with fellow intellectuals, in small meetings, in a private apartment.

4.3. In the transcript of the indictment of the Fourth Military Court of Investigation, dated 1 March 1977, the Prosecutor stated that "there is prima facie evidence that the accused . . . is guilty of the offences which are provided for in articles 150 (criminal conspiracy), 132 in conjunction with 137 (conspiracy to undermine the Constitution followed by criminal preparations), 346 (kidnapping) and 294 (unlawful entry into the home) of the Ordinary Penal Code". The Court agreed with this opinion and ordered that the prisoner "be indicted and held incommunicado" and that he be summoned to appear "at the hearing on 2 March . . . at which he shall be informed of the name of his defence counsel to be appointed from among those on the roster". On 2 March 1977, the Court appointed as defence counsel Dr. Daniel Artecona.

4.4. Hiber Conteris was also indicted for offences under articles 166 (usurpation of functions) and 340 (theft) of the Ordinary Penal Code. By the judgement of first instance rendered by the Fourth Military Court presided over by Judge Colonel Luis G. Blanco Vila, Mr. Conteris was sentenced to a term of 15 years' rigorous imprisonment and 5 to 8 years' precautionary detention.

4.5. The judgement by the Supreme Military Tribunal, dated 5 August 1980, reviewed the particular characteristics of Mr. Conteris' involvement in the Tupamaros movement. It found that he did not completely break with the movement until September of 1970; that up to that date he had participated in numerous conspiratorial meetings, many of which took place in his apartment in Montevideo, and that he also gave the key to the apartment to conspirators who met there in his absence. The Supreme Military Tribunal upheld the sentence of the court of first instance, found Mr. Conteris guilty of a further offence provided for in article 133 of the Ordinary Penal Code (acts exposing the Republic to the risk of war or reprisals) and sentenced him to an additional term of one to five years' precautionary detention.

5.1. When considering the admissibility of the communication, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, because the case before IACHR was submitted by an unrelated third party and in any event was withdrawn at the request of the Conteris family. The Committee was also unable to conclude that in the circumstances of the case there were effective remedies available to the alleged victim which he had failed to exhaust. It noted in this connection that Mr. Conteris appealed to the Supreme Military Tribunal which confirmed his conviction. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

5.2. The Committee observed that there were a number of factual issues in dispute in the case, which had to be assessed during consideration of the case on the merits. For instance, it had to be determined whether the allegation of ill-treatment and torture and whether the allegations of denial of judicial guarantees were well founded. The Committee stated that it would rely on both parties to clarify any factual issues in dispute.

5.3. On 30 March 1984, the Human Rights Committee therefore decided:

1. That the communication was admissible;

2. That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party should be requested to submit to the Committee, within six months of the date of transmittal to it of the 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, paragraph 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;

4. That the State party be again requested to furnish the Committee with decisions taken against Mr. Hiber Conteris which are not already in the possession of the Committee, in particular the judgement of the Fourth Military Court.

6.1. The decision on admissibility containing the Committee's request for specific information was transmitted to the State party and to the author on 8 May 1984. The time-limit for the State party's response expired on 8 November 1984.

6.2. By a note of 25 March 1985, the new Government of Uruguay informed the Committee that Mr. Hiber Conteris had been released from prison on 10 March 1985, but shed no further light on the factual issues in dispute.

7.1. The Committee observes in this connection that the author of the communication has submitted detailed allegations of ill-treatment and that the State party has adduced no evidence that these allegations have been duly investigated. A general refutation of these allegations merely stating that "at no time was he subjected to any kind of physical or psychological coercion" (see para. 3 above) is not sufficient. The Committee also observes that the author has made detailed allegations that Hiber Conteris was denied judicial guarantees set out in a number of provisions of article 14 of the Covenant. In its submission of 27 September 1983, the State party merely informed the Committee that "the procedure followed for his trial took place in accordance with the existing legal rules" (see para. 3 above). Again, a refutation in such general terms is not sufficient..

7.2. The Committee recalls that it has already established in other cases (e.g. Nos. 30/1978 and 85/1981- see footnotes 3 and 4) that the burden of proof cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its authorities and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

7.3 The author's allegations of breaches of the provisions of article 9 of the Covenant have not been commented on by the State party and are, therefore, treated as uncontested.

7.4. The author's allegations of breaches of the provisions of articles 12, 15, 18 and 19 of the Covenant are not adequately substantiated. The Committee, therefore, makes no finding in respect to these articles.

7.5. With regard to the author's allegations of a breach of article 4, the Committee notes that the State party has not purported to rely on any derogation from provisions of the Covenant pursuant to article 4. The Committee, therefore, regards it as inappropriate to make a finding in respect to this article.

8. In a notarized personal affidavit dated 14 June 1985, Mr. Hiber Conteris described in detail aspects of his interrogation, trial and detention, thus confirming the information submitted by the author on his behalf. In a telegram dated 1 July 1985, his wish that the Committee continue its consideration of the case was confirmed.

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 have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanations.

9.2. Hiber Conteris was arrested without a warrant by the Security Police on 2 December 1976, at the Carrasco airport, Montevideo, and taken to the intelligence service headquarters in the city. He was later transferred to different military establishments, including the establishment known as "El Infierno" and the Sixth Cavalry Headquarters. From 2 December 1976 to 4 March 1977, he was held incommunicado, and his relatives were not informed of his place of detention. During this period Mr. Conteris was subjected to extreme ill-treatment and forced to sign a confession. On 4 March 1977, when his daughter was allowed to see him for the first time after his arrest, she witnessed that his physical condition was very poor and that he had lost 20 kilos of weight. Since that time he was kept at Libertad prison under harsh and, at times, degrading conditions, including repeated solitary confinements. The remedy of *habeas corpus* was not available to Hiber Conteris. He was never brought before a judge and was kept uninformed of the charges against him for over two years. He was not granted a public hearing at which he could defend himself and he had no opportunity to consult with his court appointed lawyer in preparation for his defence. He was tried and sentenced by a military court of first instance to 15 years' imprisonment and, it appears, to one to five years of precautionary detention. His own statements to the military court of first instance were ignored and not entered into the court records. Without the assistance of legal counsel, he appealed to the Supreme Military Tribunal in August 1980, which upheld the conviction and sentenced him to 15 years' imprisonment and 5 to 8 years of precautionary detention for "criminal conspiracy", "conspiracy to undermine the Constitution followed by criminal preparations", "usurpation of functions" and "theft and copetration of kidnapping, with a combination of principal and secondary offences". After the change of Government in Uruguay Mr. Conteris was released on 10 March 1985 pursuant to the Law of Amnesty of 8 March 1985.

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 disclose violations of the Covenant, in particular of:

Article 7, because of the severe ill-treatment which Hiber Conteris suffered during the first three months of detention and the harsh and, at times, degrading conditions of his detention since then;

Article 9, paragraph 1, because the manner in which he was arrested and detained, without a warrant, constitutes an arbitrary arrest and detention, irrespective of the charges which were subsequently laid against him;

Article 9, paragraph 2, because he was not informed of the charges against him for over two years;

Article 9, paragraph 3, because he was not brought promptly before a judge and because he was not tried within a reasonable time;

Article 9, paragraph 4, because he had no opportunity to challenge his detention;

Article 10, paragraph 1, because he was held incommunicado for over three months;

Article 14, paragraph 1, because he had no fair and public hearing;

Article 14, paragraph 3 (b), because he had no effective access to legal counsel for the preparation of his defence;

Article 14, paragraph 3 (c), because he was not tried without undue delay;

Article 14, paragraph 3 (d), because he was not tried in his presence and could not defend himself in person or through legal counsel of his own choosing;

Article 14, paragraph 3 (g), because he was forced by means of torture to confess guilt.

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 Mr. Hiber Conteris has suffered and to grant him compensation.

11.2. The State party has provided the Committee with a number of lists indicating the names of persons released from prison since August 1984 and until the newly elected Government came to power on 1 March 1985. The Committee has further learned that, pursuant to an amnesty law enacted by the new Government on 8 March 1985, all political prisoners have been released and all forms of political banishment have been lifted. The Committee expresses its satisfaction at the measures taken by the State party towards the observance of the Covenant and co-operation with the Committee.

1. According to the text of the indictment it appears that Mr. Conteris had a different exofficio lawyer, Dr. Artecona. See para. 4.3.

2. It appears that the three instances are; (i) the military court of investigation, (ii) the military court of first instance and (iii) the Supreme Military Tribunal.

3. See *Selected Decisions . . .*, vol. 1, pp. 109-112.

4. See above, pp. 116-118.