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**Raul Noel Martinez Machado v. Uruguay, Communication No. 83/1981 (15 October 1982), U.N. Doc. Supp. No. 40 (A/39/40) at 148 (1984).**

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Submitted by: Victor Ernesto Martinez Machado on behalf of his brother, Raul Noel Martinez Machado

Alleged victim: Raul Noel Martinez Machado

State party concerned: Uruguay

Date of communication: 24 February 1981

Date of decision on admissibility: 15 October 1982

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

- meeting on 4 November 1983;
- having concluded its consideration of communication No. R.20/83 submitted to the Committee by Victor Ernesto Martinez Machado 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**

1.1 The author of the communication (initial letter dated 24 February 1981 and further submissions dated 18 and 28 June 1981, 27 September 1981 and 12 August 1982) is a Uruguayan national, residing at present in France. He submitted the communication on behalf of his brother, Raul Noel Martinez Machado, who is imprisoned in Uruguay.

1.2 The author states that his brother, a teacher of history, born on 7 July 1949, was arrested in Uruguay on 16 October 1971 by members of the armed forces. In 1974, his brother had come under the jurisdiction of the military courts. In 1979 - eight years after his arrest - he was sentenced to nine and a half years' imprisonment. His defence lawyer, Dr. Rodriguez Gigena abandoned the case after fruitless attempts to remedy the irregularities of the procedure.

1.3 On 26 November 1980 Raul Martinez was transferred from Libertad prison where he has been held since January 1973 and was kept at an unknown place of detention for five months. During this period his family had no contact with him and felt great concern for his state of health. The remedy of habeas corpus was not available to them because Raul Martinez was subjected to military jurisdiction.

1.4 The author states that on 26 November 1980 his brother 'disappeared'. On 26 September 1980 the detainee Mario Teti Izquierdo was taken out of Libertad prison to an unknown destination. On 25 November 1980, the public was informed by the authorities of a suspected subversive conspiracy which included the invasion of Uruguay and which was allegedly planned and directed by detainees in Libertad prison. The allegation implied, according to the author, the involvement of relatives, including children, of the detainees as a link for communicating with the outside world. The author points out that anybody who knows the prison will realize that this was impossible. He stresses that the disappearance of his brother has to be seen in this context. He adds that during the first weeks of December 1980 Orlando Pereira Malanolti and other detainees also disappeared from Libertad. The author further states that in the last days of

November and in the first days of December 1980, several relatives of political detainees were arrested. On 20 December 1980, an official communique announced that Raul Noel Martinez Machado, Orlando Pereira and others were the leaders of the alleged invasion plan. The author also observes that the disappearance of his brother and other detainees was no doubt linked to the fact that all of them were soon to complete their prison sentences.

1.5 The author further alleges that his brother's disappearance violated the internal laws of Uruguay, because detainees who were serving their sentences were theoretically at the disposal of a judge and could not be transferred or held incommunicado without an order of the judge and then only subject to the limitations imposed by the law of the country.

1.6 The author submits that on 16 May 1981 his brother was seen again when, as a result of growing international protest, a French lawyer who had travelled to Uruguay specifically to take up his brother's case was granted a 'visit' with him at the No. 4 Infantry Battalion barracks in the Departamento of Colonia. This visit took place in an atmosphere of tension and pressure and lasted for only five minutes, during which the two were allowed to speak only of the detainee's health and family.

1.7 Subsequently, Raul Martinez was taken back to Libertad prison where, on 18 June 1981 he received a family visit. The author submits that during this visit his brother informed his relatives that he had been re-tried (reprocesado) and that at the court of first instance he had been sentenced (penado) to a year's detention in a military prison, plus three months precautionary detention (medidas de seguridad) and six years 'conditional liberty'. The author adds that his family did not know the 'charges' which had been brought against his brother. He also states that his brother's physical condition had noticeably deteriorated after six months of torture and 'disappearance', but that he was apparently mentally well.

1.8 As to the question of admissibility, the author states that he has not submitted the same matter to another procedure of international investigation or settlement and that domestic remedies were not available in his brother's case.

1.9 The author claims that his brother is a victim of violations of articles 6, 7, 10 (1) and 14 of the International Covenant on Civil and Political Rights.

2. By its decision of 17 March 1981, 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 admissibility of the communication and asking for: (a) copies of any court orders or decisions relevant to this case and (b) information as to the whereabouts of Raul Noel Martinez Machado.

3. In its notes dated 14 August and 6 October 1981 and 2 June 1982, the State party objected to the admissibility of the communication on the ground that since domestic remedies had not been exhausted, it did not fulfil the requirements of article 5, paragraph 2 (b) of the Optional Protocol. The State party informed the Committee that any person on Uruguayan territory has free access to the public and administrative courts and authorities and is free to invoke all the remedies guaranteed by the domestic legal system. The State party also stated that in mid-December 1980, the population was informed of the discovery of plans for the reactivation of the Tupamaros National Liberation Movement, reorganized under the name of "seispuntista", from within Military Detention Establishment No. 1. At that time, the identity of several of the conspirators was made known and information was given on each one's legal status. Raul Martinez Machado, allegedly a subversive and one of the ringleaders of the movement operating from within the Establishment, was brought to trial (procesado) on 11 May 1981 for the offence of "conspiracy to subvert". The State party added that the accused, under military justice, had access to the following internal remedies: appeal against the decision to refuse to allow a trial (procesamiento).

appeal, complaint for refusal of leave to appeal, appeal for annulment, and the special remedies of appeal to vacate a judgement and appeal for review.

4.1 In his comments dated 27 September 1981 and 12 August 1982, the author reiterates that, in his brother's case, no domestic remedies were available which could have been invoked. He recalls that his brother had been detained incommunicado for several months (after 26 November 1980) and thus he was deprived not only of free access to the administrative authorities and courts, but of any opportunity to give anyone a sign of life or of his whereabouts, that he had been at the mercy of his captors who did not admit that they were holding him. Thus, the author claims his brother had been cut off from any contact with the outside world and deprived of all rights, including the right to security of life. In such circumstances any recourse to internal remedies had been made virtually impossible.

4.2 In connection with the alleged participation of his brother in an alleged plan to reactivate the MLN-Tupamaros, the author stresses again that, after the plebiscite held on 30 November 1980 and due to the fact that the majority of the Uruguayan population voted against the draft Constitution proposed by the authorities, a policy of repression was directed against political prisoners and their relatives. This led to new arrests and trials. He considers that in such context of repression and of non-respect for the law, his brother's re-trial (reprocesamiento) can only be seen as illegal. The author also affirms that his brother was denied a proper defence since his ex officio defence counsel, Colonel Ramirez, was a member of the armed forces who had to obey his superiors rather than defend his brother's interests. He adds that, although the Government stated that his brother was re-tried on 11 May 1981, his family had been assured by his defence counsel that he was not re-tried but would be released in October 1982. The author expresses the hope that this would prove true.

4.3 In summary, the author maintains that his brother's re-trial (reprocesamiento) took place after six months of 'disappearance' during which he had been subjected to torture } that he was 'brought to trial' (procesado) on 11 May 1981 although he had completed his prison sentence on 16 April 1981 } that he had no possibility of a fair defence } and that he was a victim of the arbitrariness of military judges.

4.4 In substantiation of his allegations, the author submits various enclosures (approximately 200 pages), in particular two publications, entitled 'Les camps de concentration' and 'La politique de rejugement', from the Comité des Familles des Prisonniers Politiques Uruguayens (FPPU, Paris, 26 November 1981). It is stated therein, inter alia, that in 1979 Raul Martinez was sentenced to nine years and six months imprisonment on grounds of attempt against the Constitution, unlawful association, deprivation of freedom, co-author of theft; that as in the cases of other detainees he is subject to inhuman prison conditions at Libertad (a detailed description of such conditions is given); and that in November-December 1979 he had been taken urgently to the military hospital due to inhuman treatment inflicted upon him.

5. With regard to article 5 (2) (a), the Committee noted that 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.

6. With regard to article 5, paragraph 2 (b), the Human Rights Committee took note of the State party's assertion that Raul Noel Martinez Machado had not yet exhausted the domestic remedies available to him. In this connection the Committee understood that the State party's assertion related merely to the proceedings which were initiated or took place on 11 May 1981 and not to events prior to that date. However, in the absence of any specific indications as to which remedies would have been applicable in the particular circumstances of this case, the Committee was unable to conclude that Raul Noel Martinez Machado had failed to exhaust domestic

remedies. Accordingly, the Committee found that the communication was not inadmissible under article 5 (2) (b). It observed that this decision, in so far as it related to events after 11 May 1981, could be reviewed in the light of further explanations which the State party might submit under article 4 (2) of the Optional Protocol, giving details of any domestic remedies claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.

7. On 15 October 1982, the Human Rights Committee therefore decided:

(1) That the communication was admissible in so far as it related to events said to have continued or taken place on or 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 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 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 State party was requested, in this connection, to enclose copies of any court orders or decisions of relevance to the matter under consideration.

8. By a note dated 22 November 1982, relating to the author's submission of 12 August 1982, the State party reiterates that Raul Martinez was one of the principal leaders of the Seispuntista Movement. It points out "that the action taken with respect to the emergence of the subversive organization concerned was based on investigations carried out in accordance with the requirements of the law. Mr. Martinez Machado was not the subject of a 'forced disappearance', as suggested in the author's communication, but was merely moved from his place of imprisonment for security reasons, with a view to frustrating the Seispuntismo plan by thus impeding communication among its members. While Mr. Martinez Machado's unconditional release might have been effected recently, the discovery of his participation in this movement made it necessary to institute new proceedings which prevented its materialization." With respect to the conduct of the ex officio defending counsel, the State party further points out that the persons concerned are independent lawyers who are not subject to the military hierarchy in the performance of their technical functions. "These were in strict conformity with the principles that should regulate any counsel of a technical and legal nature."

9. In its submission under article 4 (2) of the Optional Protocol dated 4 October 1983, the State party rejects - without providing additional facts - the author's contention that his brother was subjected to ill-treatment, that he "disappeared", that he has been denied a proper defence and that the effective application of domestic remedies available under the procedural laws of the country is not possible. The State party reiterates that military tribunals enjoy total independence in the exercise of their judicial function and it asserts that procedural guarantees are duly observed during all stages of the proceedings and that the defence may apply for such remedies as it considers appropriate.

10. When adopting its decision on admissibility on 15 October 1982, the Committee observed that this decision, in so far as it related to events after 11 May 1981, could be reviewed in the light of further explanations which the State party might submit under article 4 (2) of the Optional Protocol. The Committee notes that, despite the receipt of the State party's most recent

submission, no details have been furnished to it of any domestic remedies claimed to have been available to the alleged victim, together with evidence that there would be a reasonable prospect that such remedies would be effective. The Committee therefore sees no reason for reviewing its decision on admissibility.

11.1 The Committee decides to base its views on the following facts which have been either essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

11.2 Raul Noel Martinez Machado was arrested on 16 October 1971. In January 1973 he was transferred to Libertad prison. In 1974 he came under the jurisdiction of the military courts. In 1979 he was sentenced to nine and a half years' imprisonment. He was to have completed the sentence on 16 April 1981. On 26 November 1980 he was moved from Libertad prison to another detention establishment for interrogation in connection with his alleged involvement in operations aimed at reactivating a subversive organization (the "Tupamaros" movement) from within Libertad prison. From November 1980 to May 1981 he was held incommunicado. On 11 May 1981, Raul Martinez was again brought to trial (procesado) for the offence of "conspiracy to subvert". His ex-officio lawyer is Colonel Ramirez.

12.1 In formulating its views the Human Rights Committee takes into account, in particular, the following consideration:

12.2 In operative paragraph 3 of its decision of 15 October 1982, the Committee requested the State party to submit copies of any court orders or decisions of relevance to the matter under consideration. The Committee notes with regret that it has not been furnished with any of the relevant documents or with any information about the outcome of the criminal proceedings commenced against Raul Martinez Machado in 1971 and 1981. Taking into account the delay in the first trial, it must be concluded in this respect that he has not been tried without undue delay as required by article 14 (3) (c) of the Covenant.

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 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 Raul Martinez was held incommunicado for more than five months }

- of article 14 (3) (b) because the conditions of his detention from November 1980 to May 1981 effectively barred 'him from access to legal assistance;

- of article 14 (3) (c) , because he was not tried without undue delay.

14. 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 in particular (i) that Raul Martinez Machado is treated with humanity as required by article 10 (1) of the Covenants; (ii) that the guarantees prescribed by article 14 are fully respected and, in so far as this has not been done in any proceedings already taken, an effective remedy will be applied; and (iii) that a copy of these views be transmitted to him.