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REPORT

of

MISSION to URUGUAY

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INTERNATIONAL COMMISSION OF JURISTS

April / May 1974

Price: Sw.Fr. 5.00

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# INTERNATIONAL COMMISSION OF JURISTS

COMMISSION INTERNATIONALE DE JURISTES - COMISION INTERNACIONAL DE JURISTAS  
INTERNATIONALE JURISTEN-KOMMISSION

109, ROUTE DE CHÊNE, 1224 CHÊNE-BOUGERIES / GENEVA, SWITZERLAND - TEL. 35.19.73  
CABLE ADDRESS: INTERJURISTS, GENEVA

## REPORT of MISSION to URUGUAY

in April / May 1974

by

Mr Niall MacDermot  
Secretary-General,  
International Commission of Jurists

and

Miss Inger Fahlander  
Research Officer of Amnesty International

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1. We were in Montevideo from Monday 29 April to Saturday 4 May. We first met senior officials and legal advisers of the Ministry of Foreign Affairs, Ministry of Defence and Ministry of the Interior during which the emergency legislation and judicial procedures in force were explained to us fully. We later had interviews with two of the Military Judges of Instruction, with the Secretary of COSENA (the advisory council of the Armed Forces to the government), the President of the Supreme Court, the Vice-President of the Council of State (a nominated body to which the powers of the suspended Parliament have been transferred), the Minister of the Interior and the Minister of Foreign Affairs. It had been agreed that our meetings with Ministers would be on a confidential basis. In addition to the official meetings, we met many lawyers having practical experience in relation to political prisoners. We found the information supplied by them was in some respects at variance with that given by the authorities. We were also able to visit a prison (Libertad) where political suspects subject to trial are being held, but we were refused permission to visit any of the military barracks where interrogations are carried out.

### Legal Basis for the Arrest and Detention of Political Suspects

2. In order to combat the subversive activities of the Tupamaros a State of Internal War was declared by the President and approved by the Parliament in 1971 under Section 168 (17) of the Uruguayan Constitution. In July 1972, the State of War was lifted when Parliament passed Law No. 14.068, the Law of National Security. This law created a number of new offences against the security of the state, which were declared to be military offences and accordingly subject to military justice. The constitutionality

of this law was called in question by a number of distinguished constitutional and penal lawyers, but on April 5, 1974, the Supreme Court of Justice, by a majority of three to two, upheld the validity of the law.

3. There are, therefore, now two procedures by which political suspects may lawfully be held in custody:

- (a) Persons who are suspected of having committed offences under the Law of National Security may be arrested and held by the Armed Forces and subjected to legal process under the system of military justice. By a Decree dated June 12, 1973, they must be placed at the disposal of the competent judge (i.e. Judge of Instruction) or released within ten days of the arrest.
- (b) Persons who are not suspected of having committed an offence, but whose detention is considered necessary on security grounds, may be detained under emergency measures authorized by Article 168, para 17, of the Constitution. This power is subject to a control by the legislative and not the judicial power. All detentions under this Article are required by the Constitution to be reported to the Legislative Assembly within 24 hours, and it was the Assembly which supervised and controlled the exercise of the power. At first we were told that this power could be exercised only by the civilian police acting under the authority of the Minister of the Interior, but in practice, as we learned later, the power is also being exercised by the armed forces under the authority of the Minister of Defence. Persons detained in this way are held in police stations, or in military barracks or in a special camp in a football stadium in Montevideo known as "the Cylinder".

4. The officials with whom we spoke were at great pains to assure us that these procedures were all fully in accordance with the Constitution of Uruguay. In view of the recent decision of the Supreme Court, this would appear to be the case as far as concerns the validity of the laws. However, the suspension on 27 June, 1973, of the elected General Assembly (comprising the Senate and Chamber of Representatives), and the subsequent transfer of its powers to a nominated Council of State, is devoid of any authority under the Constitution. By this means the basic principles of the Constitution, which rest upon a carefully balanced separation of the legislative, executive and judicial powers, have been overthrown. The legislative power is now subordinated to the executive power, and the independence of the judiciary has been affected by the extension of military justice to offences committed by civilians. The President of the Supreme Court explained to us that, apart from the limited rights of review on appeal, he had no jurisdiction or control over the military courts.

#### Absence of Notification or Written Authority for Arrests

5. We were told at first that whenever anyone is arrested under the emergency measures, the Council of State as the legislative power was notified within 24 hours of the name of the person, date of arrest and place of detention in accordance with Article 168, para 17 of the Constitution. From then on, the detention was said to be subject to the authority and control of that body. If this is the theory, the practice is quite different. This can be

clearly illustrated by the case of General Seregni, leader of the Broad Front and presidential candidate at the last election in 1971. He was arrested on July 9, 1973, and has since been held in military premises. As no information could be obtained of the authority for his arrest, habeas corpus proceedings were begun, with no effect. On January 5, 1974, no proceedings having been commenced against him, it was assumed that he was held under the emergency measures. He therefore applied to go into exile, as is his constitutional right in those circumstances. On January 11, 1974, proceedings were begun against him under military justice, thus depriving him of his right of exile. On March 5, the President of the Council of State was informed by a communication from President Bordaberry, the Minister of Defence and the Minister of the Interior that General Seregni and others had been detained by the Generals commanding the Armed Forces under Article 168 (17) of the Constitution. Although this Article requires that an account of the arrest, the action taken and the reasons for the arrest be communicated to the legislature within 24 hours, the report in the Official Journal of March 26, 1974, shows that none of these things were done. Neither the date of arrest, the reasons for it, or the fact that proceedings had been started against him were mentioned. General Seregni appears, therefore, to be held both under the emergency measures and under military justice proceedings, and the legal requirements of neither procedure have been complied with.

6. General Seregni's case is in no way exceptional. In practice, arrested persons do not know under what authority they are held. Neither they, nor their families, nor their lawyers are told why or on what authority they have been arrested, and the names of arrested persons are not published, except where there is an eventual notification to the Council of State. No document is ever issued authorizing an arrest. It is usually only by pursuing energetic enquiries of the civil and military authorities that families and lawyers are able to find out where arrested persons are detained, and by whom and for what reason. If a person is taken to The Cylinder, it is known that he is held under the emergency security measures. But if he is in either police or military custody, he may in due course be subjected either to process under military justice or to detention under the emergency measures or simply be released without any authority for his detention being specified. Habeas corpus has proved quite ineffective as a remedy to determine the place or grounds of detention. The authorities usually simply neglect to make any answer to the enquiries of the judge.

#### Torture and Ill-Treatment

7. The laxity of these procedures is serious from the point of view of legal protections against ill-treatment of suspects. We received many complaints of torture and other ill-treatment. The general view among defence lawyers is that almost all persons detained in military barracks and some of those detained in police stations are still being severely ill-treated either during or as a preliminary to interrogations. The most conservative estimate we received was that it occurred in about 50% of cases.

8. The authorities told us that very strict instructions had been issued to all units forbidding any form of ill-treatment and that these instructions had, in general, been carried out. In the few cases where ill-treatment had been found to have occurred, the culprits had been severely punished. We were given no particulars either of the instructions or of these punishments,

although we asked for them. The Military Judges of Instruction said that hundreds of complaints of torture had been made to them, but they had not found a single case proved. The burden of proof lies in such cases on the complainant.

9. By contrast, the President of the Supreme Court pointed out to us that this was not a new problem in the civil jurisdiction. It was not infrequent for a civil Judge of Instruction to find a case proved against the police of ill-treatment during interrogation. He explained that when the Judge of Instruction received a complaint he had the complainant immediately examined by a doctor, and if the examination showed signs corroborating the complaint, the Judge would act upon it accordingly. It appeared to us noteworthy that there is this discrepancy between the findings of the civilian and military Judges of Instruction. We think the most likely explanation is that in the civilian jurisdiction defendants are brought before the Judge of Instruction within 48 hours (in accordance with Article 16 of the Constitution) when signs of any ill-treatment are likely to be still visible. We are assured by defence lawyers that in the military jurisdiction the normal period of delay before a person is brought before a military Judge of Instruction is now 2 to 3 months (previously it was 5 to 6 months), and sometimes the delay is considerably greater.

#### Procedure under System of Military Justice

10. The military justice procedure is divided into the following stages:

- (1) Investigation by the Juez Sumariente. Persons arrested by the armed forces are taken to the military barracks of the arresting unit. The case is then investigated by an officer appointed by the Commanding Officer as the unit's Juez Sumariente (literally "Summarizing Judge"). Article 83 of the Code on the Organisation of Military Tribunals says that these officers "can only intervene in a case where the Military Judge of Instruction is delayed by reason of distances or for any other reason" and "the intervention by the Juez Sumariente will be limited to collecting essential data of the offence so that the investigation /by the Judge of Instruction/ is not prejudiced, and it will cease as soon as the Judge of Instruction arrives, whereupon the Juez Sumariente will hand over the summary records (actuaciones sumariales) to him". Article 256 of the Code of Military Penal Procedure provides that the Commanding Officer of the unit will notify his superior "by the most rapid means in order that the notification, through the relevant channel, reaches the Ministry of Defence, so that the Judge of Instruction will come and continue the investigation (sumario)". As has been noted, a Decree of June 12, 1973, requires that persons detained under the emergency security measures "shall be placed at the disposal of the competent judge /i.e. the Judge of Instruction/ or set free at the end of ten days reckoned from the date of his detention". These provisions are the legal basis for this first stage, but the procedure laid down is not being carried out in practice. A prolonged investigation, as we have said now lasting on average 2 to 3 months, is conducted by the military unit. The arrested person is interrogated, often more than once, by the Juez Sumariente and other evidence against him is collected. If a confession or other evidence is obtained, the case is then passed to the military Judge

of Instruction. If no evidence is obtained he will, in due course, usually be released. It is during this first stage that ill-treatment most frequently occurs. In general it is not alleged that the Juez Sumariente participates in or attends the ill-treatment. The first session of ill-treatment usually takes place before the first interrogation by the Juez Sumariente and continues until the detainee indicates that he is prepared to make a confession. If he then fails to do so before the Juez Sumariente, another session of ill-treatment occurs before he is re-interrogated and so on, until he confesses. In these cases at least, the Juez Sumariente must know what is occurring. The victims can never identify their torturers as they are invariably hooded throughout. The most common forms of ill-treatment are prolonged standing (one, two or three days), beating, and repeated immersion in water, known as "sub-marine". In some cases electric "prods" are given to sensitive parts of the body. It is difficult to specify why, in some cases, a detainee's denial is accepted and he is released. Presumably these are cases where the Juez Sumariente is impressed by the denial and there is no other evidence.

- (2) The Pre-Sumario before the Military Judge of Instruction. The second stage is the Pre-Sumario before the Military Judge of Instruction. There are now 6 of these Judges (until 1972 there were only 3). Only one of them is a qualified lawyer. Two others are studying to become advocates. They are all officers or retired officers of the armed forces. During this first stage of investigation by the Judge, he interrogates the Defendant, and in particular asks if he confirms his statement to the Juez Sumariente. He examines all the evidence, and he may order other enquiries to be made with a view to collecting further evidence. If he concludes that there is not sufficient proof he may release the detainee, on terms that he may be re-arrested if any further evidence comes to light later. If he thinks the offence disclosed does not fall within the military jurisdiction, he may transfer the case to a civilian Judge of Instruction. If he considers that there is sufficient evidence of a "military offence", he draws up the indictment ("auto") and notifies the defendant. The Defendant is then asked to name his lawyer or to select as his defender either the next lawyer on a roster of advocates or the next (unqualified) military defender on a roster of officers who are willing or nominated to undertake these defences. This concludes the Pre-Sumario, all of which takes place without the Defendant having had access to a defence lawyer.
- (3) The Sumario before the Military Judge of Instruction. This stage begins by the Defendant being brought before the Judge and asked in the presence of his lawyer (but before he has been able to consult with him) whether he confirms or wishes to rectify his statement previously made to the Judge. Usually he confirms his statement, but afterwards tells his lawyer it is untrue, and that it was made as a result of torture. When asked why he did not rectify it, he says that he has to go back to the barracks where he received the torture and that he has been warned that he will receive more if he does not confirm his statement before the Judge. (Whilst it is correct that defendants would at this point be taken back to the military barracks, it is during this stage that defendants who are not conditionally released are transferred from the military barracks to a prison outside Montevideo known as Libertad. On May 2, when we visited it, there were 1,140 defendants in custody there.) We asked

one of the unqualified military Judges of Instruction whether he would act upon a confession made in the barracks but denied before him, if he disbelieved the defendant's denial. He said he would. This is clearly in conflict with Article 435 of the Code of Military Penal Procedure which says that a confession has no legal effect unless it is made before the competent Judge in the presence of his defender. (This Article also requires that the existence of the offence be proved by other evidence and that the confession be consistent with the facts and circumstances of the offence. We were told by many defence lawyers that the Military Judges frequently convict upon a confession in the absence of any other evidence.)

During this stage statements may be obtained from other witnesses, and if challenged by the defendant, a confrontation may take place. At the end of this stage, there is a period of six days within which the defender and prosecutor may each ask the Judge to undertake further investigations, or obtain further evidence with a view to establishing the defendant's guilt or innocence or mitigating circumstances.

One of the complaints of defence lawyers is that the Judge of Instruction often receives and acts upon a secret report on the case from the security intelligence authorities (the Defence Information Service), which the defence lawyer is unable to see or reply to.

It should be mentioned that during this stage also, the Judge may release the defendant. This may be either a provisional release on the grounds of insufficient evidence, or a conditional release (equivalent to bail) in cases where the offence alleged carries a maximum sentence of 2 years or less.

Another frequent complaint by defence lawyers was that persons whose release is ordered by a Judge are often not in fact set free but are further detained under the emergency security measures. In those cases where they are released, a period of one to two months (and sometimes longer) elapses before their release, even though the Judge orders them to be released immediately.

(4) The Trial (Plenario) before the Military Judge of First Instance

(5) The Second Instance before the Supreme Military Tribunal

We did not have time to investigate fully the procedure at these stages. The Second Instance is a review of the trial. It is mandatory in all cases where a sentence of more than 2 years has been passed by the trial judge, and in other cases it occurs on the appeal of either the prosecution or the defence. The Second Instance have power to, and at time do, increase the sentence even beyond that asked for by the prosecutor.

An appeal by way of cassation lies to the Integrated Supreme Court (i.e. the 5 civilian members of the Court with 2 additional military members) against irregularities in procedure.

### Delay

11. One of the chief complaints by defending lawyers is the excessive delay which occurs at all stages of the legal process.

12. We were not given any figures of the number of civilian defendants who have come before Military Judges of Instruction since the Law of National Security came into force in July 1972, but from some precise statistics of his own cases given us by one of the most experienced Military Judges of Instruction (1), we estimate that there must have been at least 3,500 to 4,000 defendants and possibly more. We were told that only 32 of these have been tried and their sentences finally determined. Some (perhaps 200) have been released on grounds of insufficient evidence. The remainder are still being processed. Many of them are on conditional release, but we are unable to say what proportion. On the day we visited Libertad prison we were told that the 1,140 prisoners there were all "procesados" (i.e. persons being processed ... under military justice). A report of this visit to Libertad is at Appendix "A".

13. The cases which are sent for trial by the Military Judges of Instruction are eventually heard by one of five Military Judges of First Instance. Some 80% to 90% of these cases go to Second Instance before the Supreme Military Tribunal. This Tribunal sits only one day a week, hearing one case per day, namely a rate of 48 cases per year. Where an appeal is made to the Supreme Court, this usually takes six months to a year and sometimes longer before a decision is given.

14. We asked defence lawyers why they did not appeal more often, particularly against irregularities in procedure (e.g. improperly acting upon a denied confession or an uncorroborated confession). They explained that the appeals being so slow, it was often not in their clients' interest to appeal. If they did so, their clients would stay in custody for another year or more. If they accepted the decision they had a better chance of getting their client released by other means, e.g. an order for conditional release. (There are also two ways in which prisoners may be released by the Supreme Court. Pending cases are reviewed once a year and defendants not yet sentenced may be granted a "pardon" and released. The President of the Supreme Court told us that they had released 36 prisoners in this way last year, apparently on the grounds that they had already served a long enough sentence on the assumption that they were guilty. Secondly, convicted persons may be released after serving half their sentence under a system similar to parole.)

### Conclusions

15. The conclusions which we reached were as follows:

(i) Now that the Tupamaro movement has been substantially overcome, it is to be hoped that Uruguay will return soon to a full system of civilian justice, in which all civilians suspected of offences against the security of the state will be subject to civil process, being arrested and

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(1) This Military Judge of Instruction told us that of 450 cases (some with numerous defendants) he alone had had in the second half of 1972, 116 cases were still pending before him. He now has a total of 190 cases before him with 483 defendants. Some of these are on conditional release, but most of them are in custody.



detained by the civilian police and their cases investigated by a qualified civilian Judge of Instruction. As long as civilians continue to be dealt with under the system of military justice, we respectfully suggest that the following safeguards should be applied in order to reduce the risk of abuses occurring.

- (ii) A central bureau of information should be established where relatives and defence lawyers of arrested persons can find out when, by whom, and under what authority they have been arrested, and where they are being held. The subsequent transfer of an arrested person to another place of detention should also be notified to, and the information available from, this bureau.
- (iii) Except in cases of persons arrested in flagrante delictu, prior written authority should be issued for all arrests, and a copy handed to the arrested person at the time of his arrest which he should be allowed to send to a lawyer.
- (iv) The provisions of the law concerning the investigation by the Juez Sumariente should be strictly applied. The competent Military Judge of Instruction should be informed at once of every arrest and should take charge of the investigation as soon as possible, and at the latest within 10 days of arrest, failing which the arrested person should be released in accordance with the Decree of June 12, 1973.
- (v) Suspects should be transferred from military barracks to "Libertad" or another prison as soon as their case is passed to a Military Judge of Instruction and before they are interrogated by the Judge.
- (vi) Military Judges of Instruction should apply strictly the provisions of the Code of Military Penal Procedure concerning the admissibility of confessions.
- (vii) Persons ordered to be released by a Judge of Instruction should be released at once and not re-arrested except by order of a Judge of Instruction based on fresh evidence.
- (viii) All arrests under the emergency security measures should be notified within 24 hours to the Council of State, who should be supplied with full particulars, in accordance with Article 168 (17) of the Constitution. A public statement should be made of the willingness of the Council of State (of which we were told by the Vice-President) to enquire into matters raised with them by relatives, friends or lawyers of persons detained under these measures.



"Libertad" Prison

At some stage during the "instruction" (sumario) by the Military Judge of Instruction, prisoners are transferred from the military barracks to a prison situated 50 km outside Montevideo, known curiously by the name of a nearby village as "Libertad". One of us visited this prison with an interpreter. It is a modern prison run by the armed forces containing a large cell block, hutments, playing fields, and administration buildings. On the date of the visit there were 1,140 prisoners there, all of whom were undergoing various stages of trial. The prisoners are divided into two classes, those in the cell block and those in the hutments.

There were 860 in the cell block. In one wing the prisoners were alone in their cells and were in effect detained in solitary confinement except when they were allowed out for exercise. These were said to be the hard core of Tupamaro leaders. The rest were 2, 3 or 4 to a cell. These also spent the greater part of the day in their cells, where they had their meals and did their work. They were allowed out for exercise and recreation, which included football and cinemas. There is a lavatory and washing facilities in each cell. Each prisoner is allowed to have four of his own books at a time. There is also a prison library. The remaining 280 prisoners were living in the hutments. There are about 50 prisoners in each hut who sleep in double-tier bunks. The huts have showers and lavatories. These prisoners have a much less strict régime and many of them work outside the perimeter. The prison commander decides which prisoners are to be held in the hutments, which in the cells and which in the isolation wing.

Prisoners are allowed visits from their families twice a months and from time to time from their lawyers. All conversations take place by telephone, the parties being separated by a glass screen. Fathers are allowed to see their children in a small garden and playground.

There is a separate punishment block where prisoners are kept in solitary confinement in a small cell for periods of from 30 to 90 days. They have no reading matter, no cigarettes, no work, no exercise and no recreation. They sleep on a blanket on a concrete floor or bench. There is a lavatory in the cell. They receive the normal prison diet. There is no corporal punishment. We were told that there had been no offences of violence. The most common offence appeared to be insolent behaviour towards the warders.

By chance, we met and conversed with two army psychiatrists who were visiting the camp. They said there had been quite a number of cases of psychological disturbance among the prisoners. This tended not to occur among the hard core leaders in the solitary cells, as they found an internal strength from their political convictions. The greatest disturbance was often among those expecting to be released shortly. In bad cases, prisoners were removed to the military hospital for treatment. We were told subsequently that some suicides had occurred, and indeed one took place the day after our visit.

We were told that conditions in Libertad are greatly superior to those in the two civilian prisons in Montevideo, and by all accounts this is true. Nevertheless, it was quite apparent that the prisoners, though still being processed, were subjected to a strict régime of punishment, particularly those in the cell block. Indeed, during the conversations we had, their guilt seemed to be taken for granted. Those who benefitted from the laxer régime of the hutments did so simply because they were considered to present less of a danger to security, not because their guilt was in doubt.

