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truth and justice**



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URUGUAY: The case of Simón Riquelo - A 25-year-struggle for truth and justice

Since 1985, when Uruguay returned to democracy, Amnesty International has urged the four democratic administrations which have governed the country since then to clarify the fate of those Uruguayans who "disappeared" between 1973 and 1985, to bring those responsible to justice and to provide adequate reparation to the relatives of the victims, in order to ensure that such abuses never happen again.

Some 34 people "disappeared" in Uruguay under the military governments of 1973 to 1985 and at least a further 100 Uruguayans "disappeared" in Argentina at the time. Among these, were 12 cases of children, four of whom were born while their mothers were being held by the military. Thousands of people were tortured and ill-treated during the same period.

When Dr. Jorge Batlle Ibáñez took office as President of Uruguay at the beginning of March 2000, he committed himself to clarifying the fate and whereabouts of those who "disappeared" in Uruguay during the 12 years of military rule. A short period after he had expressed this commitment, Juan Gelman, Argentinian writer, was reunited with his granddaughter. Juan Gelman's son, Marcelo Gelman, Argentinian citizen, and his pregnant wife, María Claudia García Irureta Goyena, Uruguayan citizen "disappeared" in Argentina in August 1976. Marcelo Gelman's body was discovered in 1989. In 1999 it emerged that María Claudia García had given birth to her baby at the Military Hospital in Montevideo, the Uruguayan capital. Throughout 1999 Juan Gelman had called on the Uruguayan authorities to investigate the allegations. Finally, in March 2000, Juan Gelman was reunited with his grand-daughter.

However, this has not been the case yet with Sara Rita Méndez Lampodio, whose 20 days-old baby was taken from her arms in 1976.

Simón Antonio Riquelo case - a 25 year-struggle for truth and justice

Simón Antonio Riquelo was born in Argentina, in Buenos Aires, the capital, in June 1976. His parents, Sara Rita Méndez and Mauricio Gatti, were two Uruguayan citizens who had fled their country in 1973 seeking refuge in Argentina after members of the armed forces entered their home and some of their relatives' homes in Montevideo in order to arrest the couple.

Riquelo was the false surname used by Sara Rita Méndez in Argentina in order to cover her real identity as the couple was afraid for their safety. By 1973, there had already been several cases of refugee Uruguayan citizens in Argentina who had been kidnapped and "disappeared" by Uruguayan para-police groups, including Mauricio Gatti's uncle. In

addition, Sara Rita Méndez had learned that some members of the Uruguayan military had been asking for her at the hospital where she was being treated while pregnant.

Less than a month after Simón Riquelo's birth, Sara Rita Méndez was detained by members of the military wearing plain clothes who violently entered the couple's home while Mauricio Gatti was away. Sara Rita Méndez was questioned and ill-treated by the military. Before being taken to a secret detention centre in Argentina, known as *Automotores Orletti*, where she was subjected to torture for 10 days, the officials took Simón Riquelo away from his mother. She has never seen him again.

After 10 days in this secret detention centre in Argentina, Sara Rita Méndez was taken illegally to Uruguay in a military plane. In Uruguay she was held in different secret military detention centres where she was also subjected to torture in order to force her to reveal information on other Uruguayan citizens who had sought asylum in Argentina. During the time she spent in detention, Sara Rita Méndez asked the military guards several times about her son's whereabouts but received no answers.

Four months later, Sara Rita Méndez was secretly taken to Montevideo where, according to her testimony, the military had prepared a plan to legalise the detainees' situation by pretending to detain them for the first time in different locations in the capital. According to Sara Rita Méndez's testimony, the military would allege that the detainees were Uruguayan refugees in Argentina who had returned to the country to organise "subversive activities" (*actividades subversivas*). Sara Rita Méndez was convicted by a military court on charges of subversive association and taken to a women's prison in Montevideo (Penal de Punta de Rieles) where she was able to receive visits from her family. She then found out that Simón Riquelo's whereabouts remained unknown. While in prison, Sara Rita Méndez was told by two members of the military, one of them an officer who took part in the operation which led to her arrest, that they would personally look for Simón Riquelo. However, to this date, both military officers have reportedly refused to give any information on either Sara Rita Méndez kidnapping in Argentina or her child's whereabouts.

In March 1981, when Sara Rita Méndez was released from prison, she started looking for her son, together with Mauricio Gatti, who had sought refuge in Europe after fleeing Argentina following Sara Rita Méndez's arrest. They were helped in their search for their son by the human rights organization, *Abuelas de Plaza de Mayo* (Grandmothers of Plaza de Mayo) in Argentina.

In 1987, Sara Rita Méndez obtained some information about the adopted son of a family in Montevideo who were related to a member of the military who had taken part in Sara Rita Méndez arrest. However, the parents of the boy refused to allow him to be DNA tested. Years later, the young man himself refused to have the DNA test. Sara Rita Méndez's

partner, Mauricio Gatti, died in 1989 and she continued her ordeal in the courts trying to obtain a blood test to determine the identity of the minor in Montevideo she believed to be her son. Finally, in the year 2000, after President Jorge Batlle's personal intervention, the young man agreed to having a blood test. However, the DNA test showed that the young man was not Simón Riquelo.

Sara Rita Méndez and human rights organizations in Uruguay are now calling on President Jorge Batlle to use his power as Commander in Chief of the Uruguayan Armed Forces to do everything in his power so that the members of the military who took part in the kidnapping of Uruguayans in Argentina, including Sara Rita Méndez, and in the kidnapping and "disappearance" of babies, including Simón Riquelo, disclose all the information they have regarding this case and any other cases of "disappeared" persons which are still unclarified.

In June 2001, an Argentinian judge, Rodolfo Carnicoba Corral, ordered the preventive detention of three Uruguayan army officers, José Nino Gavazzo, Manuel Cordero and Jorge Silva, and a Uruguayan police officer, Hugo Campos Hermida, for their alleged involvement in the "disappearances" of over 20 Uruguayan citizens in Argentina, including the "disappearance" of Simón Riquelo, in the 70s. In his decision (exhorto) judge Carnicoba cites the testimony which Sara Rita Méndez gave to the Argentinian *Comisión Nacional sobre la Desaparición de Personas* (CONADEP), National Commission on Disappeared People, file (legajo) 7143¹. In her testimony to the CONADEP, Sara Rita Méndez identified José Nino Gavazzo and Manuel Cordero as the military officers who lead the operation to arrest her.

Amnesty International is calling on the Uruguayan authorities to cooperate fully with the Argentinian Judge's decision. The organization believes that this is an opportunity for Uruguay to abide by international obligations and break the circle of impunity which has been in place for over two decades².

The Peace Commission - A window of opportunity for truth and justice?

In August 2000, the Uruguayan president, Jorge Batlle, took his initial commitment to clarify the fate and whereabouts of the "disappeared" a step further by establishing a special commission, *Comisión para la Paz*, Peace Commission, to clarify the fate of all those Uruguayans who "disappeared" between 1973 and 1985. The Commission has the competence

¹The CONADEP was appointed in 1983 by the new civilian government of President Raúl Alfonsín to "clarify the tragic events in which thousands of people disappeared". CONADEP submitted its report "Nunca Más" in November 1984.

² See Amnesty International News Service Nr 129, AMR 52/004/01, 25 July 2001.

to receive documents and testimonies. Upon completion of its work a final report will be presented to the president with the Commission's conclusion, including recommendations on possible legal measures to offer redress to the relatives of the "disappeared" and a summary of each case the Commission has worked on. The Commission had an initial mandate of 120 days which was later extended until September 2001.

Amnesty International welcomes the establishment of this Peace Commission. However, the organization is concerned that the Commission only has the power to receive information and call witnesses, but not to compel witnesses or those who are allegedly involved in these crimes, such as members of the armed forces, who might be able to provide information about the fate and whereabouts of those who were "disappeared" to appear before the Commission to testify. According to reports received by the organization, the information that has been provided to this Commission so far has been mainly compiled by human rights' organizations and relatives of the victims. Amnesty International is concerned that without further information from the Uruguayan State and the military about what happened to those who "disappeared" after they were detained by the armed forces, many cases might not be clarified.

According to reports, in May 2001, members of the Peace Commission revealed that they had reached conclusions on a small proportion of cases of "disappeared" detainees establishing the circumstances in which these people died. However, the Commission has been unable to establish the whereabouts of the victims because of lack of information and is now appealing to the President to conclude with their investigation into these cases.

In this context, Amnesty International urges President Jorge Batlle to do everything in his power to disclose all the information that the Uruguayan State might have access to in relation with these cases. In addition, the organization urges President Jorge Batlle, as Commander in Chief of the Uruguayan Armed Forces, to call on all members of the military who might have any information regarding these cases to present such information to the Peace Commission.

After more than 25 years since the "disappearance" of her son, then only a 20-days-old-baby, and many fruitless court cases, Sara Rita Méndez has not yet been able to discover the whereabouts of her son. The information held by those military officers who were involved in the baby's kidnapping and later "disappearance" is essential to establish the fate and whereabouts of Simón Riquelo and put an end to a 25-year-struggle for truth and justice.

In addition, the organization is also concerned that whereas President Jorge Batlle has shown the political will to clarify the fate of the "disappeared", bringing the perpetrators of these crimes to justice is prevented in Uruguay by an amnesty law. In 1986 the Uruguayan parliament

approved the Expiry Law (Ley de Caducidad), Law 15.848, granting exemption from punishment to all police and military personnel who committed human rights violations for political motives, or to fulfil orders before 1 March 1985. The Expiry Law was retained after a national referendum in April 1989. This law has been considered to violate the American Convention on Human Rights by the Inter-American Commission on Human Rights (IACHR)³. Furthermore, the UN Human Rights Committee found in 1998 that, "the Expiry Law violates article 16 of the Covenant in respect of the "disappeared" persons and article 7 in respect of their family members"⁴.

Amnesty International believes that the Expiry Law denies the relatives of the "disappeared" the right to know the truth about the fate of their loved ones and allows impunity to persist in blatant violation of the state's international obligation to investigate the facts and bring to justice those responsible for these crimes.

Amnesty International considers that the relatives of those who "disappeared" have the right to know the fate and whereabouts of their loved ones and the Uruguayan society in general have also the right to know their history. The relatives of the victims have already had to endure almost three decades of suffering and as Article 1 (2) of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances states:

"Any act of enforced disappearance . . . inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, . . . the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment".

This view is also shared by the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights and the UN Human Rights Committee.

Furthermore, it is a generally accepted principle that a "disappearance" constitutes a continuous or permanent offence as long as the fate or whereabouts of the victim has not been determined, as it is set down in Article 3 of the Inter-American Convention on the Forced Disappearance of Persons, ratified by Uruguay in 1995 and in force since 1996.

³In 1992 the Inter-American Commission on Human Rights concluded that the Expiry Law was incompatible with the provisions of the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. In its report, the Commission recommended that the Uruguayan government, "...adopt the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the de facto period".

⁴ Concluding Observations of the Human Rights Committee : Uruguay. 04/08/98. CCPR/C/79/Add.90.

This same principle was also enshrined by the United Nations in 1992 in the Declaration on the Protection of All Persons from Enforced Disappearance, Article 17.1⁵.

Amnesty International believes that after 25 years of continuous struggle for truth and justice, Sara Rita Méndez and all the other relatives whose loved ones “disappeared” during the Uruguayan military governments, deserve to know the truth and thus, put an end to years of uncertainty and suffering. Furthermore, the organization considers that the other children who were separated from their parents during that time, whose whereabouts remain unknown, as is the case of Simón Riquelo, have also the right to know their true identity. In addition, Uruguayan society as a whole has also the right to know its history.

In 1989 the UN adopted the Convention on the Rights of the Child. Article 8 of this Convention recognises the right of a child to preserve his/her own identity, including nationality, name and family relations. In addition, this same article also states that “where a child is illegally deprived of some of all the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to reestablishing speedily his or her identity”. Uruguay signed and ratified this Convention in 1990.

Amnesty International hopes that the issue of the “disappeared” in Uruguay during the period of military rule will once and for all be resolved in favour of truth and justice for the victims of these serious crimes and for their relatives. The organization believes that if the Uruguayan authorities want a just and long-lasting process of social reconciliation in Uruguay, closing once and for all wounds which have been open for almost three decades, it is important that the Uruguayan society is allowed access to the whole truth of what happened during the years of the military rule and that the victims and their relatives have the right to justice and appropriate redress. The organization believes that by doing this, the current Uruguayan government will put the country at the forefront of human rights protection.

⁵ Article 17.1 reads: “Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.”