

ANNEX XII

Views of the Human Rights Committee under article 5 (4) of the
Optional Protocol to the International Covenant on Civil and
Political Rights

concerning

Communication No. R.8/34

Submitted by: Jorge Landinelli Silva and other persons

State party concerned: Uruguay

Date of communication: 30 May 1978 (date of initial letter)

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

Meeting on 8 April 1981,

Having concluded its consideration of communication No. R.8/34 submitted to the Committee by Jorge Landinelli Silva and other persons, 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 authors of the communication and by the State party concerned,

adopts the following:

VIEWS UNDER ARTICLE 5 (4) OF THE OPTIONAL PROTOCOL

1. The authors of this communication (initial letter dated 30 May 1978 and a further letter dated 26 February 1981) are Jorge Landinelli Silva, 34 years old, professor of history; Luis E. Echave Zas, 46 years old, farm labourer; Omar Patron Zeballos, 52 years old, assistant accountant; Niurka Sala Fernández, 49 years old, professor of physics; and Rafael Guarga Ferro, 39 years old, engineer, all Uruguayan citizens residing in Mexico. They submitted the communication on their own behalf.

2. The facts of the present communication are undisputed. The authors of the communication were all candidates for elective office on the lists of certain political groups for the 1966 and 1971 elections and which groups were later declared illegal through a decree issued by the new Government of the country in November 1973. In this capacity, Institutional Act No. 4 of 1 September 1976

(art. 1 (a)) a/ has deprived the authors of the communication of the right to engage in any activity of a political nature, including the right to vote for a term of 15 years.

3.1 The authors contend that such a deprivation of their rights goes beyond the restrictions envisaged in article 25 of the Covenant, since suspension of political rights under the Uruguayan juridical system, as in others, is only permissible as a sanction for certain categories of penal crimes. They further contend that the duration of the suspension of rights, as well as the number of categories of persons affected by this suspension, are without precedent in political history. In conclusion, the authors claim that the fundamental idea upon which the "Institutional Act No. 4" is based, is incompatible with the principles set forth in article 25 of the Covenant.

3.2 The authors of the communication state that they have not submitted the same case to any other procedure of international investigation or settlement.

4. Under rule 91 of the provisional rules of procedure of the Committee, the communication was transmitted to the State party on 28 September 1978 with the request that the State party submit, not later than 9 November 1978, information or observations which it might deem relevant to the question of the admissibility of the communication, in particular as regards the fulfilment of the conditions set out in article 5 (2) (a) and 5 (2) (b) of the Optional Protocol. No reply was received from the State party in this connexion.

5. The Committee found, on the basis of the information before it, that it was not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication. The Committee was also unable to conclude that there were effective domestic remedies available to the alleged victims in the circumstances of their case, which they had failed to exhaust. Since, furthermore no other procedural impediment had emerged, the Human Rights Committee declared the communication admissible on 24 April 1979.

6. On 10 July 1980, the State party submitted its observations under article 4 (2) of the Optional Protocol. Essentially, it invoked article 4 of the Covenant in the following terms:

"The Government of Uruguay wishes to inform the Committee that it has availed

a/ The text reads as follows:

... The Executive Power, in exercise of the powers conferred on it by the institutionalization of the revolutionary process,

DECREES:

Art. 1. The following shall be prohibited, for a term of 15 years, from engaging in any of the activities of a political nature authorized by the Constitution of the Republic, including the vote:

(a) All Candidates for elective office on the lists for the 1966 and 1971 elections of the Marxist and pro-Marxist Political Parties or Groups declared illegal by the resolutions of the Executive Power No. 1788/67 of 12 December 1967 and No. 1026/73 of 26 November 1973; ...

itself of the right of derogation provided for in article 4 (3) of the International Covenant on Civil and Political Rights. The Secretary-General of the United Nations was informed of this decision and, through him, notes were sent to the States parties containing the notification of the Uruguayan State. Nevertheless, the Government of Uruguay wishes to state that it reiterates the information given on that occasion, namely that the requirements of article 4 (2) of the Covenant are being strictly complied with - requirements whose purpose is precisely to ensure the real, effective and lasting defence of human rights, the enjoyment and promotion of which constitute the basis of our existence as an independent, sovereign nation. Article 25, on which the authors of the communication argue their case, is not mentioned in the text of article 4 (2). Accordingly, the Government of Uruguay, as it has a right to do, has temporarily derogated from some provisions relating to political parties. Nevertheless, as is stated in the third preambular paragraph of Act No. 4, dated 1 September 1976, it is the firm intention of the authorities to restore political life."

7. The Committee has considered the present communication in the light of all information made available to it by the parties, as provided for in article 5 (1) of the Optional Protocol.

8.1 Although the Government of Uruguay, in its submission of 10 July 1980, has invoked article 4 of the Covenant in order to justify the ban imposed on the authors of the communication, the Human Rights Committee feels unable to accept that the requirements set forth in article 4 (1) of the Covenant have been met.

8.2 According to article 4 (1) of the Covenant, the States parties may take measures derogating from their obligations under that instrument in a situation of public emergency which threatens the life of the nation and the existence of which has been formally proclaimed. Even in such circumstances, derogations are only permissible to the extent strictly required by the exigencies of the situation. In its note of 28 June 1979 to the Secretary-General of the United Nations (reproduced in document CCPR/C/2/Add.3, p. 4), which was designed to comply with the formal requirements laid down in article 4 (3) of the Covenant, the Government of Uruguay has made reference to an emergency situation in the country which was legally acknowledged in a number of "Institutional Acts". However, no factual details were given at that time. The note confined itself to stating that the existence of the emergency situation was "a matter of universal knowledge"; no attempt was made to indicate the nature and the scope of the derogations actually resorted to with regard to the rights guaranteed by the Covenant, or to show that such derogations were strictly necessary. Instead, the Government of Uruguay declared that more information would be provided in connexion with the submission of the country's report under article 40 of the Covenant. To date neither has this report been received, nor the information by which it was to be supplemented.

8.3 Although the sovereign right of a State party to declare a state of emergency is not questioned, yet, in the specific context of the present communication, the Human Rights Committee is of the opinion that a State, by merely invoking the existence of exceptional circumstances, cannot evade the obligations which it has undertaken by ratifying the Covenant. Although the substantive right to take derogatory measures may not depend on a formal notification being made pursuant to article 4 (3) of the Covenant, the State party concerned is duty-bound to give a sufficiently detailed account of the relevant facts when it invokes article 4 (1) of the Covenant in proceedings under the Optional Protocol. It is the function of