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Session:	Fifty-Second Session (26 February – 7 March 1981)
Title/Style of Cause:	Mónica Beatriz Bustos v. Argentina
Doc. Type:	Resolution
Decided by:	Chairman: Tom J. Farer; First Vice Chairman: Marco Gerardo Monroy Cabra; Second Vice Chairman: Francisco Bertrand Galindo; Members: Carlos A. Dunshee de Abranches; Andrés Aguilar; Luis Demetrio Tinoco Castro; César Sepúlveda
Dated:	06 March 1981
Citation:	Bustos v. Arg., Case 2488, Inter-Am. C.H.R., Report No. 15/81, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1980-1981)
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## BACKGROUND:

1. In a communication of May 1977, the Inter-American Commission on Human Rights received the following complaint:

MONICA BUSTOS was detained on April 11, 1976, in Misiones by the Personal Investigations Brigade and taken to the Regiment offices in Posadas, where she was tortured until she lost consciousness. According to the last report received, Miss Bustos was on the verge of death.

2. In a note of December 8, 1977 the Commission transmitted this denunciation to the Government of Argentina, requesting information on the case.

3. In a note of January 9, 1978, the Argentine Government replied to the Commission as follows:

### F. Observations:

The Permanent Mission of the Argentine Republic to the Organization of American States informs the Inter-American Commission on Human Rights that the Argentine Government emphatically denies all responsibility in the reported deaths of the following persons, none of whom have arrest records: 129, BUSTOS, Mónica (Case 2488).

4. The Commission requested in a note of March 23, 1978, that the claimant submit this comments on the Government's reply.

5. In a communication of April 26, 1979, the claimant contested the Government's reply as follows:

Mónica Beatriz Bustos, 26 years of age, was detained on April 11, 1976, in the locality of CARUPA, city of Posadas, province of Misiones, by security forces, and taken to Alcaldia for a three month period,

during which time nothing was known of her whereabouts. Subsequently, information was obtained that she was tortured and beaten, and was held in the Villa Devoto Prison in July 1976. This information was obtained through correspondence received from the jail.

Neither at the time of her detention nor at present are the legal grounds for her arrest known, despite innumerable efforts to obtain information on the reason for her detention. These efforts include sending official communications to the Ministry of the Interior, the National Bureau of Penal Institutions, and a writ of habeas corpus to the Federal Capital Court with a request that she be released.

6. The Commission transmitted to the Argentine Government the complainant's observations in a note of May 30, 1979, and requested that it supply information on the case.

7. The claimant submitted to the Commission the following additional information:

On receiving notice of the visit of the Inter-American Commission on Human Rights, Mónica Bustos was interviewed by some six or seven persons, who proposed that she sign a document renouncing guerrilla warfare. She replied that she could not make any renunciation, since she had never taken part in guerrilla warfare or in subversion.

If she signed the document, she was offered a transfer to section G-1 (of the three sections in the prison, this is the one in which prisoners are allowed to read newspapers, work, receive visitors, and obtain other benefits, including the use of perfume).

When she refused--because she said such a renunciation would have been a lie--she was transferred that same night around midnight from that section of the prison to section G-III, where prisoners are not permitted to read newspapers, work, or received visits, except for interrogation.

This information was submitted to the Argentine Government in a note of October 2, 1979.

8. In a note of January 17, 1980, the Argentine Government gave the following reply to the requests for information;

The person named has been detained and placed at the disposition of the Executive Department, in exercise of the authority conferred under Article 23 of the National Constitution in force since 1853, because it is considered necessary to consolidate domestic peace, according to Decree 332 of May 5, 1976.

Mónica Beatriz BUSTOS is lodged in an appropriate detention facility, and at no time has been subjected to torture or mistreatment. Such procedures are prohibited in the Argentine Republic, and the Government diligently sees to it that they do not incur.

There is no record that Mónica Beatriz BUSTOS has exercised the right to request permission to leave the country, a petition that would be duly evaluated if received.

Therefore, based on the legitimacy of her detention and the consequent falsity of the information in the denunciation, that denunciation should be rejected without further proceedings.

9. The claimant submitted his comments on the Government's reply in a communication of May 5, 1980, stating as follows:

1. Mónica Beatriz Bustos was detained on April 11, 1976, and not on May 5 of that year, which is the date the decree placing her at the disposition of the Executive Department was signed. During the interim period, she was illegally imprisoned in the Women's Jail of the Police Headquarters in the province of Misiones, in Posadas, the capital of that state. She was subjected there to savage torture that left her in a coma for three days. She was saved by the intervention of the Diocesan Bishop of Posadas, Monsignor Jorge Kemerer, who succeeded in locating her despite the denials of the authorities.

2. Bishop Jorge Kemerer, residing at 222 Félix Azara Street 3300 Posadas, Misiones, Argentina,

along with Professor Víctor Rene Nicoletti, the Vice Rector of the National University of Misiones, (then Dean of the School of Social Sciences), residing at 485 Colón Street, 3300 Posadas, Misiones, Argentina, who also intervened in the case because Mónica was a student in that institution, attest to the facts stated above.

3. The detention of Mónica Beatriz Bustos, while based on Article 23 of the National Constitution, is illegal because of its prolongation. In fact, the law and legal doctrine have repeatedly declared that an arrest that exceeds a reasonable time for the security of the country becomes a punishment and authority to impose punishment is expressly and emphatically denied to the President of the nation by Articles 29 and 95 of the Constitution.

4. Mónica Beatriz Bustos, has, in fact, not requested the right to choose to leave the country. But that should be in her favor. Since she is convinced of her innocence and wishes to be useful to her society and her country, and since she believes that Argentines should solve their own problems within their borders, she does not wish to live in exile.

5. There is no doubt that Mónica Beatriz Bustos has committed no act that justifies her detention for four years under inhumane and cruel conditions--as this Commission verified when it conducted its on-site visit to Argentina and the Villa Devoto Prison. If her detention had been justified, the Executive Department would have accused her through the Public Prosecutor in compliance with its legal obligation, and it has not done so.

10. In a note of July 18, 1980, the Commission transmitted the pertinent portions of the claimant's comments to the Argentine Government, requesting that all appropriate information should be remitted to it for consideration in thirty days, pursuant to its Regulations.

11. To date, the Argentine Government has not replied.

#### WHEREAS:

1. Miss MONICA BEATRIZ BUSTOS has been imprisoned since April 11, 1976, and has been placed at the disposition of the Executive Department, under Decree 332 of May 5, 1976;

2. During the first days of her detention, Miss Bustos was illegally subjected to torture, which seriously endangered her life and personal security, and the Argentine Government has not refuted the denounced events;

3. The Argentine Government initially denied to the Commission that Mónica Beatriz Bustos had been detained, as shown in its note of January 9, 1978, and two years later, in a communication of January 17, 1980, it recognized that she was detained;

4. To date, no specific charges have been made against Miss Bustos, and her detention has become arbitrary because the Government has exceeded reasonableness in its detention, since there are no duly justified grounds for its action;

5. The IACHR has expressed its views on a number of occasions about prolonged detentions without a specified term and without justified cause, which are an unreasonable application of measures restricting liberty during a constitutional state of emergency and actually constitute punishment.

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLVES:

1. To declare that the Argentine Government violated the rights to life, liberty and personal security (Art. I); the right of protection from arbitrary arrest (Art. XXV) and the right to due process of law (Art.

XXVI) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Argentine Government:

- a) that it immediately release Miss Mónica Beatriz Bustos;
- b) that it order a complete and impartial investigation to determine the perpetrators of the reported illegal acts of torture;
- c) that it report to the Commission in ninety days on the measures taken to implement the above recommendations.

3. To communicate this resolution to the Government of Argentina and to the claimant.

4. To include this resolution in the Annual Report to the General Assembly of the Organization of American States, pursuant to Article 50(4) of the Commission's Regulations, if the Argentine Government does not implement these recommendations by the deadline indicated above.