

URUGUAY

CAT A/47/44 (1992)

160. The Committee considered the initial report of Uruguay (CAT/C/5/Add.27 and 30) at its 95th and 103rd meetings, held on 15 and 21 November 1991, and its 105th meeting, held on 28 April 1992 (CAT/C/SR.95, 103, and 105).

161. The report was introduced by the representative of the State party.

162. Members of the Committee welcomed the submission of the report which contained comprehensive information, and noted with satisfaction that Uruguay had accepted the optional procedures provided for under articles 20, 21 and 22 of the Convention.

163. Members sought additional information on various matters of a general nature relevant to the implementation of the Convention asking, in particular, what reasons had led Uruguay to adopt the Immunity from Prosecution Act; what effect that Act had had on public opinion; and whether the present Government had taken any steps to dismiss persons who had been involved in acts of torture under the previous regime.

164. Members of the Committee also requested details concerning the public demonstrations held in 1990 protesting the death of two young men and the action the Government had taken in response to those demonstrations. They also wished to know the outcome of the Supreme Court's inspection of Libertad Prison in November 1990; whether there were any political prisoners in Uruguay and, if so, how many such prisoners there were and who had jurisdiction over them; whether the independence of the judiciary was guaranteed; how judges were appointed, whether they could be removed and what the compulsory retirement age was; how many courts of appeal there were and whether a case could be brought before any court of appeal. In addition, concern was expressed at reported suicides at Migueletes Prison, about which members requested clarification.

165. Members of the Committee also requested a more detailed explanation of how the remedies of habeas corpus and amparo were actually applied in Uruguay. In that regard reference was made to information received by the Committee concerning, inter alia, a judgement of the Third Rota Criminal Court of Appeal rejecting an application for amparo on the grounds that the court was not the appropriate channel for challenging a general provision. Mention was also made of a ruling that a judge had no power to put an end to unfair treatment whereas, according to article 316 and 317 of the Code of Criminal Procedure, a judge was authorized to monitor prison conditions.

166. It was noted, in the foregoing connection, that the judgement appeared to establish that amparo could not be a remedy against an unconstitutional law, whereas in most countries the reverse was true, and that most of the provisions affording protection against torture had been in force in Uruguay before 1985 but had proved inadequate. Members asked what changes in those provisions had been made since 1985 to remedy their shortcomings and whether it was intended to correct various legislative shortcomings.

167. With regard to article 1 and 4 of the Convention, members of the Committee indicated that the provisions of the Penal Code did not appear to fully cover the definition of torture nor sufficiently penalize those committing the crime of torture. They observed, in that connection, that a clear definition of torture should be incorporated into Uruguay's domestic legislation.

168. In connection with article 2 of the Convention, members of the Committee expressed concern that Uruguayan legislation appeared to allow for the suspension of guarantees relating to the security of the person in special circumstances, which was contrary to article 2, paragraph 2, of the Convention, and requested clarification of the role of parliament and the Permanent Commission in any such suspension as well as of the special circumstances under which the Constitution could be suspended. Concern was also expressed over legislative provisions relating to the exoneration from criminal liability and punishment of persons who committed acts of torture on the order of a superior officer, which appeared to be contrary to article 2, paragraph 3, of the Convention. Members wondered how the Convention would supersede the domestic provisions on that matter in actual practice and whether, in view of the past experience in Uruguay, the formal abrogation of those domestic provisions would not be advisable.

169. In respect of article 3 of the Convention, further information on the matter of expulsion was requested. In addition, it was asked whether there had been any cases in which Uruguay had refused to expel or to return a person who was in danger of being subjected to torture, or any cases in which persons had been expelled or returned to a country that provided sufficient guarantees for their security, rather than to their country of origin.

170. With regard to articles 5 to 9 of the Convention, members of the Committee asked how the principle of aut dedere aut judicare was being implemented, whether it was possible for a foreigner who had committed an act of torture against another foreigner on foreign territory to be tried for his act in Uruguay and whether there was any mutual judicial assistance with countries with which Uruguay had no treaty relations.

171. In connection with article 10 of the Convention, members of the Committee observed that the failure to provide education and information for medical personnel regarding the prohibition against torture was a serious shortcoming, especially because, according to the Uruguayan Medical Association, some 600 doctors had been involved in acts of torture in Uruguay during the previous regime.

172. With regard to article 11 of the Convention, members of the Committee wished to know what rules governed the pre-indictment and which authority was empowered to order arrests and to indict persons. On the matter of detention, information was sought as to whether persons could be detained incommunicado, who could order such detention, what was the maximum period of incommunicado detention or custody and whether a medical examination during custody was systematic and compulsory. In addition, members of the Committee wished to know what were the powers of the police to detain persons for inquiries into their background, how long such detention could last, and how such powers were monitored, and requested details concerning the right of detainees to a lawyer and as to the periodicity of interrogation during custody and judicial control.

173. Concerning article 12 of the Convention, members of the Committee referred to information

alleging that ill-treatment was being practised in police stations and that persons had died during custody. In that connection, they asked whether any investigations had been conducted into such cases and other complaints or ill-treatment and whether there was a police authority to monitor police activities and to ensure that complaints against the police would be examined impartially. In addition, further details were requested as to the responsibilities and powers of the Public Prosecutor's Office and as to whether that Office could arrest or indict persons and challenge decisions taken by courts. Information was also sought as to the experience of the Prosecutor's Office since the beginning of 1991 in ensuring more effective supervision of police activities.

174. With regard to article 15 of the Convention, information was sought as to whether there had been any cases in which it had been established that a statement had been made as a result of torture and what decisions had been taken by the courts. Moreover, it was asked what the rules were governing the submission of evidence and whether involuntary confessions were admissible as evidence before civil, criminal or military courts.

175. In connection with article 16 of the Convention, a brief description of the texts governing the treatment of prisoners was requested with particular reference to the separation of minors from adults, women from men and the accused from convicted persons.

176. The representative of Uruguay stated that he was as yet unable to reply to the many detailed questions raised by the Committee and requested that his Government be allowed to submit its replies in writing to the Committee at its next session.

177. In that regard, the members of the Committee drew attention to rule 66 of the rules of procedure of the Committee, according to which a representative of a reporting State should be able to answer questions to which may be put to him by the Committee. They also recalled that answers were generally given by representatives of reporting States on the same day that the questions were asked. However, the members of the Committee decided, as an exception to its rules and normal practice, to request the Government of Uruguay to transmit its replies in writing and to the Secretariat within one week.

Concluding observations

178. The Committee commended the Government of Uruguay for having submitted detailed written replies to its questions by the appointed time-limit. The information supplied clearly demonstrated Uruguay's firm intention to respect its international commitments and to enforce the rule of law in the country.

179. The Committee noted, however, that there were still some problems in Uruguay with regard to the full implementation of the provisions of the Convention. In that connection, it observed that the country seemed to have a number of laws which were inconsistent with the Constitution and a number of regulations which were inconsistent with the laws. As examples, the Committee referred to Decree No. 690/980 which enabled the police to hold a suspect in custody in order to obtain information, and Decree-Law No. 14470 governing treatment in detention. The Committee expressed the hope that the authorities of the State party would make the legislative system more consistent and repeal laws that were incompatible with higher-ranking legal provisions and with the

Convention.

180. The Committee also considered that the Government of Uruguay should energetically prosecute persons guilty of torture, which continued to be practised in some cases, as well as individuals who had been guilty of committing torture under the dictatorship. It asked that detailed information on that subject and on the medical rehabilitation of torture victims should be included in Uruguay's first supplementary report, scheduled for June 1992. That report might also indicate the measures taken to resolve problems connected with the prison system which, in the absence of judicial supervision, enabled maltreatment to occur in the prisons.

CAT A/52/44 (1997)

81. The Committee considered the second periodic report of Uruguay (CAT/C/17/Add.16) at its 274th and 275th meetings, held on 19 November 1996 (see CAT/C/SR.274 and 275), and adopted the following conclusions and recommendations.

1. Introduction

82. The members of the Committee welcome the presentation of the second periodic report by the delegation of Uruguay and note that Uruguay was one of the first countries to ratify the Convention, that it has not made any reservations and that it has recognized the optional procedures set forth in articles 20, 21 and 22 of the Convention.

83. Uruguay is also a party to the Inter-American Convention to Prevent and Punish Torture.

84. The Committee welcomes the fact that the Uruguayan delegation included representatives of the executive and the judiciary and that the report was prepared with the participation of official institutions such as the Supreme Court of Justice, the Ministry of Education and Culture and the Ministry of the Interior, as well as non-governmental organizations such as Service Peace and Justice and the Institute for Legal and Social Studies of Uruguay, which enjoy well-deserved prestige in the area of the protection and promotion of human rights. In the Committee's view, such cooperation clearly shows that the eradication of the practice of torture has been elevated to the level of national policy that must be pursued by the authorities and society as a whole.

2. Positive aspects

85. The report describes a series of measures that attest to the authorities' concern to achieve the maximum harmonization of legislation and administrative procedures with the requirements of the Convention.

86. Among those measures are the bills on crimes against humanity, on the establishment of courts of enforcement and supervision and on the parliamentary commission set up to examine issues relating to prisons.

87. The Committee also appreciates the establishment of the Honorary National Commission for the Amendment of the Code of Penal Procedure, through Act No. 15,844 of 1990, and of the Honorary Commission on the improvement of the prison system, through Act No. 16,707 of July 1995.

88. The establishment of a working group on the national prison system, made up of representatives of the non-governmental organizations listed in paragraph 23 of the second periodic report, which is developing a programme of systematic visits to penal institutions, is in the Committee's view worthy of being held up as an example. Some of the proposals formulated by the working group from a multi-disciplinary point of view, which are described in the report, have been welcomed by the Government and are an indication of the working group's serious commitment; for this reason

it should be given further support by the Government and institutionalized.

89. With regard to medical ethics, mention should be made of the establishment of a Committee on Medical Ethics and Academic Conduct within the Faculty of Medicine of the Universidad de la República through Decree No. 258/92, which for the first time in domestic law regulates the ethical standards applicable to medical conduct, and of the Uruguayan Medical Association's adoption by a direct vote of its own Code of Medical Ethics.

3. Factors and difficulties impeding the application of the provisions of the Convention

90. The Committee notes:

- (a) The slowness of the legislative process for considering and adopting the bills mentioned earlier;
- (b) The fact that the technical cooperation agreement signed in 1992 between the United Nations Centre for Human Rights and the Ministry of Foreign Affairs of Uruguay has been suspended. The three projects on awareness-raising and training in the application of international human rights instruments, adopted under the agreement in 1992, for prison officers, judicial personnel and doctors were positive initiatives and it is regrettable that they have been ended.

4. Subjects of concern

91. The Committee regrets the State party's delay in giving effect to the recommendations made during the consideration of Uruguay's initial report. The Committee is particularly concerned at the following:

- (a) The continuing gaps in Uruguayan legislation which are impeding full implementation of the provisions of the Convention;
- (b) The lack of a provision introducing a definition of the crime of torture into domestic law in terms compatible with article 1, paragraph 1, of the Convention;
- (c) The persistence in Uruguayan law of provisions concerning obedience to a superior, which are incompatible with article 2, paragraph 3, of the Convention.

5. Recommendations

92. The Committee welcomes the series of legal and administrative measures described in the report, which attest to the State party's determination to fulfil the obligations it assumed on promptly ratifying the Convention. It regrets, however, the considerable delay in implementing them.

93. The Committee reminds the State party that it must introduce the legal reforms needed to bring its internal legislation into conformity with the provisions of the Convention, in particular as regards the definition of torture as a specific offence and the elimination of obedience to a superior as justification for exculpation from the crime of torture.

94. It also urges the State party to improve the measures taken to prevent the torture of persons deprived of their liberty and to strengthen protection in prisons.