

## URUGUAY

### CCPR A/37/40 (1982)

265. The Committee considered the initial report of Uruguay (CCPR/C/1/Add.57) at its 355<sup>th</sup>, 356<sup>th</sup>, 357<sup>th</sup> and 359<sup>th</sup> meetings held on 6, 7, and 8 April 1982 (CCPR/C/SR.355, 356, 357 and 359) and at its 373<sup>rd</sup> meeting held on 21 July 1982 (CCPR/C/SR.373).

266. The report was introduced by the representative of the State party who recalled that representative democracy and highly developed human rights legislation had been in force in his country for some 50 years before the eruption of “terrorism and political violence” in the early 1970s. He recognized that, since then, his country had undergone a crisis, the effects of which were still being felt and which had had a negative impact on human rights in the country. It had been necessary to enact special legislation and to suspend some rights, on a strictly temporary basis, because of the grave situation menacing the life of the country. These measures entailed the dissolution of the national parliament, the General Assembly, as well as derogations from certain rights set forth in the Covenant. In particular, restrictions had been placed on the right of association and political meetings had been banned. He informed the Committee that only some 150 people had been killed over a period of five to six years, of which most had been bystanders or members of the security forces; that, even at the height of the crisis, Uruguay had been concerned to defend the right to life, the inviolability of the person and justice; and that it was possible that the security forces had violated those rights on occasion, but that the Government had made efforts to investigate such cases. He stated that the number of subversives detained in prisons had decreased from some 1,300 in 1979 to approximately 900 in 1982 and denied that there were political prisoners in his country, stressing that those incarcerated were people imprisoned for their deeds not their ideas. He informed the Committee that his Government had devoted considerable resources to prison facilities as a result of which Uruguayan prisons were unsurpassed in the world.

267. The representative informed the Committee that the fundamental prerequisites for the restoration of all freedoms already existed, recognizing meanwhile that the process of normalization would not be complete until the Parliament was again functioning on a democratic basis. He referred to a programme that was being carried out for the purpose of re-establishing all the guarantees of human rights; that, in October 1981, the Government had enacted a law concerning professional associations which had resulted in the establishment of a large number of trade unions; that currently there were no limitations on political meetings provided that such meetings were not held in a public place and that political groups notified the authorities of the location of their headquarters; and that Institutional Act No.8 had been superseded by Institutional Act No. 12 which restored the total independence of the judiciary.

268. Members of the Committee expressed their satisfaction at the submission, though belatedly, of Uruguay's initial report and at the designation of such a senior official to represent that country during the consideration of its report and to make, as he did, an informative introduction to the report, indicating the desire of the Government of Uruguay to continue co-operation with the Committee. The report was thought to be a substantial one but it referred solely to legal provisions

and was mainly based on a Constitution which, exemplary and progressive as it was, had been overridden for some 10 years by the proclamation of public emergency in the country and superseded by drastic changes in the political order. Referring to the Committee's views on a number of communications pertaining to Uruguay under the Optional Protocol, members felt that the human rights situation in that country was fraught with features which were not acceptable, even by emergency standards, and that the Committee would have greatly assisted in discussing communications from individuals in Uruguay had the Government submitted it earlier and complied with the requests of the Committee for information.

269. The current political order in Uruguay was thought to have undergone drastic changes over the past 10 years and was determined more by a series of Institutional Acts than by the Constitution. Mention was made of Institution Act No. 1 which suspended all elections, Act No. 2 which established the Council of State and vested it with powers not provided for in the Constitution, Act No. 4 which banned all political parties for 15 years, Act No. 5 which subordinated the enjoyment of human rights to the requirements of national security, and Act No. 8 which eliminated the important constitutional principle of the separation of powers. This political order was described as a unification of the three separate powers of Governments - legislative, administrative and judicial - in the military authorities, which escaped the control of popular political bodies, its establishment being characterized not only by the length of its duration but also by the breadth of its application. In this connection, reference was made to a statement made in December 1978 by the former President of the Council of State in Uruguay, set up specifically to control the exercise of executive power, in which he admitted that the Council had failed to limit the assumption of executive power, in relation to the observance of the rights of the individual. The information provided by the representative in his introductory statement to the effect that Institutional Act No. 8 had been superseded by Institutional Act No. 12 and whether the independence of the judiciary was now really ensured. It was pointed out that the fact remained, however, that when Institutional Act No. 8 had been issued, the Covenant had already entered into force for Uruguay and its provisions were clearly at variance with the requirements of the Covenant with respect to the independence of the judiciary.

270. Noting that it was lawful under the Covenant for a State party to declare a state of emergency, members stressed that this could be done only in compliance with the requirements of the Covenant's provisions. The letter and spirit of article 4 of the Covenant, stipulated that when a country took measures to suspend human rights, those measures, which, however, could not affect certain rights specified in that article, must be temporary. It was pointed out that, in the case of Uruguay, those requirements of article 4 of the Covenant, as well as of the relevant articles of the Constitution itself, had not been complied with. Mention was made of violations of the rights provided for in articles 7 and 15 of the Covenant as found by the Committee in dealing with communications under the Optional Protocol, as well as of the notification of derogations under article 4 of the Covenant by the Government of Uruguay, <sup>12/</sup> which was thought to have failed to meet the formal requirements of that article and thus to have given the disturbing impression that all the rights embodied in the Covenant had been suspended. Particular reference was made to article

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<sup>12/</sup> For the text of the notification under article 4 of the Covenant, see document CCPR/C/2/Add.3.

168 (17) of the Constitution which provided for prompt security measures under the supervision of the General Assembly, the Uruguayan Parliament, but that this was not being implemented since the Assembly had long been dissolved. Information was requested on the specific rights which had been suspended in Uruguay, on how far derogations from the Covenant were strictly required by the exigencies of the current situation and on the measures taken to control violation of those rights which the Government might not abrogate, to discipline officials charged with such violations and to compensate their victims.

271. Reference was made to the State Security and Internal Order Act which established a series of offences, including lèse-nation, divulging secrets and association for subversive purposes and the offence of speaking out against the prestige of the military, which conferred extremely broad search powers on the authorities and placed restrictions on the freedom of speech, and it was noted that those offences were to be tried by military courts whose judges were appointed by the executive. In this connection, clarification was requested of the “new concept of security” referred to in the report in that respect; of the relationship between military jurisdiction and normal jurisdiction; and of the difference between ordinary and exceptional remedies.

272. In general comments under articles 7, 9 and 10 of the Covenant, members expressed their concern, in view of the information which had come to their attention under the Optional Protocol regarding physical assault and mental torture of detainees and prisoners, the abduction of individuals into Uruguayan territory by Government authorities, denial to detainees of their right to be informed promptly of any charges against them and the long delays which seemed to be the rule in bringing cases to trial. They asked how many places of incarceration existed in Uruguay and where; how could the Government of Uruguay justify the fact that detainees were required to pay for the costs of their being kept in captivity, what happened if they were unable to do so and to what extent the work performed by them offset such costs, and they felt that to require prisoners to pay for their keep was not in keeping with the spirit of the Covenant. Information was requested on the number of people who had been detained for political violence and similar offences. They noted the statement in the report that, up to 1977 there had been 16 cases of officials who had abused their powers, and they asked what had happened since 1977; what measures had been taken to strengthen the control over the police and prison authorities, to educate the security forces, to punish those who overstepped the limits of the law; to what extent had the Government implemented the minimum standard rules for treatment of prisoners, including medical care, and what investigations had been carried out in the cases of death which had occurred in suspicious circumstances in Uruguayan prisons.

273. Commenting on remedies under article 9 of the Covenant, members noted that, according to the report, the interested party or any other person might, in event of unlawful unrest, apply to the competent judge for a writ of habeas corpus unless the arrest was ordered under the prompt security measures régime, and that in considering communications under the Optional Protocol the Committee had been informed by the Government of Uruguay that the remedy of habeas corpus was not in effect in the country. They wondered what the meaning of “unlawful” was in the context of the emergency situation; whether the prompt security measures régime in effect suspended the application of the remedy of habeas corpus, whether an individual would be unable to invoke that remedy as long as this régime was in force and, if so, whether that did not amount to the legalization of unlawful acts carried out under the prompt security measures régime. It was also asked whether

conditional release was only an administrative measure based on a judicial decision taken by a court which had special jurisdiction in such matters.

274. As regards article 14 of the Covenant, it was pointed out that military courts could take over in an emergency certain functions normally performed by the ordinary courts, provided the former's independence and impartiality were duly protected. However, considering the fact that Uruguayan judges were appointed by the Government, that the military courts in Uruguay had clearly superseded the civil courts under the emergency régime and that the military courts in general were concerned less with providing minimum guarantees than the exercise of exceptional and summary powers, and that they, in practice, had acted in a way which was not conducive to impartiality, members wondered whether the principles and minimum guarantees embodied in article 14 of the Covenant were equally upheld and ensured and, if so, to what extent. It was pointed out that the general definition of such criminal offences as subversive association might violate the principle of the presumption of innocence inasmuch as any individual hostile to the Government would be liable to criminal sanctions merely by discussing political issues with friends. Information was requested on the scope of such offences, on the persons who were generally brought before military courts and on the practice of courts in dealing with them. It was maintained that it was implicit in the right to a fair trial, that sentences for long periods of detention should be handed down in writing and, in that connection, members noted with regret that the Committee, in the course of its consideration of communications under the Optional Protocol, had never been provided by the Government with the text of any court decisions despite repeated requests.

275. Members noted that, in Uruguay, accused persons did not always have access to a defence lawyer at the stage of preliminary proceedings and that challenging evidence obtained in the course of those proceedings under military jurisdiction was not possible if more than six days had elapsed since it had been submitted to the court for a preliminary hearing, and it was pointed out that if that were the case and a trial took place months or years later, the defendant stood no chance whatsoever of being acquitted. They also indicated that it seemed that there were considerable difficulties in enforcing the guarantee provided in article 14 (3) (e) of the Covenant, since evidence was taken primarily in the preliminary investigation when the accused had little opportunity of influencing the proceedings. It was asked whether hearings were oral or written and whether cases before the Military Judge of First Instance were tried in the presence of the accused and, if not, whether the existing public emergency would indeed justify the derogation from an individual's right to be tried in his presence. More information was requested on the remedy of appeal, particularly in cases involving offences of lèse-nation as well as military cases, the recourse for review and on the composition of the Supreme Court of Justice when it considered exceptional remedies and whether the military officers serving on this court in such cases were required to have legal training.

276. Commenting on the rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, members recognized that article 4 of the Covenant did not prohibit derogations from those articles. They inquired, however, about the circumstances in which derogations from those articles had been made in Uruguay. Mention was made of the steps taken against Uruguayans who disagreed in one way or another with the authorities, whether illegally or by making use of various political freedoms, with particular reference to the suppression of the trade union movement, to the outlawing of 14 political parties as well as to the persons who were proscribed from political life because they had served in an earlier Government. In this connection, it was asked who decided

when and how normality was to be restored in the country.

277. Questions were also raised concerning other articles of the Covenant, particularly as regards the position of Uruguay concerning the right of the Palestinian people to self-determination under article 1 of the Covenant; the rights of women, the family and children under articles 3, 23 and 24 and the ban on war propaganda under article 20 of the Covenant.

278. Several references were made to a number of specific complaints against the Government of Uruguay which the Committee had considered under the Optional Protocol and which had involved allegations of the denial of effective remedies, detention without court order, torture and ill-treatment. It was pointed out that the Committee had tried to give Uruguay a fair hearing, but that the information supplied had not been adequate and had sometimes been practically non-existent. The Committee's final views on many of those cases had appeared in its reports to the United Nations General Assembly and hence were public knowledge. Members wondered whether the Government had ever investigated the allegations which the Committee had found substantiated, punished those responsible, released the individuals in question or provided them with compensation, as the case might be. They urged the Government of Uruguay to make all relevant information available to the Committee when so requested.

279. Members of the Committee noted that positive signs seemed to indicate that Uruguay was beginning to return to the democratic and free tradition. Stressing that the rights and freedoms guaranteed by the Covenant could not be suspended indefinitely, they expressed the hope for further development in the right direction which would be a marked improvement in the protection of personal freedom and the treatment of detainees. They sought an assurance that the advent of democracy would be hastened, with participation in public life by all citizens without distinction, including the political leaders who had been banned from political life. They further sought an assurance that an amnesty or release would be extended to all persons who had been convicted only of the broadly defined offences established under the state of emergency and who had not been personally responsible for acts of violence.

280. Replying to questions raised and comments made by members of the Committee, the representative of Uruguay denied that the Constitution had become inoperative, that the executive, legislative and judiciary formed a monolithic whole, and stated that the dissolution of the legislature did not destroy the very foundations of the political system in his country; that although the Institutional Acts had introduced changes, they took as their point of reference the Constitution; that the Council of State, all of whose members were civilians, had been established as a provisional body following the dissolution of Parliament but that it was not a parliament, although it had acted to curb government power on occasion, and that the Minister of Justice had recognized that it had not been completely effective in defending human rights. He emphasized that Institutional Act No. 8 had limited only the administrative functions of the judiciary, not the general exercise of its powers; that throughout all the years of the crisis in the country the judicial branch of the Government had continued to function normally in other respects; and that Act No. 12, which superseded Act No. 8, restored the total independence of the judiciary and the balance of power between the three branches of the Government.

281. He stated that his Government had derogated from articles 9, 19 and 25 of the Covenant to a

limited degree because of the public emergency which threatened the life of the nation and that, at no time, had Uruguay derogated from the articles from which there could be no derogation in accordance with article 4 (2) of the Covenant. He assured the Committee that his Government would reply in detail, in a future report, to the objections raised by members of the Committee regarding derogations from certain articles of the Covenant and emphasized that at no time during the past 10 years had the Government violated the right to life as provided for in the Covenant. On the contrary, his Government had made great efforts to protect that right in conditions of civil war and had provided full explanations in other international fora concerning the cases of individuals who had died while in prison, the rate of which was among the lowest in the world. He asserted that members of the Committee had not understood the gravity of the emergency situation in Uruguay caused by “terrorist acts and foreign intervention” and that clear understanding of the situation was needed in order to comprehend why it was necessary to curtail the exercise of certain fundamental rights in Uruguay. He stressed that the enactment of the State Security Internal Order Act should be seen in this context and that conferring jurisdiction on military courts for offences of lèse-nation, which constituted threats to the life of the nation, was appropriate since the defence of the nation in such times of danger was the responsibility of the military.

282. As regards comments made under articles 7, 9 and 10 of the Covenant, he denied allegations of torture and quoted from a pamphlet in which the Tupamaros were said to have urged their followers who were arrested, especially women, to charge the police and military with ill-treatment and torture in order to win the sympathy of the public. He pointed out that, according to the Code of Military Penal Procedure, preventive arrests were to be carried out in the manner least detrimental to the suspect and his reputation and that, in any event, preventive detention could not exceed 12 days, that persons so held were entitled to communicate with the judge through a defence attorney, to attend proceedings at which witnesses were heard and to communicate in writing with the head of the establishment in which they were held and with the judicial authorities. In this connection, he emphasized that not a single person had been arrested in Uruguay for his opinions; that 985 persons had been arrested for subversion, an offence that had a specific legal meaning, only 15 of whom had not yet been sentenced; that some trade union members and five former members of Parliament had been imprisoned for the offences of sedition and subversive activities, respectively; that prison conditions were excellent, in particular, with regard to the recreational and health-care facilities provided, and that while prisoners might, in some circumstances, be required to pay the cost of their incarceration, no one had been obliged to remain in prison for failing to do so.

283. Replying to questions relating to the remedy of habeas corpus, he informed the Committee that the right of habeas corpus had been suspended only in cases which came under the prompt security measures régime, which had been imposed in order to deal with an emergency situation, but that in all other cases habeas corpus was fully observed; and that his Government was now considering abolishing the prompt security measures régime and restoring the full exercise of the right of habeas corpus. As to the distinction between ordinary and exceptional remedies, he stated that ordinary remedies were those available against sentences that had not yet acquired the status of res judicata, whereas exceptional remedies were available against sentences which had acquired that status.

284. In relation to article 14 of the Covenant, the representative stated that the appointment of judges in Uruguay was not a novelty because judges were appointed by the Executive in a number of countries and that this could not, per se, be construed as affecting their impartiality; that the

Supreme Court of Justice was a civil body; that military courts in Uruguay operated in a genuinely independent manner; that judgements were always handed down in writing and provided to both the prisoner and his attorney and published in law digests; that Act No. 14.068 provided that an appeal might be lodged against the indictment in cases involving offences of lèse-nation with the Supreme Court of Justice; that in actual practice in some 50 to 60 cases such decisions had been appealed; and that the law had been enacted to serve as a counter-weight to the powers which had been granted to the Military Examining Magistrates.

285. As regards the suspension of rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, the representative emphasized the transitory nature of the measures taken to meet special circumstances in the country's political life; that measures would be revised by a three-member commission with a view to achieving a gradual return to normality; that the press was gaining ground rapidly, including the opposition press which was in fact very critical of the Government and the security forces; that the Government supported free trade unions but wanted to ensure that they concerned themselves only with trade union matters and not be used as political tools by any party; that changes had been made in trade union legislation and the observations made by the International Labour Organisation in the past were therefore no longer valid; and that political rights of only some 25 persons continue to be suspended. He informed the Committee that elections were planned for November 1982 to select the leaders of the country's political parties as an essential step towards the resumption of normal political life and that, during 1983, the political parties would participate with the Government in the drafting of a new Constitution which would be submitted to a referendum at the time of the general elections planned for the following year.

286. He replied briefly to the few questions raised under articles 1, 3, 20, 23 and 24 of the Covenant indicating his country's support for the right of the Palestinian people to self-determination and to establish their own State; the rights of women, family and children; and on propaganda for war.

287. Responding to observations made by members of the Committee in connection with communications submitted to it against Uruguay under the Optional Protocol, the representative stated that his government would provide the Committee with all necessary information in the future and suggested the setting up by the Committee of some sort of machinery permitting the Committee to review its decisions in the light of additional information.

288. He expressed his regret that the report was found to contain not enough details and promised the Committee that his Government would supplement its report to provide additional information on all the matters raised by members of the Committee.

289. The Chairman pointed out that Uruguay's subsequent report would be due in February 1983 and that the supplementary information requested could be included therein.

290. Some members made brief comments on the replies of the representative of Uruguay. Others were unable to do so in view of the shortage of time and the Chairman announced that the Committee would continue its consideration of Uruguay's report at the next (sixteenth) session.

291. At its sixteenth session, the Committee at its 373<sup>rd</sup> meeting held on 21 July 1982 concluded its consideration of the report of Uruguay in the presence of the representative of the State party

(CCPR/C/SR.373).

292. Questions were raised by some members of the Committee, who, for lack of time, were unable to put them during the consideration of the report of Uruguay at its fifteenth session. Members asked whether the provisions of State Security Law No. 14068 punishing officials in charge of detention centres who abuse their powers by committing physical assaults on detainees had ever been implemented and whether that law applied to officials committing similar acts outside detention centres; whether decree No. 466 of 1973 requiring prior authorization for the exercise of the right of assembly was still in force and, if so, whether the restrictions extended to cultural, social and sports activities; whether the right to strike had been recognized; whether the Government of Uruguay had now abolished the régime of “prompt security measures” and re-established the full exercise of the right of habeas corpus; and what steps had been taken by Uruguayan authorities to give effect to the views of the Committee on communications concerning Uruguay.

293. In their comments, members expressed the hope that, in its next report, Uruguay would be able to assure the Committee that it fully guaranteed the rights of the accused to a fair trial; to present a complete analysis of Constitutional Act No. 12 which had a great impact on the juridical and political life in Uruguay; to give to the Committee information on the election of the party leadership due to take place late in 1982 and on the general elections scheduled for 1983; and to inform the Committee that restrictions on the issue of passports to all Uruguayan citizens living abroad are no longer in force. They also emphasized the need for Uruguay to co-operate more fully with the Committee in respect of communications by transmitting all relevant information, including judgements rendered by Uruguayan courts, and expressed the hope that actual practices would be radically modified so as to ensure the progressive return of the country to normal life.

294. Replying to questions raised and comments made by members of the Committee, the representative of Uruguay stated that sanctions had already been imposed in cases of abuse of power and that a number of officials had been interrogated; that, although political meetings were limited during the fight against subversion, more than 500 meetings had taken place in 1982, that the right to strike was guaranteed by the Constitution; that the country had been witnessing all sorts of strikes in both the public and private sectors and that the Council of State was now trying to introduce provisions for a better definition of that right. He reiterated the statement which he had made before the Committee at the fifteenth session to the effect that not one accused person had been condemned without a written judgement, and he referred to a particular case before a military court involving some foreigners and he indicated that foreign lawyers who represented them agreed that there had been no irregularity at the trial.

295. The representative explained the law and policy of his country governing the issue of passports to Uruguayan citizens living abroad and indicated that most of these citizens had obtained their passports in accordance with the law. He promised that his Government would be more responsive to requests of the Committee for more information concerning communications.

296. He finally assured the Committee of his Government’s readiness to continue the dialogue and co-operation which had now been established.

297. The Chairman expressed the Committee’s satisfaction at the encouraging replies given by the



representative of Uruguay and expressed the hope that the fruitful and constructive dialogue would continue. He informed the representative that, in accordance with the decision of the Committee on the periodicity of reports, the next report of Uruguay would be due in February 1983 and expressed the hope that this report would contain fuller information on all questions which had remained unanswered. He finally noted the undertaking that the Uruguayan authorities would respond fully to the requests of the Committee for information in connection with communications concerning Uruguay.

## CCPR A/44/40 (1989)

271. The Committee considered the second periodic report of Uruguay (CCPR/C/28/Add.10) at its 876<sup>th</sup> to 879<sup>th</sup> meetings, held from 27 to 28 March 1989 (CCPR/C/SR.876-879).

272. The report was introduced by the representative of the State party, who drew attention to the tradition of democratic government and institutions in his country, which had now been restored after a 12-year period of military dictatorship. Having overcome that national tragedy, democratic Uruguay expected to resume its active role in the international defence of human rights.

273. Referring to certain developments that had occurred since the submission of the report, the representative noted that a new law, regulating the remedy of amparo, had been promulgated on 18 December 1988. Additionally, a Human Rights Commission had recently been established by the Government to advise the executive authorities. The representative also recalled that a referendum was to be held on 16 April 1989, as envisaged under the Constitution, to determine whether to repeal or to confirm Act No. 15,848, which declared all punitive claims by the State relating to the period of de facto government as having lapsed.

### Constitutional and legal framework within which the Covenant is implemented

274. With regard to that issue, members of the Committee wished to know whether there had been any court decisions in cases where the Covenant had been invoked; what Uruguay's legal situation had been since 1 March 1985, particularly in respect of the applicability of the Institutional Acts adopted during the de facto period; what measures had been adopted since 1 March 1985 to provide remedies for violations that had occurred during the de facto period and how effective the measures taken had been in respect of restoring the rights, entitlements or employment of public servants who had been dismissed during the de facto period for ideological or political reasons; what follow-up had been given to certain specific decisions or requests of the Committee in the foregoing regard; what special measures had been taken, if any, since 1 March 1985 to inform the Uruguayan population about their rights under the Covenant and the Optional Protocol and to promote human rights, particularly in the schools, among the least privileged population groups and among police officials who had served during the military government; what the functions, scope and influence of the advisory committee on human rights were; and how many complaints had been filed with the Inter-American Commission on Human Rights since Uruguay had become a party to the American Convention on Human Rights. Members also wished to receive additional information concerning the practice of the Supreme Court of Justice in granting pardons under article 20 of Amnesty Act No. 15,737 of 8 March 1985; the relationship between the Covenant and the American Convention on Human Rights; and concerning factors and difficulties, if any, affecting the implementation of the Covenant since 1 March 1985.

275. With specific reference to the Law of Expiry No. 15,848, members expressed concern that leaving unpunished those who had violated human rights during the de facto period would have a negative impact on the deterrence of future violations and would set an undesirable precedent both internally and externally. Accordingly, they wished to know, in particular, what measures had been taken in the context of that law to provide effective safeguards for the protection of human rights

and how the right of victims of human rights violations to effective compensation was being ensured. In the latter connection, members asked what remedies could be invoked by such victims or by the family members of disappeared persons and whether, notwithstanding the expiry of public penal action for those responsible for violations during the de facto government, the current procedures for filing civil suits for obtaining compensation were adequate to ensure effective relief. Additionally, grave doubts were expressed as to whether the Law of Expiry was compatible with article 2, paragraph 3, and article 9, paragraph 5, of the Covenant. It was further asked whether that law also granted immunity for crimes that were not committed during the performance of duty by members of the armed forces or the police; how many cases of disappearances it covered; and whether the concept of expiration applied solely to the State or also to the possibilities open to individuals to address the courts.

276. In his reply to questions raised by members of the Committee, the representative of the State party explained that Uruguay admitted the direct application of international norms in its domestic law and therefore places no legal impediment to the direct application of the Covenant in judicial or administrative proceedings. While there had thus far been no cases where the provisions of the Covenant had been invoked, in several instances the norms of the American Convention on Human Rights had been invoked and applied by the courts. The Institutional Acts adopted by the de facto government had all lapsed since 1 March 1985 and legislation that violated fundamental freedoms had been specifically repealed by Parliament. Other norms previously in force had been ratified or amended by Parliament, as appropriate. Up to 31 December 1987 a total of 14,836 civil servants had been dealt with under Act No. 15,783, of whom 10,321 had been reinstated in their posts and 4,515 had retired or had been granted improved retirement benefits. Virtually all those who had been dismissed for ideological reasons had now been reinstated, although some cases were still pending owing to the complexity of the legal problems involved. Many former members of the Tupamaros movement had also been reinstated and had recovered their assets. The institution of pardon, provided for by law, was an act of individual clemency whereby both the offence and the sentence were annulled. With the restoration of democracy, the right of pardon had been withdrawn from the President and restored to the competence of the Supreme Court of Justice. Any convicted person could seek a pardon from the Supreme Court of Justice during the annual review of prison and criminal cases.

277. The Commission to advise the Government on the application of the International Covenant on Civil and Political Rights was a special mark of the Government's respect for the dignity of the human person. The Commission comprised representatives of the Ministry of Foreign Affairs, the Ministry of Labour and Social Security, the Ministry of Education and Culture, the Ministry of the Interior and a representative of the Presidential Office. Seminars and workshops had been held to provide information on and details of human rights and to ensure the international protection of those rights. There was also an experimental scheme to teach human rights in elementary schools. Since the Committee's meetings were open to the public and attended by journalists and non-governmental organizations, there could be no doubt that the discussion would receive scrupulous coverage and be reported in Uruguay. The referendum would allow Uruguayans from all levels of society to determine whether the Law of Expiry was just. The media were giving extensive coverage to the referendum.

278. After the restoration of the constitutional State, the Covenant had been fully applied in

Uruguay and there were no legal factors impeding its implementation. A few violations had occurred since 1 March 1985 and offenders had been brought to justice before the civil courts, which were the only courts operating in the country. Uruguay was aware of its obligations under both the Covenant and the American Convention on Human Rights. Its obligations under the latter were even greater than under the Covenant. A total of five complaints had been lodged with the American Commission on Human Rights since 1 March 1985, four of which involved events that had taken place during the period of de facto government.

279. Responding to questions relating to the Law of Expiry, the representative expressed understanding for the Committee's concerns about the possibility of incompatibility between that Act and the Covenant but stated that there had been no derogation from the provisions of the Covenant. The Law of Expiry was intended to bring stability and social tranquillity to a deeply divided nation, after many years of dictatorship and undeclared civil war, and in such situations there were no perfect solutions. Uruguay's experience had shown that the law had not had the effect, which some had feared, of encouraging others to violate human rights in the knowledge that they would go unpunished. With or without amnesty, there were always those who sought to undermine Governments and it was hard to see how an amnesty could foster dictatorship. The law did not extend to crimes other than those committed for political reasons nor to cases in which proceedings had already been initiated. While the Government would not be instituting further criminal proceedings as a result of the adoption of the Law of Expiry, it had committed itself to provide compensation for the victims and to ensure that such crimes did not take place in the future. It would be up to the courts to decide whether victims could make claims. In many cases, claims for compensation were in process. Furthermore, the Law of Expiry did not put an end to investigations into the fate of disappeared persons and the Government was doing in its power to uncover the fate of disappeared persons. Out of a total of 164 persons who had disappeared, none of them were minors.

#### Self-determination

280. With reference to that issue, members of the Committee wished to know Uruguay's position in respect of the right to self-determination of the Namibian, Palestinian and South African people and what measures Uruguay had taken to prevent public and private support for the apartheid régime of South Africa.

281. In his reply, the representative of the State party said that his country repudiated racial discrimination and apartheid and was a party to the relevant international instruments. Uruguay's democratic Government had reduced its level of representation and had limited its relations with South Africa. In respect of the Middle East, Uruguay supported Security Council resolution 242 (1967) and the right of all peoples in the area of self-determination, while acknowledging Israel's right to exist.

#### State of emergency

282. With reference to that issue, members of the Committee wished to know whether the State of emergency, as notified under article 4 (3) of the Covenant on 30 July 1979, had been formally terminated; how the power of the courts to judge the substantive grounds for detention in the course

of habeas corpus proceedings during a state of emergency, as specified under article 4 (1) and (2) of the Covenant, was ensured; and what rights were subject to derogation in an emergency.

283. In his reply, the representative of the State party said that there was no state of emergency in Uruguay. The Constitution provided for no general suspension of laws in an emergency but only for preventive and temporary prompt security measures. Judges could order a person's release from detention during habeas corpus proceedings only on formal grounds, such as illegal imprisonment or danger of physical mistreatment. The substantive decision as to who should be detained during an emergency came within the purview of the executive. The advisability and propriety of that decision could be judged only by the legislature. Under the Constitution, the executive was required to inform Parliament within 24 hours of any prompt security measures it had adopted and the latter had the power to reject such measures. While there was no exact correspondence between article 4 of the Covenant and article 168 of the Constitution, no derogations of rights incompatible with article 4, paragraph 2, of the Covenant were permitted under the Constitution and laws of Uruguay.

#### Non-discrimination and equality of the sexes

284. In connection with those issues, members of the Committee wished to receive information concerning the laws and practice giving effect to the provisions of article 2 (1) and 26 of the Covenant; the status of women, particularly their participation in the political and economic life of the country; the status of blacks; and the measures that had been taken to improve the condition of the latter and to ensure their full enjoyment of the rights provided for under the Covenant. Members also wished to know the current status of the proposed amendment to article 140 of the Penal Code in relation to discrimination; in which respect the rights of aliens were restricted as compared with those of citizens; why article 267 of Act No. 15,855 conferred the legal administration of the assets of children only upon the father; and what measures had been taken to eliminate prejudice against women at work and to ensure the application of the principle of equal pay for equal work.

285. In his reply, the representative of the State party noted that the norms of the Covenant were reflected in the Constitution and laws of Uruguay and that articles 7 and 8 of the Constitution, which provided for certain basic guarantees without distinction as to nationality as well as for equality before the law. It was hoped that the proposed amendment to article 140 of the Penal Code, making incitement to racial hatred a criminal offence, would be approved by Parliament before the end of the year.

286. Racial discrimination was completely alien to Uruguay, which was a melting pot of races and peoples of different origins. There were no indigenous or national minorities. The population of African origin numbered only about 30,000 and enjoyed full access to education and to public employment. Although there were relatively few black professionals, that was due to economic circumstances and not to racial discrimination. The Constitution protected the rights of all the inhabitants of the country, including foreigners, and there were no legal restrictions on the latter except for ineligibility for the office of President and Vice-President of the Republic.

287. Under the Civil Code and the Civil Rights Act of 1946, women enjoyed the same rights as men in respect of children, property and matrimonial domicile. The reference in article 267 of the Civil Code to "father" (el padre), in relation to the administration of children's assets, should have read

“parents” (los padres) and that mistake was being corrected. The Minister for Education and Culture in the current Government was a woman and there was also a woman member of the Supreme Court of Justice. Difficulties, based largely on sociological factors, were however still being encountered in ensuring the full equality of women in practice. To deal with certain social problems affecting women, such as physical ill-treatment or sexual abuse, the Government had recently established the Office of the Special Commissioner for Women, which was staffed exclusively by women and which also comprised a special police department.

### Right to life and prohibition of torture

288. With regard to that issue, members of the Committee wished to receive information on article 6 in the light of the Committee’s general comments Nos. 6 (16) and 14 (23) and on measures taken to ensure strict observance of article 7 of the Covenant and to punish violators. Members also wished to know what the infant mortality rate was; whether any deaths had occurred recently as a result of torture or other abuses by military or police officials; whether the norms regulating the use of force by such officials were consistent with the Code of Conduct for Law Enforcement Officials; what specific means were used to control the activities of the police and military forces and of correctional staff and what type of training was provided to such personnel; how the rights of the mentally ill were safeguarded; what the current state of investigation was into the 56 cases of unresolved disappearances cited by the Commission on Human Rights in 1986; what measures had been taken to provide compensation to victims of torture under the de facto government; whether there were any circumstances under which abortion could be considered as legal; and whether, subsequent to the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Penal Code had been appropriately amended to establish specific penalties for violators.

289. In his reply, the representative of the State party recalled that, under the Constitution, the death penalty had been abolished for all offences since 1907. There had been no cases of deaths as a result of torture or police abuse nor any cases of disappearances since 1 January 1985. There had only been six serious cases of mistreatment by the police since that time and all of them had been immediately investigated by independent judicial authorities. The two overcrowded prisons in Montevideo dating from the nineteenth century had been closed down and the inmates transferred to new prisons with more modern facilities and better opportunities for rehabilitation. The use of firearms by police was authorized only under very limited circumstances. There was a police school for officers but not for lower ranks. Although no school for prison guards existed as yet, it was intended to establish one as part of the police school. The infant mortality rate was 20 per 1,000 and life expectancy was 72 years.

290. Responding to other questions, the representative reiterated that while the Law of Expiry No. 15,848 eliminated any possibility of criminal proceedings, victims of ill-treatment were not left without remedy but could seek to enforce their rights before an impartial legal authority. Amnesty Act No. 15,737 of 8 March 1985 also provided for the payment of compensation to victims of mistreatment as well as for their reinstatement in their former posts and the back-payment of wages. The de-criminalization of abortion was currently the subject of much debate in Uruguay. Not all abortions were viewed in the same light and varying degrees of criminal responsibility were attached to them. The entry into force on 26 June 1987 of the Convention against Torture and Other Cruel,

Inhuman, or Degrading Treatment or Punishment had been of great importance since it brought into effect Act No. 15,798 of 27 December 1985, which, defined, for the first time in national legislation, the offence of torture. There had been no serious complaints of ill-treatment since that date.

#### Liberty and security of the person

291. With reference to that issue, members of the Committee wished to know whether any investigations had actually been carried out under Act No. 15,848 of 27 December 1986 in respect of alleged disappearances of individuals and the kidnapping of minors; what follow-up had been given to the Committee's views in cases of disappearances submitted under the Optional Protocol, particularly with regard to the compensation of victims; what the maximum periods of detention were in custody and of pre-trial detention, respectively; how quickly after arrest a person's family or lawyer could be contacted; whether the United Nations Standard Minimum rules for the Treatment of Prisoners were complied with and the relevant regulations made known to prisoners; and how effective the activities of the National Prisoners and Discharged Persons Aid Association had been in promoting the reintegration of former inmates into society and in preventing recidivism.

292. Members also wished to know what the differences were between standard and maximum security prisons; what improvements in the treatment of prisoners had resulted from the activities of the Centre for Classification, Diagnosis and Progressive Treatment of Detainees; and whether earlier provisions relating to the payment of debts arising from prison expenses were still in force.

293. In his reply, the representative of the State party stated that while cases of disappearances and kidnappings of minors - all of which had occurred outside Uruguayan territory - had been investigated pursuant to article 4 of the Law of Expiry, many non-governmental organizations and individuals had declined to co-operate with the military prosecutor charged with the conduct of the investigation. The investigation had also proved difficult because of the complexity of the relevant international procedures. Nevertheless, some minors had been located in neighbouring countries and a number of them had been united with their families. In the case of Mariana Zeffarini, the Minister for Foreign Affairs had assumed personal responsibility for the investigation and was in direct contact with her father. Uruguay intended to carry out its obligations under the Covenant and planned to inform the Committee promptly on the procedures that had been followed in respect of each case submitted under the Optional Protocol on which the Committee had adopted final views. The results to date of the activities of the Centre for Classification, Diagnosis and Progressive Treatment of Detainees had been very encouraging but statistical data in that regard were not immediately available. Attempts had been made in Uruguay, notably at the Santiago Vazquez prison complex, to improve the conditions of the inmates and to bring their treatment into line with constitutional percepts and international norms but such reforms and improvements had unfortunately not yet extended to all of the prisons in the country. The Constitutional Government had written off the debts that former prisoners had owed for their food bills in prison and had refunded such payments to those who had been obliged to make them under the dictatorship.

#### Right to a fair trial

294. With reference to that issue, members of the Committee wished to receive information in article 14 in the light of the Committee's general comment No. 13 (21) and on the availability of free

legal aid. Members also requested clarification of the changes that had occurred in the role of the military courts since the restoration of democratic government and of the activities of various tribunals and the Supreme Court of Justice in respect of the annual reviews of prison visits and of criminal cases.

295. In his reply, the representative of the State party reaffirmed the independence of the judiciary in his country. He noted that the main problems were procedural and that the reliance on a system of written proceedings - which had medieval origins and had been inherited from Spain - had made the process of justice extremely slow. Military courts were only competent to hear cases involving military offences such as insubordination and desertion. Such courts could not try civilians, not even under a state of war, and military personnel were also prosecuted in civilian courts for ordinary offences. Free legal aid was available from the Faculty of Law. There was a large number of public defenders throughout the whole country and the latest national budget provided for significant further increases in their number. Preliminary hearings were held in the presence of defence lawyers and trials could not be held except where the defence had the opportunity to question and cross-examine witnesses.

#### Freedom of movement and expulsion of aliens

296. Regarding that issue, members of the Committee wished to receive additional information on the position of aliens in the light of the Committee's general comment No. 15 (27) and concerning the effectiveness of the efforts of the National Repatriation Commission in promoting the return of Uruguayan citizens and their reinstatement in society. Members also requested clarification of the procedures relating to the entry and expulsion of aliens and to the circumstances relating to the imprisonment of the leader of the National Party after his return from exile abroad.

297. In his reply, the representative of the State party said that it was a basic rule in Uruguay that there could be no distinction between aliens and citizens with respect to their rights except, of course, with regard to political rights, which were accorded only to citizens. Aliens could not be expelled for committing a crime and the country had never deported an alien whose life or freedom was at risk elsewhere. If the executive authorities decided to expel an alien, the latter was entitled to receive legal advice and to apply for appropriate remedies including, since 19 December 1988, the right to amparo. The National Repatriation Commission had contributed to the success of the repatriation, particularly in helping to distribute international assistance to the returnees. Most of those repatriated were still in the country although few had been able to return to their homes because of the different economic situation. The Commission had now concluded its work. The leader of the National Party, Mr. Wilson Ferreira, had been prevented from returning to the country by the de facto régime and not the Constitutional Government and had been active in promoting the Law of Expiry after his return.

#### Right to privacy

298. With reference to that issue, members of the Committee wished to know whether the practice of tapping telephone conversations, which had been current during the period of de facto government, had been discontinued; what bodies could authorize interference with privacy at present; whether personal information was stored in computers or data banks and, if so, what rights



individuals enjoyed with respect to the content of such information; and whether article 7 of Decree Law No. 15,672, which provided for the “right of reply”, might not inhibit the freedom of expression.

299. In his reply, the representative of the State party said that the right to privacy was guaranteed in Uruguay and telephone conversations were no longer being intercepted except in certain circumstances authorized under the law. Evidence obtained from interception or wire-tapping without a court order was not admissible in court. There were no data banks on individuals and census-related statistics were compiled without harming individuals. The “right to reply” could be invoked only when a person’s honour or dignity had been affected by the publication of false information in the media and did not constitute a threat to freedom of the press unless that right was abused.

#### Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

300. With regard to those issues, members of the Committee wished to know whether religions were registered and received official recognition and, if so, on what basis; whether the country’s archives were open to the press and public; whether the press law against “malicious information” had been repealed; what legal régime governed the ownership and licensing of the press; and whether the various publications that had been closed down under the dictatorship were entitled to receive compensation for their losses.

301. In his reply, the representative of the State party said that the doctrine of separation of Church and State was firmly established in Uruguay and there was no official religion. There was no official control of religious groups and they were not required to register unless they sought legal status as corporate bodies. The Catholic Church had corporate status under the Constitution but other religions could also obtain such status if they wished. Freedom of information was considered to be one of the foundations of a democratic régime and there was full access to information under the current administration. There were many newspapers and radio stations in Uruguay and 90 per cent of them were against the Government. Even the Tupamaros had their own station. All government documents, files and archives were public, except for certain documents that had been classified secret under the law. Administrative or legal remedies were available to anyone who had wrongfully been denied access to official information. The former Press Law was still in force but some of its provisions were to be repealed by a bill that was currently under consideration. The courts had held that the burden of proof in demonstrating “malicious intent” rested with the State, which would make it difficult for the Government to use the law to stifle legitimate criticism. Under the law, publications that had been closed down by the dictatorship and believed that their economic interests had thereby been damaged could petition the courts for compensation, as a number of publications were currently doing, or seek an administrative settlement, as the Communist Party was doing.

#### Freedom of assembly and association

302. With reference to that issue, members of the Committee wished to receive information on laws and practice relating to public meetings; on the actual situation in respect of the functioning of trade

unions; the current status of certain draft bills relating to trade-union rights; and relevant laws and practices relating to the establishment of political parties. Members also wished to know whether there was any mechanism - other than recourse to the courts, which involved a lengthy procedure - to safeguard job security for labour leaders, provide for collective bargaining and prevent the discriminatory dismissal of labour leaders' and whether the unrestricted exercise of the right to organize and to strike applied to all civil servants and public employees, including the police, and, if so, how essential supplies and services were protected.

303. In his reply, the representative of the State party said that public meetings were regulated under legislation enacted in 1897, which was still considered to be highly effective. Open-air public meetings during the daytime could be held without prior authorization, the latter being required only for night meetings. The police were present at such meetings only for the purpose of protecting the right of assembly. Refusals to issue an authorization could be contested in court. The right to freedom of association was total. There was no difficulty in forming union, which enjoyed tax exempt status, and there was no legal impediments to the right to strike except in the case of the police and the armed forces, whose members were prohibited from striking. Workers in such essential service sectors as health, water, electricity, or post and transportation services could be enjoined from striking by the Ministry of Labour under a 1968 law, but the labour unions had refused to recognize the legitimacy of that law, holding that the right to strike was of an unrestricted character. Draft legislation containing a bill of rights for trade unions was still under consideration in Parliament. Pending its enactment the International Labour Organisation's norms were in force. The only weapon currently available to a dismissed trade union member was to have his union call a strike, which happened frequently, but the labour courts - which acted much more swiftly than ordinary courts - were beginning to entertain the concept of "wrongful dismissal".

#### Protection of family and children

304. With regard to that issue, members of the Committee wished to know whether all discrimination between spouses and all differences in the status and rights of children born in or out of wedlock had been eliminated under Act No. 15,855 of 17 March 1987; what the law and practice were regarding the employment of minors; what the role and functions of the Children's Council were in caring for minors; and what regulations had been adopted by the Council in respect of the working conditions of minors.

305. In his reply, the representative of the State party explained that Act No. 15,855 had broadened the obligations of the natural parents to equal those of parents of legitimate children; had instituted the same system of surnames for all children, which reduced the incidence of social discrimination, and had granted equal status to all children under the inheritance laws. The regulations relating to the employment of minors were contained in the Code of the Child and were fully compatible with the provisions of the Covenant. Under the Code, children under 14 were prohibited from working in industrial enterprises and children between 12 and 14 were permitted to do farm work in rural areas only outside of regular school hours. Regrettably, the latter regulation was not always fully respected. Children between the ages of 14 and 18 were prohibited from working in environments detrimental to their health, morals or lives. Night work was prohibited for all children under the age of 16 and their working day was limited to six hours per day and 36 hours per week. Compliance

with child labour laws was monitored by the Institute for the Protection of Minors and violators were subject to fines and other penalties. In 1988, the Children's Council had been renamed the Child Welfare Institute and had been granted greater autonomy and higher status.

#### Right to participate in the conduct of public affairs

306. With reference to that issue, members of the Committee wished to know how access to the public service was regulated and what kind of information in a person's record might bar such access.

307. In his reply, the representative of the State party noted that access to public service was regulated by the Constitution, which also contained specific provisions relating to the status of judges, magistrates, diplomats and elected officials. Except for the latter, political affiliation did not need to be declared since all other civil service positions were open to citizens regardless of their ideological or political commitments. The main qualifications for public office related to citizenship, age, literacy and the absence of any recent criminal record. Applicants also had to be of good moral character and were required to take an oath of loyalty to the national flag.

#### Rights of minorities

308. With reference to that issue, members of the Committee wished to receive information concerning ethnic, religious and linguistic minorities in Uruguay, if any, and regarding measures taken to guarantee their rights under article 27 of the Covenant. Some members also suggested that the provisions of article 27 were not intended to apply solely in cases where there were problems among different communities or races or where minorities were necessarily accorded inferior status, and should be given a broad reading.

309. In his reply, the representative of the State party explained that there were no linguistic, ethnic or religious minorities in Uruguay. The official language of the State was Spanish and the civil and penal codes provided for methods by which non-Spanish speakers could avail themselves of interpretation services when necessary. Blacks and non-Catholics, while constituting only a small portion of the population were not considered minorities but simply Uruguayans sharing the same language and traditions as everyone else. The Government of Uruguay did not have a restrictive view of article 27 and was firmly committed to the protection of rights such as those relating to the practice of one's own religion and to receive linguistic assistance as necessary.

#### General observations

310. Members of the Committee thanked the State party's delegation for co-operating with the Committee and for having engaged in a constructive dialogue. They expressed admiration for Uruguay's efforts to restore democracy and welcomed the impressive progress that had been achieved in restoring democratic institutions and respect for human rights. However, members voiced certain continuing concerns, especially with respect to the compatibility of the Law of Expiry with the Covenant, and about some aspect of the Press Law, as well as guarantees relating to derogations under article 4 of the Covenant. They hoped, in particular, that the Law of Expiry would not prevent victims of human rights violations under the de facto régime from availing

themselves of civil remedies and receiving compensation. They also hoped that the Government would study and take appropriate action in respect of the cases submitted under the Optional Protocol on which the Committee had adopted final views and would inform the Committee thereon. They also requested the delegation to convey an account of the Committee's discussions to the competent authorities and to the people of Uruguay.

311. The representative of the State party assured the Committee that the views expressed by members would be made known to his Government.

## CCPR A/48/40 (1993)

467. The Committee considered the third periodic report of Uruguay (CCPR/C/64/Add.4) at its 1216<sup>th</sup> to 1218<sup>th</sup> meetings, held on 29 and 30 March 1993 (CCPR/C/SR.1216-1218). (For the composition of the delegation, see annex XI).

### Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family and children

468. With respect to those issues, the Committee wished to know what follow-up action had been taken as a result of views adopted by the Committee under the Optional Protocol with regard to Uruguay; what consideration the Government had given to the comments made by Committee members regarding the compatibility of Act. No. 15,848 of 22 December 1986 (Statutory Limitations Act) with article 2, paragraph 3, and article 9, paragraph 5, of the Covenant; whether any legal provisions relating to the declaration and implementation of a state of emergency had been adopted different from those which were in effect during the de facto regime; how existing norms conformed with article 4 of the Covenant, particularly paragraph 2 thereof, and what safeguards and effective remedies were available to individuals during a state of emergency; whether Act No. 16,048 of 16 June 1989 had been applied since the submission of the report; what progress had been achieved by the adoption of Act No. 16,045 of 2 June 1989 relating to non-discrimination based on sex; and what the law and practice were relating to the employment of minors and how children were protected from exploitation, particularly in the agricultural sector.

469. In addition, members of the Committee wished to know what effect the Statutory Limitations Act had had regarding the exercise of the right of individuals to submit communications to the Committee under the Optional Protocol; what other complaints procedures, if any, had been negatively affected by the enactment of the Statutory Limitations Act; whether the Statutory Limitations Act left open the possibility to continue to collect information in support of claims for compensation; whether freedom of movement was restricted and derogations from the provisions of article 9 of the Covenant possible during a state of emergency; whether further training courses on human rights were foreseen for law enforcement officials and medical personnel; and whether a human rights commission had been established in Uruguay that could receive and investigate complaints. Further information was also requested concerning the operation of the Honorary National Commission for Disabled Persons; cases involving discrimination against women that had come before the industrial tribunal; and the practice of "reverse discrimination" as referred to in paragraph 26 of the report.

470. In reply, the representative of the State party said that the Statutory Limitations Act or Law of Expiry (Act No. 15,848 of 22 December 1986) had been enacted subsequent to the amnesty of 1985 at a very difficult period in his country's history following years of internal war. The Act was a fully legal action that did not suspend any of the provisions of the Covenant. Moreover, it undertook to provide compensation to the victims of human rights violations under the de facto regime and to guarantee that such abuses would not recur. In that respect, it differed from various statutes of limitations that had been adopted in other Latin American countries. Not only had the Act been adopted by an elected Parliament and declared constitutional by the Supreme Court of

Uruguay, but it had also been democratically endorsed by the people of the country in a referendum held in 1989. The Act made provision for recourse to legal remedies and for claims of compensation for physical and moral damage sustained by individuals during the de facto regime. At least 34 judgements had been handed down thus far by the competent civil courts on compensation claims for involuntary or enforced disappearances and physical harassment during that period. Four of those cases were still pending, one had been dropped by the plaintiff, three had been dismissed as unfounded and in the remaining 26 cases, reparations ranging from approximately US\$ 17,000 to US\$ 156,000 had been awarded. No sense of impunity among members of the police or military existed as a result of the Act. Other legislation in that area included a law granting exiled persons the right to return to Uruguay and to receive compensation for losses suffered as a result of exile and a law permitting persons deprived of their rights to return to government employment. Additionally, a recently passed law, Act No. 16,011, provided legal recourse to any citizen whose constitutional rights were violated.

471. With respect to legislation concerning states of emergency, article 31 and paragraph 17 of article 168 of the Constitution were again fully applicable and safeguarded the rights of individuals during a state of emergency. In regard to racial discrimination, Act No. 16,048 of 16 June 1989 penalizing discrimination and the incitement to racial hatred or violence had not had to be applied so far. The Act, no doubt, had a preventive effect, reinforced also by Uruguay's democratic culture and the high level of general education in the country. Moreover, article 8 of the Constitution established that all persons were equal before the law. As a consequence, there was equality of opportunity in education, the holding of public office and service in the military. Additionally, articles 5, 29 and 37 of the Constitution specifically guaranteed the freedoms of religion, thought and movement respectively and thus, in conjunction with article 8, made any formulation of discriminatory employment policies impossible in Uruguay. Ethnic minorities were fully integrated into Uruguayan society and discrimination as such did not exist.

472. Any possible discrimination against women had been eliminated by Act No. 16,051 of 10 July 1989, which made both parents the legal administrators of the assets of their children. The employment rights of women were also specifically guaranteed by law, in conformity with the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the International Labour Organization. The Government had passed laws promoting preferential hiring of women in order to eliminate past inequalities. With respect to child laborers, minors under 15 years of age were not authorized to work. However, exceptions could be made for children aged 12 and over who were employed in their own family's business and minors aged 14 and over who were engaged in agricultural work. A human rights section had been established within the Ministry of Foreign Affairs with a view to investigation, follow-up and responding to international bodies dealing with human rights.

#### Right to life, liberty and security of person and treatment of prisoners and other detainees

473. With respect to those issues, the Committee wished to know whether there had been any complaints during the period under review of disappearances, extrajudicial executions or torture and, if so, what measures had been taken to investigate such acts, to punish those found guilty and to prevent their recurrence; what were the rules and regulations governing the use of firearms by the police and security forces and whether there had been any violations of such rules and what

measures had been taken to prevent their recurrence; what measures had been taken by the authorities to ensure strict observance of article 7 of the Covenant; whether confessions or testimony obtained under duress were admissible before the courts; what were the respective roles of the Supreme Court of Justice and the National Directorate of Prisons, Penitentiaries and Detention Centres in the supervision of places of detention; what procedures there were for receiving and investigating complaints of violations of prisoners' rights; whether the Standard Minimum Rules for the Treatment of Prisoners were complied with in places of detention and whether the relevant regulations and directives were known and accessible to prisoners; how quickly after arrest a person's family was informed; and when, after his arrest, a person could contact a lawyer. Further information was requested on the maximum time-limits for remand in custody and pre-trial detention and on the measures taken by the Supreme Court in its Ruling No. 7019.

474. Members of the Committee also wished to know whether individuals could submit complaints regarding mistreatment and how such complaints were dealt with; what measures were being taken to investigate allegations of ill-treatment while in police custody, and if officials had been tried for offences against the physical integrity of prisoners; whether a police officer could return to duty while an accusation alleging mistreatment of a person in detention and, in particular, torture, was pending against him; whether decisions taken by a judge with regard to pre-trial detention could be appealed to a higher court; what was the maximum duration a person could be held in detention before being sentenced; under what circumstances a prisoner might be placed in solitary confinement; what safeguards existed to prevent detainees from being subjected to medical or scientific experimentation; whether defendants could appeal to other judges in cases in which the examining judge refused to grant bail, whether legal aid was available for such an appeal and whether there were any rules about how quickly the appeal could be heard; whether any specific measures were being taken to protect women in custody against sexual abuse; whether there were separate prisons and facilities for women providing conditions equivalent to those for men; whether there were any special measures to protect young people in custody and whether there was a high incidence of suicide in custody.

475. Responding to the questions, the representative of the State party said that there had been no disappearances, extrajudicial executions, or torture in the form of organized or institutional repression. Article 7 of the Covenant had been incorporated into law by Act No. 15,737. Isolated cases of mistreatment had been minor and had been duly investigated. Act No. 16,170 (article 58) established an agency within the police department to act as a consultative and watchdog agency for branches of the Ministry of the Interior. Its task was to report on irregularities, receive complaints and prepare summary reports as required by the Ministry. That agency had effectively assisted the Ministry of the Interior in the prevention and elimination of torture. Articles 26 and 28 of the Penal Code governed the use of firearms. No complaints of violations by police of the relevant regulations had been lodged.

476. There were no restrictions on individual freedoms, including liberty of movement. Persons could be arrested only if caught in flagrante delicto, or if proof of the same was offered by written order of the competent judge. The remedy of habeas corpus was guaranteed by the Constitution. Under articles 16 and 60 of the Constitution and articles 118-124 of the Penal Code, a statement made by a person in detention had to be submitted to a magistrate within 24 hours and the person arraigned within 48 hours of his arrest or be released. A person could not be held for more than 24

hours without being allowed contact with his lawyer and could communicate with his family within 48 hours unless a magistrate ruled otherwise. Confessions and testimony obtained under duress were not admissible as proof in courts of law; only testimony given before the competent judge was valid, in accordance with article 185 of the Penal Code. Government officials were required to respect all international conventions on human rights and if they failed to do so they were duly punished under domestic law. Supreme Court Ruling No. 7019 provided that the competent judge must ensure a speedy trial and if, after 120 days, no evidence had been submitted, the competent judge must explain in writing why the required action had not been taken. Moreover, under article 69 of the Penal Code, any sentence imposed had to take into account the amount of time a person had already spent in detention.

477. Act No. 15,859 ("law of prevention without imprisonment") allowed judges to decide whether or not a person accused of an offence was to be placed in preventive detention. When it could be presumed that the defendant would not undertake any further criminal action, judges usually decided to release the defendant. Regarding violence against women, a special police station staffed entirely by women had been established to receive and investigate reports of maltreatment and abuses of women. There were also prisons for and run by women.

#### Right to a fair trial

478. In regard to that issue, the Committee requested information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; and on the organization and functioning of the legal profession, particularly the Bar.

479. Members of the Committee also wished to know who ultimately decided whether or not a judge was to be dismissed for violating the Constitution; whether a judge could be dismissed on the basis of a political decision of the elected Parliament; how many of the 440 judges in Uruguay were women; and whether judges, in the absence of malice, enjoyed impunity from civil or criminal process in the discharge of their duties.

480. Responding to the questions, the representative of the State party noted that Uruguay had the third highest proportion of judges to population in the world, with 15.5 judges per 1,000 inhabitants. Members of the Supreme Court of Justice were designated by the National Assembly and members of the Court of Appeals were nominated by the Supreme Court and confirmed by the Senate. All other judges were directly appointed by the Supreme Court. There were four different procedures for the designation of judges at the various hierarchical levels and they included provisions regulating the dismissal of members of the Supreme Court and the appellate courts. Members of the Bar belonged to a civil association which had been very active in the promotion of human rights.

481. Whereas judges of the Supreme Court could not serve for more than 10 years and could not be re-elected until five years had elapsed after the end of their tenure, the only limit on the tenure of other judges other than satisfactory performance was that article 250 of the Constitution set the retirement age of all judges at 70 years. The majority of judges in Uruguay were women, especially in areas that dealt with family matters and minors. In Montevideo, 27 out of the 29 family court judges were women.



Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participate in the conduct of public affairs, and rights of persons belonging to minorities

482. Regarding those issues, the Committee wished to know in what respect, if any, the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; what restrictions might be placed on the exercise of the right to freedom of expression and information "within the limits of the Constitution and the law"; to what extent Act No. 16,099 of 24 October 1989 was compatible with article 19, paragraph 2, of the Covenant, especially in relation to the freedom to seek, receive and impart information; what administrative requirements needed to be met by heads of news agencies, printers and editors, "vis-à-vis the Ministry of Education and Culture"; how the procedure described in paragraph 91 of the report regarding the exercise of the right of reply was applied in practice; whether any legislation governing the registration of trade unions and the right to strike had been enacted following accession to the relevant ILO Conventions; what factors or difficulties may have hampered the implementation and enjoyment of the rights set out in article 27 of the Covenant; and how many members of minority groups were members of Parliament.

483. Members of the Committee also wished to know what measures had been taken with respect to reported discrimination against the black minority; whether there were any problems impeding ethnic or racial groups from continuing to enjoy their own culture and language; how the legal separation of Church and State worked in practice; whether there were any government-controlled newspapers or television channels; what limitations could be placed upon a journalist's right to professional secrecy; whether a journalist had to be a member of a professional association in order to enjoy the right of professional secrecy; why the name of a publication's printing press had to be registered and whether failure to do so was a punishable offence; whether the Bill of Rights for Trade Unions had already been adopted; and whether the failure to vote was a punishable offence and, if so, how that accorded with freedom of conscience. Further information was requested on the extent to which the Press Act permitted investigative journalism, such as in government archives; and on affirmative action legislation for minorities.

484. Responding to the questions, the representative of the State party said that no church in Uruguay enjoyed privileged treatment as compared with other churches and that, under the second Constitution, Church and State had been separated. Religion or ethnicity had no bearing on accession to Parliament.

485. Although article 29 of the Constitution guaranteed total freedom of expression without prior censorship, authors were liable for any abuses they committed. Act No. 16,099 established that deliberate dissemination of inaccurate information which seriously disrupted public order or severely damaged the economic interests of the State or harmed its credit abroad, and instigation to slandering of the nation, State or its powers, were punishable offences. There was no government-controlled press and only one government television channel, which carried cultural programming. Under article 4 of the Press Act, an unregistered newspaper could not publish. The Act in no way limited the right to criticize the Government. Heads of news agencies and printers and editors of publications were required to file, prior to the start of publication, a sworn statement giving the name and address of the publication in question, of the owner and of the printing press.

That purely administrative requirement in no way affected the operation of the publication, but did provide a safeguard for any individual who might wish to sue the publication for libel.

486. With regard to the right of reply, the competent judge must call a hearing within 24 hours of receiving a written application for the right to reply publicly to published information injurious to the applicant. If the representative of the publication or the media did not appear, the judge was required to order immediate publication of the reply; if the applicant did not appear, he would lose his right ever to exercise a similar right of reply; if both attended the hearing, the judge would normally make an immediate ruling, although he could take up to three days if more time or more evidence were required. Whatever the ruling, it could be appealed to a criminal court of the second instance, which had 10 working days to reach a final decision. A recent judgement confirmed the view that both the right to express opinions and the right to reply were inherent human rights, neither having precedence over the other.

487. In connection with the journalists' right to professional secrecy, disclosure of sources by journalists was optional. If the right to professional secrecy were invoked in a court of law, the door was closed to inquiry about sources. No limitations were imposed on entry into the profession, and journalists were not required to be members of any professional organization.

488. With respect to article 27 of the Covenant, no ethnic minorities in Uruguay were denied any of their rights. People of all races and colors could rise to any station in society, and any difficulties of access or opportunity arose along social rather than ethnic lines. Minority groups were fully integrated into the various political parties, which were the sole avenue to public office.

#### Concluding observations by individual members

489. Members of the Committee commended the present situation concerning human rights, the rule of law in Uruguay and the considerable progress achieved in this regard. The dialogue with the delegation had been very productive, evidencing encouraging progress by the leadership of Uruguay in promoting national awareness of democracy and respect for human rights.

490. Members of the Committee expressed their concern over the Statutory Limitations Act, which was not consistent with the provisions of article 2, paragraph 2, of the Covenant. By prohibiting the investigation of abuses, the Act impeded the exercise by the individual of his right to effective recourse, one of the most basic human rights. Payment of compensation by the Government to the victims of the military dictatorship was a positive step. However, the number of cases of reparations - 34 - was very small in view of the scale of the abuses which had taken place under the former Government. Furthermore, it was noted that a high number of communications on which the Committee had adopted its views had not been followed up by the State party. Since the Act, both in its spirit and in its application, was contrary to the provisions of the Covenant, the State party was urged to take appropriate measures, including possible amendment of the Act.

491. Members of the Committee observed with concern that, although torture was not systematically practised, there were many reports of maltreatment in police stations. The abuse of detainees should be investigated more rapidly and the perpetrators tried and convicted. Establishment of an independent and impartial authority to hear complaints would represent

progress. Moreover, prison conditions needed to be improved and the lack of recreational facilities and training programmes should be remedied. It was noted that the length of the pre-trial detention period was not in conformity with article 9 of the Covenant. In current practice, it appeared that detention was the rule and freedom was the exception in direct opposition to the provisions of the Covenant, including the presumption of innocence in article 14. It was also suggested that efforts should be made to streamline the procedures of habeas corpus and amparo, thereby making it easier for the population to understand the remedies thus provided.

492. Members of the Committee expressed their concern over the firearms law and recommended that it be amended to conform with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials allowing their use only in cases of self-defense.

493. Members of the Committee noted that the coup d'état in Uruguay in 1973 could be attributed to a certain extent to a lack of guarantees in the constitution in force at that time. In order to prevent any repetition of such a massive violation, the necessary constitutional safeguards needed to be enacted. The laws regulating the freedom of expression, in particular, were worded in such a general way as to allow prosecution of persons criticizing the Government. It was suggested that the State party check all its laws against the provisions of the Covenant, using its dialogue with the Committee as a guide.

494. The representative of the State party assured the Committee that those questions which he had been unable to answer would be taken up by the appropriate authorities. While Uruguay still had a considerable distance to go before it achieved full recognition of the dignity of human beings and respect for human rights, his Government would make every effort to implement and improve all domestic instruments aimed at full respect for human rights and looked forward to future cooperation with the Committee.

495. The Chairman of the Committee said that, with regard to the problems caused by the Statutory Limitations Act, maximum efforts should be made to remedy past abuses and violations. Uruguay was already making such efforts and he hoped that the Committee's comments would prove helpful.

#### Comments of the Committee

496. At its 1232nd meeting (forty-seventh session), held on 8 April 1993, the Committee adopted the following comments.

#### Introduction

497. The Committee welcomes the third periodic report of Uruguay covering the important changes which have taken place in that country since 1989. The Committee takes note of the useful information contained in the report concerning recent legislative changes and appreciates, in particular, that the report in general takes into account comments made by the Committee during the consideration of the State party's second periodic report. There was, however, no information in the report on several articles of the Covenant or on implication for the Covenant of the Ley de Caducidad de la Pretensión Punitiva del Estado (Law of Expiry of the Punitive Powers of the State) which is a matter of particular concern to the Committee. The report should also have included

more information on the factors and difficulties encountered in the actual application of the Covenant and on the follow-up to the views adopted by the Committee on individual complaints under the Optional Protocol.

498. The Committee expresses its appreciation to the State party for having sent a high-level representative who introduced the report and responded to the many questions raised by members of the Committee. The valuable additional information provided by the State party's representative and his competence in matters concerning the Covenant facilitated an open, frank and fruitful dialogue between the Committee and the State party.

#### Positive aspects

499. The Committee welcomes the restoration of democracy in Uruguay and the efforts to restore respect for human rights made by the two administrations that have governed the country since the return of civilian rule. The Committee notes with satisfaction the notable progress achieved during the period under examination in bringing domestic law into line with the provisions of the Covenant. Considerable progress has been achieved with the enactment of new laws and codes and with the strengthening of democratic institutions and processes aimed at promoting and protecting human rights. Notable among these legislative achievements is the passage of the new Press Bill (Act No. 16,099 of 24 October 1989) containing guarantees for freedom of expression. The creation of a new organ "Fiscalía Nacional de la Policía" to investigate human rights abuses committed by the police is another welcome development.

500. The Committee also welcomes the holding of the first national course in Uruguay on the implementation of human rights instruments and the recent adherence by Uruguay to the Second Optional Protocol, on the abolition of the death penalty.

#### Factors and difficulties impeding the application of the Covenant

501. The Committee notes that the civilian Governments have had to overcome the authoritarian legacy of the military regime, while dealing, at the same time, with deeply rooted social and economic problems.

#### Principal subjects of concern

502. The Committee expresses once again its deep concern on the implications for the Covenant of the Expiry Law. In this regard, the Committee emphasizes the obligation of States parties, under article 2, paragraph 3, of the Covenant, to ensure that all persons whose rights or freedoms have been violated shall have an effective remedy as provided through recourse to the competent judicial, administrative, legislative or other authority. The Committee notes with deep concern that the adoption of the Law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. The Committee is particularly concerned that the adoption of the Law has impeded follow-up on its views on communications. Additionally, the Committee is particularly concerned that, in adopting the Law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further

grave human rights violations. This is especially distressing given the serious nature of the human rights abuses in question.

503. The Committee expresses a concern over the constitutional provisions relating to the declaration of a state of emergency. In particular, the Committee notes that the grounds for declaring a state of emergency are too broad and that the range of rights which may be derogated from does not conform to article 4 of the Covenant. Additionally, there is no mention in the relevant provision of the Constitution of non-derogable rights.

504. The Committee notes with concern that the regulations relating to pre-trial detention are not in conformity with article 9 of the Covenant. In this regard, the Committee underlines that, in accordance with the principle of the presumption of innocence, release should be the rule and not the exception as is the case under the current system. The Committee also notes with concern that, while there is no systematic use of torture, there are occurrences of serious maltreatment of detainees. Such occurrences indicate a lack of proper training of prison and law enforcement officials and an inadequate understanding of international standards concerning the treatment of detainees.

505. Although the new Press Law (Act No. 16,099) is in general a positive achievement, the Committee is concerned that it still includes provisions that might impede the full exercise of the freedom of expression. Foremost among these are certain provisions relating to offences committed by the press or other media, in particular articles 19 and 26 of the Law.

#### Suggestions and recommendations

506. The Committee emphasizes the obligation of the State party under article 2, paragraph 3 of the Covenant to ensure that victims of past human rights violations have an effective remedy. In order to discharge that obligation under the Covenant, the Committee recommends that the State Party adopt legislation to correct the effects of the Expiry Law.

507. The Committee recommends that the State party continue in its efforts to harmonize domestic laws with the provisions of the Covenant. In particular, procedures for dealing with remedies should be reviewed. The Committee also recommends the establishment of an impartial and independent authority to monitor the application of human rights standards and to receive complaints of abuses. Greater publicity should be given to the Covenant and the Optional Protocol to ensure that the provisions of these instruments are widely known to members of the legal profession, the judiciary and law enforcement officials, as well as to the general public. Adequate follow-up should also be ensured with respect to the views adopted by the Committee on individual cases considered under the Optional Protocol.

508. The Committee suggests that detention procedures should be revised with a view to facilitating a full application of the rights provided for under the Covenant. In particular, the penal procedure should be reformed so that it is based on the principle of the presumption of innocence. The State party should ensure that adequate remedies are available with regard to habeas corpus under article 9 of the Covenant. There should be significantly less reliance on the use of pre-trial detention, particularly in view of the fact that some abuses during detention have occurred. Legislation and

procedures concerning the use of firearms by police should be reviewed and additional training in human rights norms should be provided for police and other law enforcement officials.

509. The Committee suggests that special measures should be taken to protect minorities as provided for under article 27 of the Covenant.

510. With respect to freedom of expression, there should be greater freedom to seek information, as provided for under article 19, paragraph 3, of the Covenant. Additionally, the sanctions provided for under chapter IV of the Press Law are too wide and might hinder the full enjoyment of article 19 of the Covenant. In this regard, the law is not adequate.

## CCPR A/53/40 (1998)

234. The Committee considered the fourth periodic report of Uruguay (CCPR/C/95/Add.9) at its 1653rd and 1654<sup>th</sup> meetings, on 27 March 1998, and at its 1665th meeting (sixty-second session), on 6 April 1998, adopted the following observations.

### 1. Introduction

235. The Committee welcomes the timely submission of the fourth periodic report of Uruguay and takes note of the useful information contained in the report concerning recent legislative changes. It appreciates, in particular, that the report in general takes into account a number of comments made by the Committee during the consideration of the State party's third periodic report.

236. The Committee expresses its appreciation to the delegation for its thorough introduction of the report and responses to questions raised by members of the Committee. The valuable additional information provided by the State facilitated an open, frank and fruitful dialogue between the Committee and the State party.

### 2. Positive aspects

237. The Committee welcomes the achievements during the period under review in bringing domestic law into conformity with the provisions of the Covenant. Considerable progress has also been realized with the enactment of new laws and codes and with the strengthening of democratic institutions and processes aimed at promoting and protecting human rights. Notable among these legislative achievements is the enactment of the new Code of Criminal Procedure (Act No. 16.893).

238. It also welcomes the constitutional amendment of January 1997, which makes the electoral system more transparent and brings it in line with international norms, as well as various legislative acts to ensure equality between men and women and to prevent domestic violence, including that against women, children and old people.

239. It further welcomes the steps taken to improve the training of law enforcement officers and wardens in detention centres, as well as the agreements between the Ministry of the Interior and the universities in order to improve police training.

### 3. Principal subjects of concern and recommendations

240. The Committee expresses once again its deep concern about the Ley de Caducidad de la Pretensión Punitiva del Estado (Expiry Law of the Punitive Powers of the State) and its profound anxiety about the implications of the Law with regard to compliance with the Covenant. In this regard, the Committee emphasizes the obligation of States parties, under article 2, paragraph 3, of the Covenant, to ensure that all persons whose rights or freedoms have been violated shall have an effective remedy through recourse to the competent judicial, administrative, legislative or other authority. The Committee notes with deep concern that in a number of cases the maintenance of the Expiry Law effectively excludes the possibility of investigation into past human rights abuses and

thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. The Committee also considers 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. Therefore:

In the light of the information provided by the delegation, the Committee encourages the State party to promote and facilitate every opportunity to discuss this issue within the country, in order to find a solution that is in full compliance with Uruguay's obligations under the Covenant.

241. The Committee reiterates its concern about the constitutional provisions relating to the declaration of a state of emergency. In particular, the Committee notes that the grounds for declaring an emergency are too broad and that the range of rights which may be derogated from does not conform with article 4 of the Covenant. Additionally, the Constitution fails to make reference to non-derogable rights. Therefore:

The Committee reiterates its observations on Uruguay's third periodic report, that the State party restrict its provisions relating to the possibilities of declaring a state of emergency, and constitutionally specify those Covenant rights which are non-derogable.

242. The Committee appreciates the new Code of Criminal Procedure that will come into force in July of 1998. However, it notes with concern that the following aspects thereof are not in conformity with the Covenant:

(a) The Committee is particularly concerned with article 55 of the Code in accordance with which a suspect may be placed in "incommunicado" detention until a decision is taken as to whether he should be committed to stand trial, and with the fact that during this period the judge may restrict contact by the suspect with a lawyer. The Committee recommends that this provision is brought into conformity with the Covenant;

(b) The Committee is concerned that the regulations relating to pre-trial detention both in respect of suspects (*imputados*) and accused are not in conformity with article 9 of the Covenant. In this regard, it underlines that, in accordance with the principle of presumption of innocence, pre-trial detention should not be mandatory. It is also concerned with the wide possibilities which exist to restrict a suspect's liberty as set forth in article 185 of the Code, in the light of the broad definition of "*imputado*", contained in article 51 (1) of the Code. The Committee recommends that detention procedures and other restrictions on the liberty of suspects and accused should be revised with a view to facilitating full application of the rights provided for under the Covenant, having particular regard to the principle of the presumption of innocence;

(c) The Committee is concerned that, in accordance with the new Code, the trial judge is the same judge who has supervised and/or ordered investigations, and who subsequently charged the defendant. This raises serious concerns about possible impartiality of the trial. The Committee recommends that the new Code ensure true impartiality in accordance with the Covenant;

(d) The Committee is concerned about articles 89 and 90 of the Code which provide that the marriage to the accused of a victim of rape, even statutory rape, and of other criminal offences,



extinguishes the criminal offence or the sentence handed down at the trial, to the benefit of a perpetrator who has subsequently married the victim, and particularly of all other participants in the offence. The Committee recommends that these provisions be modified to conform to the Covenant.

243. Although the new Press Law (Act No. 16,099) is in general a positive achievement, the Committee is concerned that it still includes provisions that might impede the full exercise of freedom of expression. Foremost among these are certain provisions relating to offences committed by the press or other media, in particular articles 19 and 26 of the law, relating to false information and to slander through the media. Therefore:

With respect to freedom of expression, there should be greater freedom to seek information, as provided for under article 19 (3) of the Covenant. Additionally, the sanctions provided for under chapter IV of the Press Law are too wide and may hinder the full enjoyment of article 19 of the Covenant. In this regard, the law is not adequate.

244. The Committee, while recognizing the progress made by the State party in respect of children's rights and in particular the future Code Relating to Minors (Codigo del Menor), remains concerned with the information provided by the delegation, that the future Code discriminates against female minors and fails to protect fully the new born child, as unmarried minor mothers may register their children at any age, whereas minor fathers may only do so from the age of 16 onwards. In this regard:

The Committee urges the State party in the course of drafting this Code to bring the whole of it into full conformity with articles 3 and 24 of the Covenant. It wishes to receive the text of the Code when it is enacted.

245. The Committee is concerned about the statement of the State party that no minority group exists in Uruguay and recommends that the State party continue to develop its efforts in identifying the minority groups within the country and adopt the pertinent measures to ensure that the rights under article 27 are respected.

246. The Committee recommends that the State party proceed as rapidly as possible with the Bill before Parliament on the Ombudsman (Defensor del Pueblo), and that the Office should be independent of the Government, have jurisdiction to deal with human rights violations, and be adequately staffed to deal with complaints of abuse.

247. The Committee is concerned with the information provided by the State party, in respect of the follow-up on the Committee's decisions in individual cases, where the Committee has established a violation of the Covenant. In particular, the Committee does not consider it appropriate to expect a person found to be a victim of a human rights violation to have to initiate new procedures before the domestic courts to establish the violation, and considers that the statute of limitations should not apply. Therefore:

The Committee recommends that the State party provide a remedy in accordance with the views adopted by the Committee on individual cases considered under the Optional Protocol.

248. The Committee further recommends that greater publicity should be given to the Covenant and the Optional Protocol to ensure that the provisions of these instruments are made widely known to the legislature, the executive, the judiciary, law enforcement officials and members of the legal profession, as well as to the general public.

249. The Committee draws the attention of the Government of Uruguay to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 21 March 2003, contain material which responds to all of these concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Uruguay.

250. The Committee fixed the date for the submission of Uruguay's fifth periodic report as June 2003.