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SUMMARY RECORD OF THE 1653rd MEETING

Held at Headquarters, New York,
on Friday, 27 March 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. EL-SHAFEI
(Vice-Chairperson)

later: Ms. CHANET

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Uruguay (CCPR/C/95/Add.9; HRI/CORE/1/Add.9/Rev.1)

1. At the invitation of the Chairperson, Mr. Alvarez (Uruguay), Mr. Pelufo (Uruguay) and Mr. Talice (Uruguay) took places at the Committee table.

2. Mr. TALICE (Uruguay), introducing the fourth periodic report of Uruguay (CCPR/C/95/Add.9; HRI/CORE/1/Add.9/Rev.1), said that since 1985, when his country had emerged from a period that had constituted a significant break from its long institutional tradition, it had consolidated and continuously enriched the democratic system which it now enjoyed, one characterized by the highest degree of protection of the human rights guaranteed by national and international norms. For over 12 years, the constitutional, legal and political framework in Uruguay had ensured the full and effective exercise of the rights embodied in the Covenant and other international instruments.

3. Referring to the main positive developments that had occurred in his country since the submission of the fourth periodic report, he pointed out, first, that his Government had continued the process of ratification of various international human rights treaties, including the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) and the United Nations Declaration on the Elimination of Violence against Women, the Inter-American Convention on the Forced Disappearance of Persons and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol).

4. Secondly, an amended Uruguayan Constitution had entered into force on 14 January 1997. Certain provisions of the 1967 Constitution, mainly those relating to the electoral system, had been amended, replaced and supplemented with a view to enhancing the transparency of the text and adapting it to the contemporary era, in which a multiparty system had replaced the historic two-party system. The object was to enable the country's democratic institutions to function more effectively, and was therefore closely related to article 25 of the Covenant. The constitutional changes included amendments to article 77, paragraph 9, which provided for national and municipal elections to be held in alternate years, and the addition of article 77, paragraph 12, which provided for the presidential candidates of the political parties to be chosen through internal elections. That was a profoundly democratic reform which placed decision-making in the hands of the electorate. The new text of article 151 spelled out the most important change in the electoral system: it provided for only one candidate for President and Vice-President from each of the political parties, and for a second round (balotaje) to be held if no candidate won a simple majority on the first round.

5. The new text of article 312, which dealt with financial reparation of damage caused to individuals by administrative acts, allowed persons whose

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legitimate interest was affected by an administrative act to choose between application for annulment of the act and direct reparation of the damage caused by the act. That solution afforded greater flexibility with regard to the effective remedies to which individuals were entitled under article 2, paragraph 3, of the Covenant.

6. The new text of article 47, which declared environmental protection to be of general interest and prohibited any act causing serious degradation, destruction or contamination of the environment, established the right to a healthful and ecologically balanced environment as part of the right to life.

7. At the time of its consideration of the third periodic report in March 1993, the Committee had expressed its concern over the constitutional provisions relating to the declaration of a state of emergency, particularly article 31 (suspension of individual security) and article 168, paragraph 17 (prompt security measures). The Committee had noted that the grounds for declaring such a state were too broad and that the range of rights which might be derogated from did not conform to article 4 of the Covenant. While that question had not been addressed in the context of the constitutional reform, which had focused on the need to modernize the electoral system, the constitutional deficiencies in that area were largely mitigated by the provisions of the Covenant itself, especially article 1, paragraph 2, and article 4, and by similar provisions contained in the Inter-American Convention on Human Rights, all of which were directly applicable in his country and had the same status as its laws, or even a higher status. While there was no express constitutional provision to that effect, it was accepted in theory and borne out by judicial precedents that a treaty ratified by Uruguay was incorporated directly into its domestic law and could be invoked before the national courts without the need for supplementary legislation. Furthermore, the status of human rights treaties could not be affected by any subsequent domestic laws.

8. As a final point, the new Code of Criminal Procedure, referred to in paragraphs 45 to 47 of the report, had been adopted and would enter into force on 1 July. The new Code stated expressly that the remedy of habeas corpus could not be impaired or suspended as a result of the states of emergency provided for in the Constitution.

9. Thirdly, the entry into force of the new Code would give legal effect to the reforms promised in the earlier report that were designed to ensure compatibility with the Covenant. Criminal proceedings would now take place through oral argument and in public session. Defence lawyers would intervene at the start of the proceedings, rather than only in the trial phase, and prosecutors would play a more prominent role. The new Code substantially modified the current inquisitorial system, which had functioned very slowly due to the written and secret nature of the inquiry proceedings and the fact that investigations were carried out by the judges themselves, resulting in sentencing delays for a large percentage of prisoners. Under the new Code, criminal complaints would be transmitted to the prosecutors; a criminal action could not be brought unless the prosecutor proposed the initiation of proceedings to the judge. For their part, judges could not commit a person for trial unless the prosecutor so requested, and judges were required to close a case at the demand of the prosecutor. Thus, the role of judges would be limited

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to that of impartial third parties, in contrast to the current system, in which they also had investigatory functions.

10. Other improvements provided for in the new Code included the establishment of special courts to monitor the rights of prisoners, the legal regulation of the extradition and habeas corpus procedures, and the adoption of the principle of timeliness, designed to reduce the number of criminal actions.

11. Fourthly, a number of new legislative texts had been promoted by the executive authority; some had been approved and promulgated during the period under review, while others were awaiting parliamentary approval. Among the laws now in force was the Law of Expiry of the Punitive Powers of the State (Ley de Caducidad de la Pretensión Punitiva del Estado), which contained various provisions relating to human rights. That law incorporated the crime of domestic violence into the Code of Criminal Procedure, and introduced changes into the Code of the Child with regard to the internment of minors, the powers of juvenile court judges and crimes committed by persons under 18 years of age.

12. Another law, Executive Decree No. 37/997, was designed to promote equal treatment and opportunities for women and men in the area of employment.

13. The most sensitive issue which his country had faced in recent times concerned the human rights violations committed during the period prior to the restoration of democracy in 1985. As the members of the Committee were aware, the relatives of persons who had disappeared during the dictatorship had made various requests for investigations into their fate. Such requests were linked to the Expiry Law, which declared the extinction of the State's punitive power with respect to crimes committed by military and police officers during the period prior to 1 March 1985.

14. During its consideration of the third periodic report, the Committee had expressed its concern that the Expiry Law excluded the possibility of investigating previous human rights violations, thus preventing Uruguay from complying with its obligation to provide an effective remedy to the victims.

15. As pointed out on previous occasions, the reinstatement of a democratic Government after 12 years of military rule had implied the need to rebuild the country's institutional structures and restore the equilibrium of a deeply divided society. Among the measures adopted had been the Expiry Law, which had reflected a principle of Uruguayan law, namely, that anyone who caused damage must repair it. Since 1985, a large number of civil judgements had been handed down, awarding significant amounts of compensation to claimants. Furthermore, there were no limitations on the right to bring civil actions seeking monetary damages, and no obstacles to the production of evidence, including the testimony of police and military personnel.

16. All those measures had given an impetus to the process of national pacification, and all political and social sectors could now exercise their rights freely. Over the past 12 or 13 years, the effective exercise of freedom of expression without censorship or restriction of any kind, as well as freedom of assembly and association, had demonstrated the pluralism prevailing in the country. It was through the exercise of those rights and freedoms, and not

through any act of authority, that the country was gradually arriving at the truth about those who had disappeared.

17. Uruguay had chosen its own path to solving its problems, based on pacification, democratization, protection of the rule of law and the full enjoyment of human rights, subject to such limitations as were justified by the demands of public welfare. Contrary to what the Committee had once predicted, the measures adopted had in no way contributed to creating an atmosphere of impunity that could undermine the democratic system.

18. His Government had been unable to comply strictly with the Committee's recommendations that it should adopt measures to elucidate the facts and name those responsible for human rights violations during the dictatorship. That did not mean, however, that the Expiry Law had affected the right of the victims to seek an effective remedy before independent courts. In the first place, as the acts in question were irreversible, there was no way to restore the rights that had been violated. Secondly, the remedy of claiming financial reparation for the damage caused had not been undermined by the Expiry Law.

19. The question of persons who had disappeared was currently the subject of broad and unrestricted public debate. His Government had in no way impeded any initiatives which might contribute to the pacification and reconciliation of Uruguayans, so long as they did not endanger other values which it deemed to be essential. Uruguayan society was continuing to explore ways of alleviating the anxiety of the relatives of missing persons; for instance, a high-ranking official of the Catholic Church had proposed a dialogue between the relatives and those members of the armed forces who might be willing to give testimony about the missing persons' fate.

20. The record of events since 1985 showed a clear desire on the part of the authorities and of Uruguayan society as a whole to put the past behind them, not in order to deny it or to prevent the truth from emerging, but to ensure that every Uruguayan, regardless of his or her past, could have a second chance. The country had now embarked on an electoral process that would culminate in national elections in October 1999. The question of those who had disappeared was one that all political candidates would have to address.

Part I of the list of issues

Issue 1: Right to an effective remedy (article 2(3) of the Covenant)

21. The CHAIRPERSON read out the questions relating to issue 1: how and by whom the investigations on all the cases of disappeared persons, ordered pursuant to article 4 of the Expiry Law, had been carried out; outcome of the investigation and steps taken by the State as a result thereof; legislation to compensate persons who had suffered human rights violations; indemnification of the victims.

22. Mr. TALICE (Uruguay) said that the courts which had heard the complaints of human rights violations during the military period had transmitted the cases in question to the executive authority, which had ordered the administrative investigations prescribed by law. Those investigations had been entrusted to

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the competent Military Prosecutors' Offices under the Ministry of National Defence.

23. The investigations carried out had failed to provide elucidation of the facts. Evidentiary proceedings had been held; testimony had been collected, mainly from the military officers mentioned in the complaints. The victims themselves, or their relatives, and representatives of non-governmental human rights organizations had also been summonsed to appear before the prosecutors, but most of them had refused to cooperate in the investigations. A report on the outcome of the investigations had been transmitted to a group of legislators and had been widely publicized by the media.

24. With regard to compensation and/or reparation, various types of measures had been implemented. Law 15,737 (Ley de Pacificación Nacional) had decreed an amnesty for all civilian and military political crimes committed beginning on 1 January 1962. It had also recognized the right of all Uruguayans to return to the country and the right of public employees dismissed by the military Government to be reinstated in their posts.

25. Law 15,783 had established the right of persons who had been dismissed on political or ideological grounds, for belonging to a trade union, or for purely arbitrary reasons, or who had been forced to retire or resign, to resume their administrative careers. Some 18,000 claimants had been compensated, at a cost to the State of \$120 million; 12,000 employees had been reinstated, and 6,000 persons had had their pensions increased.

26. On 24 December 1997, the executive authority had issued a decree providing for reparation to be made to military personnel who had been dismissed from the armed forces for political, ideological or purely arbitrary reasons, granting them the status of military retirees.

27. Lastly, no special legislation had been needed in order to compensate the victims of human rights violations during the military period, because the existing legislation on the State's financial responsibility had fully met the expectations of the claimants.

28. Mr. ÁLVAREZ (Uruguay) said that Uruguay had submitted a periodic report to the Committee on the Elimination of Discrimination against Women containing detailed information on the steps that had been taken to combat discrimination against women. Among the measures mentioned were the creation of the National Institute for Women and the Family and the implementation of several programmes aimed at combating discrimination. Furthermore, Law 16045 prohibited any type of discrimination in the workplace that violated the principle of equal opportunity for men and women. It also provided for the establishment of an interministerial commission with representatives from workers, employers and non-governmental organizations. The commission had launched education campaigns and set up support programmes for working women.

29. The consequences of the application of articles 89 and 90 of the new Code of Criminal Procedure were that if a victim of a sexual crime listed in article 89 subsequently married the perpetrator, the criminal offence or the penalty already applied in a trial were extinguished vis-à-vis both the

perpetrator and any participants. The articles were applied in the interest of the family and only when the victim consented to the marriage.

30. Uruguay had taken both legal and practical steps to eradicate domestic violence and it had ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women in 1996. Domestic violence had been a criminal offence since July 1995; the relevant law (16,707) protected not just women but also children, adolescents, the aged and the handicapped. Marital rape was, of course, a crime in Uruguay.

31. As far as practical measures to combat domestic violence were concerned, the National Institute for Women and the Family had implemented a plan to train civil servants - including police, doctors and social workers - who dealt with the victims of such violence. The Ministry of the Interior had also set up the Office of Technical Assistance to Victims of Domestic Violence, which provided assistance for women and minors who were victims of such violence as well as for witnesses to violence. In addition, a scientific study of the victims of domestic violence, done in cooperation with non-governmental organizations, had provided a profile of family violence. Lastly, a hotline had been set up for women victims of violence.

32. Mr. El-Shafei (Vice-Chairman) took the Chair.

33. Mr. TALICE (Uruguay) said that there had been isolated cases of torture or ill-treatment by law enforcement officials during the reporting period. As an example, in 1997, complaints had been filed against nine police officers, eight of whom had been brought to trial; of those eight, two had received prison sentences. There was a body in the Ministry of the Interior responsible for not only receiving complaints but also for investigating any irregularities that came to its attention and initiating criminal prosecution if the case so required. Parliament was currently considering a bill which would criminalize torture. At present the Criminal Code made no mention of torture, although it did list other offences, such as causing serious injury, which could be invoked against perpetrators of torture and which stipulated that the crime was aggravated if committed by a civil servant. Lastly, Uruguay had ratified the regional and global international Conventions against torture and cruel, inhuman and degrading treatment and punishments.

34. The new Code of Criminal Procedure was a significant step forward in assuring that the rights of persons accused of a crime in Uruguay were in keeping with those afforded them by the Covenant for it stated that persons accused of a crime were to be treated with due respect and humanely and that all persons were innocent until proven guilty by a court of law. The new Code divided offences into three categories: minor, intermediate and serious (those covered by articles 194.1 and 199 of the Code). Pre-trial detention was not allowed for persons charged with minor offences; where a person was charged with an intermediate offence, it was up to the discretion of the court to determine whether such detention was appropriate; there were a variety of alternative measures, which were listed in paragraph 81 of the report. Pre-trial detention was obligatory only when a person was accused of one of the most serious offences for which the minimum punishment involved imprisonment or when because

of the nature of the offence there was a danger that the accused would attempt to escape justice.

35. Article 55 stipulated that the accused had the right to speak to his lawyer as soon as the latter took the case and before the start of preliminary proceedings, after which they could not speak again until it had been decided whether or not to proceed to trial. The Government believed that the right to defence was duly covered during the initial stages of the proceedings with that procedure, and at the same time, the collection of evidence could not be hindered by the defence lawyer.

36. Although it was true that the percentage of defendants in detention awaiting conviction was high, the new Code of Criminal Procedure provided for a number of mechanisms to correct that problem. For example, article 49 of the new Code stated that in a number of instances, including where the accused had been caused grievous harm while committing the crime, in lesser crimes and in crimes involving property where the accused had compensated the victim, the prosecuting attorney could decide not to bring the case to trial. Steps were also being taken to abbreviate the accusatory process in general, and in some cases the Code provided for single-hearing proceedings.

37. Ms. Chanet resumed the Chair.

Issue 6: Protection of juvenile offenders (articles 10 (2) (b) and (3) and 24 of the Covenant)

38. The CHAIRPERSON read out the questions relating to issue 6: whether the Instituto Nacional del Menor (National Minors' Institute (INAME)) made special premises available for the detention of juvenile offenders in order to avoid their detention in high-security establishments (para. 95 of the report) and examples of measures taken to "re-educate minors in trouble with the law" (para. 96 of the report).

39. Mr. ALVAREZ (Uruguay) said that a draft Code on the Child and Adolescent, which would supersede both the Code of the Child of 1934 and the provisions of the Law on Citizens' Security (16,707), was under consideration in Parliament. The draft Code, which was expected to be adopted in the near future, would radically alter the treatment of juvenile delinquents. Although the Law on Citizens' Security provided for the detention of juveniles in high-security establishments, in practice, minors were detained in special INAME establishments only.

40. Since, under Uruguayan law, minors could not be prosecuted, measures taken against juvenile delinquents were of a purely social nature. Under article 124 of the Code of the Child and the Convention on the Rights of the Child, they included the return of minors to their families; the issuance of a summons to their parents; compensation for damage; community service in schools or hospitals; prohibition from going to certain places; the surrender of the minor to third parties; or detention in official institutions.

41. There were four special INAME detention centres for minors: Burgues, Chimborazo, La Tablada and Miguelete. The treatment of juvenile prisoners had

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improved as a result of official cooperation with non-governmental human rights organizations, including Service, Peace and Justice (SERPAJ). Since 1995, the Institute and representatives of non-governmental organizations had conducted a job training and placement programme for juvenile prisoners, which offered workshops in iron working, animal breeding and gardening, and another special programme for 56 of the 141 youth imprisoned nationwide. In general, the emphasis was on rehabilitation and not on punishment. Studies indicated that juvenile delinquents came from poor backgrounds and broken families and had little formal education. The State was seeking to reintegrate them through education, literacy and job training. A team of experts continually monitored the psychological state of the juvenile prisoners. All centres had a very flexible visiting schedule and the Institute paid long-distance travelling expenses of family members, where necessary.

Issue 7: Child labour and abuse of children and issue 8: Protection of the child (article 24 of the Covenant)

42. The CHAIRPERSON read out the questions relating to issue 7: information on the occurrence of child labour and child abuse, within and outside the family, and on measures taken to combat and prevent such phenomena; and those relating to issue 8: the amendment of the legal provisions establishing the minimum marriageable age of 14 for boys and 12 for girls (article 24, para. 1 of the Covenant and para. 144 (a) of the report; information on reported discrimination against illegitimate children in the Civil Code; legal treatment of children born to minors; and the legal regime applicable to homeless children.

43. Mr. TALICE (Uruguay) said that the draft Code on the Child and Adolescent, submitted by the executive branch, would truly update legislation in that area, taking into account the recommendations of, inter alia, international organizations and such bodies as the Committee on the Rights of the Child and the Human Rights Committee. One of the main goals of the draft Code was to ensure the compatibility of current legislation with the provisions of the United Nations Convention on the Rights of the Child. The draft Code was a comprehensive text which dealt with rights and duties, the rights of parents and the State, social policies for children and adolescents, guardianship of the child and adolescent, visiting schedules, nutrition requirements, abandonment, foster homes, adoption, child labour and protection on the job, protection in the mass media and advertising, and the treatment of juvenile delinquents. In addition, an honorary National Council on the Rights of the Child and Adolescent had been established.

44. The draft Code was extremely innovative in that, for the first time, it established children as the subject of rights and duties; guaranteed their right to protection by their families, society and the State; stressed the importance of family life for the child's development and the child's right not to be separated from his or her family for financial reasons; and established the duty of children and adolescents to show respect at home, in school and in social life and to devote themselves to acquiring knowledge and developing their aptitudes and skills.

45. It also established social policies to protect the rights of children and adolescents enshrined in the Constitution; programmes for homeless, marginalized

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and disabled children and adolescents; medical and psycho-social programmes for victims of negligence, abuse, violence or sexual exploitation; programmes for the legal and social protection and rehabilitation of juvenile delinquents; and sports, cultural and recreational programmes.

46. The draft Code guaranteed minors due process. Children under 12 years of age could not be prosecuted; Family Court judges determined the action to be taken in such cases, on the basis of the individual's family and social conditions. Juvenile delinquents between 12 and 18 years of age were subject to special proceedings and, at the discretion of the Juvenile Court Judge, such measures as warnings, support and guidance, community service, imprisonment, part-time detention, weekend arrest, or release and assistance were applied. Juveniles were incarcerated separately from adults.

47. The draft Code established 15 years as the minimum employment age in both the public and private sectors, in conformity with the Convention on the Rights of the Child. It required the State to protect children in situations of, inter alia, abandonment, sexual abuse or exploitation (prostitution), harassment, segregation in or exclusion from educational establishments, leisure activities or work; economic exploitation or any other type of work that was harmful to their health or their physical, spiritual or moral development; and cruel, inhuman or degrading treatment.

48. The draft Code did not set a minimum age for marriage. With a view to ensuring compatibility with the Covenant, national legislation would no longer differentiate between the status of legitimate and illegitimate children. It would also guarantee a mother's right to recognize her child, regardless of her age; the father must be at least 16 years of age.

49. Lastly, with regard to street children, estimated in a 1990 survey to number 1,000, a preventive action programme had been launched in 1986 to deal with families that appeared to be at risk of disintegrating. Street children were also receiving assistance from various non-governmental organizations.

50. Mr. PRADO VALLEJO expressed concern that the Expiry Law was still in force, despite the Committee's repeated objections. Liability for crimes against humanity, including those committed against the missing, should not lapse with the passage of time. Civil remedies affording compensation to victims or their families were not sufficient; if the Government did not investigate and prosecute the authors of such crimes, a regime of impunity would persist.

51. He expressed surprise that torture was not characterized as a crime by Uruguay's effective and modern democracy and that it was, in fact, routinely practised during investigations. He wondered what steps the Government was taking to remedy that situation, which constituted a serious violation of human rights. Moreover, the large number of prisoners held incommunicado seemed to reflect a discrepancy between law and practice. He also inquired why 49 out of the 54 police officers found guilty of crimes in the exercise of their duties were still in their posts. He wondered whether measures reportedly established to control that situation had been implemented and whether they had been effective.

52. It would be useful to know whether there had been an increase in penalties commensurate with the increase in offenses characterized in the Penal Code. It was not clear why the fact that a victim was employed was considered an aggravating circumstance.

53. The Committee, in its comments under article 7 of the Covenant, had stressed that preventive detention should be the exception and not the rule. And yet, according to the available statistics, a high percentage of prisoners awaiting trial (procesados) were in preventive detention. The presumption of innocence was undermined by the Penal Code's prescription of preventive detention for all cases where penitenciaria was stipulated. He wondered why Decree no. 690, a carry-over from the military dictatorship - whereby anyone could be detained at any time for investigation - was still in force. Did the democratic Government plan to repeal it? Lastly, he wished to know whether an effort was being made to provide human rights training to Uruguayan police officers, many of whom still had the mentality of the dictatorship era.

54. Ms. MEDINA QUIROGA welcomed the legislative and administrative progress achieved in Uruguay and the successful development of its democracy, which paralleled the situation of her own country. She wondered whether it was the military which had failed to provide the courts with sufficient information to prosecute in certain cases and whether any cases involving military personnel had been referred to the ordinary courts.

55. The State's failure to seek information on the whereabouts of the missing and inform their families constituted a violation of article 7 of the Covenant.

56. She expressed surprise that the Government had not taken steps that were clearly within its power to improve the situation of women, such as increasing the number of women ministers, ambassadors, judges and women in other appointed positions. The fact that statutory rape did not entail criminal liability under article 90 of the new Code of Criminal Procedure seemed to constitute a human rights violation. She also wondered why a father must be at least 16 years of age in order to recognize a child born out of wedlock.

57. Turning to articles 9 and 14 of the Covenant, she welcomed the tremendous progress represented by the adoption of a new Code of Criminal Procedure. However, she questioned the regulation of the relationship between a suspect (imputado) and counsel (art. 56.3 of the new Code). Since the report only specified that the investigatory procedures were public (para. 16), she wondered whether the preliminary inquiries, a crucial phase, were public as well. She voiced concern not only about the deprivation of suspects' liberty but also about limitations imposed on their physical liberty and the fact that, under article 51 of the Code, anyone alleged to have been connected with a crime in any way was considered a suspect.

58. The new Code was also contradictory with regard to preventive detention. In one article, it required judges to order preventive detention (art. 194.1), causing them to ignore another article which gave them some latitude in deciding on the matter. She also expressed doubt about the impartiality of judges who, under the Code, presided over cases from the time of the prosecutor's initial application to the sentencing; that seemed to be contrary to the provisions of

article 14 of the Covenant. The suspension of the political rights of prisoners awaiting trial (procesados) seemed incompatible with article 25 of the Covenant. She would appreciate clarification of the power of the courts to decide on petitions of habeas corpus during a state of emergency. It would also be useful to know whether the declaration of a state of emergency could be opposed in court under the Constitution or under article 4 of the Covenant.

59. Lord COLVILLE, recalling that some persons in pre-trial detention actually were and would be found innocent, said that a long pre-trial detention violated both article 10 and article 14, paragraphs 2 and 3 (c). Since a surprising 80 per cent of all prisoners were apparently those in pre-trial detention, it would be useful to have more information on the actual extent of the problem in Uruguay. There was a system under Decision No. 7019 of the Supreme Court whereby a judge had to explain in writing if over 120 days had elapsed before a detainee was brought to trial, and another system where persons held in pre-trial detention for three years were automatically released, and he wondered how often instances of either had occurred in the previous three or four years.

60. He applauded the new Code of Criminal Procedure which would come into effect in June and should indeed speed up the judicial process. What, however, would be the transitional provisions governing those who were tried now? It was unimaginable that the backlog would immediately disappear, and he hoped that judges could use a high degree of discretion in, for instance, setting bail, even for the more serious offences. The very comprehensive official list of bail sums might even make it possible to release detainees held for a long time so that they could then take advantage of the new rules.

61. Mr. KLEIN, recognizing the legal framework that had created greater stability in Uruguay in recent years, said that he had rarely seen a finer reflection on freedom of expression than in the recent Uruguayan court ruling cited in the report (para. 122), worthy of inclusion in any legal treatise.

62. He, too, was alarmed about the rules for pre-trial detention and would like to know the minimum prison sentence according to the Penal Code. If there proved to be a correspondence between the relevant prison sentence and the time spent in pre-trial detention, the long delay would be doubly disproportionate.

63. With regard to medical experiments (report, para. 65 et seq.) he asked who gave consent to any experiments carried out on the mentally ill. Concerning the three grounds of divorce given in paragraph 151 of the report, he asked whether a divorce could not be granted at the husband's as well as the wife's request. Concerning freedom of movement (report, para. 98), the restrictions "required by the general interest" should be clarified, in the light of article 12, paragraph 3, of the Covenant. Regarding article 25 of the Covenant, it seemed to him that article 77, paragraphs 4, 5 and 8, of the Constitution (report, para. 154) took an overly broad approach in restricting the political activities of public officials. Lastly, when the delegation took up part II of the list of issues and dealt with article 27, he would appreciate an explanation of why the groups referred to in paragraph 165 of the report did not constitute minorities.

64. Mr. ANDO said that it had been reported that of the 165 outstanding cases of disappeared persons only 27 had failed to show proof of disappearance, and

the rest had not been resolved. When non-governmental organizations made investigations of their own, of course, governments sometimes tried to block them. In any case, Uruguay must investigate all such cases, for reparation was not the only remedy.

65. He agreed that the new Code of Criminal Procedure should expedite the judicial process. Concerning the independence of the judiciary, the report and the core document made reference only once to the matter, citing article 2250 of the Constitution on retirement of judges; but far more details were needed in answer to the questions the Committee had raised in connection with the previous periodic report, regarding guarantees of independence, mode of appointment, tenure and the like.

66. Concerning article 25, he asked the delegation to give persuasive reasons why Uruguay was keeping to the tradition of excluding certain minorities from military service, an approach that was perhaps not conducive to stability. He also asked for clarification as to whether a child of minors could be registered.

67. Mr. BUERGENTHAL said that Uruguay had submitted such a fine report, very effectively supplemented by the delegation's oral presentation, that he had few questions left. Uruguay could be justly proud of its democratic history, with the exception of the one dark interlude under dictatorship, for it had long been a showplace for both democracy and social welfare in the region.

68. He was particularly saddened by the Expiry Law, for it was not in the tradition of the country not to investigate human rights violations, even when granting compensation to the victims. Matters were made worse by the way in which investigations, presumably in keeping with article 4 of the Covenant, had been carried out, some of them by the military themselves. A country like Uruguay seemed actually to be encouraging impunity. He therefore strongly supported the comments in that regard by Mr. Prado Vallejo and Ms. Medina Quiroga. Experience had shown that uninvestigated human rights violations festered, and Uruguay might eventually have to reach the same decision as had Argentina on the repeal of a similar law.

69. He wondered whether the time had not come to establish an independent body to investigate abuses occurring under police detention and in prisons. He supported Lord Colville's remarks on pre-trial detention.

70. He asked for clarification as to whether the law on domestic violence contained a specific provision that made marital rape a criminal offence. Also, torture was not designated as an offence and it was important to do so, especially in a country with Uruguay's experiences.

71. Mr. EL-SHAFEI said that more information was needed on the many bills referred to as pending in the report, despite the good oral update. He wondered, for instance, if there had been any change in the laws governing the declaration of states of emergency; in considering the previous report, the Committee had said that the grounds were too broad and that the range of rights derogated from violated article 4. Had the referendum referred to in the report (para. 38) taken place? More information would be useful on the extent to which

the alternatives to pre-trial detention (report, paras. 75 et seq.) had been implemented and the extent to which they had alleviated the burden on prisons. Also, information should be given on specific measures taken to improve areas where the Government recognized there was not full gender equality (report, para. 22), particularly in cases where equality was seriously limited.

72. Ms. EVATT asked whether the new decree prohibiting discrimination in employment did so only on the grounds of sex, whether violations led to the prosecution of the employer or other punitive proceedings, and whether it offered a remedy to the individual victim, and if so, if complaints were heard in ordinary courts or special tribunals. She noted that full equality in government appointments as well needed to be ensured.

73. Regarding the effect of marriage on the crime of rape, she had concerns about the concept of free consent, particularly in view of the low marriageable age. She failed to see why other participants in the offence should be released from liability and worse yet, how the situation could be allowed to continue, since rape in marriage was now an offence in itself.

74. Under Uruguayan law, there could be no discretion in dealing with certain offences, and in such cases, detention related only to the nature of the offence and not to the circumstances. Even though the Committee had been told that in average cases the situation of the suspect was relevant, it was her impression that the basic rule was still detention. That ran counter to the thrust of article 9, paragraph 3, of the Covenant, under which, because of the presumption of innocence, detention should not be the general rule.

75. She asked for confirmation that it was now an offence to employ children under the age of 15. Also, she would like copies of the legal provisions relative to the recognition of the children of minors, early marriage and the situation of extra-nuptial children.

76. She had been encouraged by the statement that the Government would not create obstacles if new paths were found to open inquiries into cases of disappeared persons. There had, however, been reports that the Government and the court had indeed blocked investigations and cited the law in doing so. Intervention by the Church would be welcome, but the fact remained that the Government itself was responsible as the guardian for all its people. Independent, impartial inquiries were essential. The ghosts of the past would not rest until the facts were fully revealed.

77. Mr. POCAR said that he had been happy to note the number of improvements in Uruguay since the last report. The implications of the Expiry Law, with its intolerable impact of impunity on the country, must nevertheless be underscored, even if, fortunately, the democratic order had apparently not been undermined in Uruguay. Under the Committee's case law, there were three facets to addressing the problem of disappeared persons: punishment, compensation and investigation. The State had an obligation to proceed against those responsible although, in the interest of national reconciliation, it might decide to absolve them. Victims could be compensated without reference to either punishment or investigation. Investigation, however, had an independent standing, not necessarily linked to either punishment or compensation, and it was never

possible to say that it was no longer necessary. Survivors of disappeared persons had the right to know; in respect of the victims, a failure to investigate could, he believed, be considered a violation of article 16 of the Covenant on the right to recognition as a person before the law. Any uninvestigated disappearance in a real sense denied that right and in itself constituted a new, current violation of the Covenant distinct from past violations. He would be interested to hear what thoughts the delegation had on the subject.

The meeting rose at 1.10 p.m.