



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports of States parties under  
article 29 of the Convention**

**Initial reports of States parties due in 2011**

**Uruguay\***

[4 September 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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## I. Introduction

1. The initial report of Uruguay to the Committee on Enforced Disappearances, on the measures taken by the Uruguayan State to fulfil its obligations under the International Convention for the Protection of All Persons from Enforced Disappearance, is submitted herewith in accordance with article 29, paragraph 1, of the Convention.
2. This country report was drafted and structured in line with the Guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2).
3. The drafting of this initial report was coordinated by the Directorate of Human Rights and Humanitarian Law of the Ministry of Foreign Affairs of Uruguay.
4. Extensive consultations were held with the various State bodies involved in this issue, principally the Human Rights Directorate of the Ministry of Education and Culture, the Ministry of the Interior, the Ministry of Defence, the judiciary, the legislature (Chamber of Deputies Human Rights Committee) and the Secretariat for Follow-up on the Peace Commission.
5. Open-ended consultations were also held with various NGOs and other civil society bodies involved with the defence of human rights.

### A. Brief background to the issue of enforced disappearance in Uruguay

6. Since the Convention entered into force, no cases of the offence of enforced disappearance have been recorded in Uruguay.
7. Even though there have been no cases during the period covered by the report, the issue of enforced disappearances is a matter of the highest legal and ethical importance for the State. Following the restoration of democracy after the period of de facto Government (1973–1985), Uruguay signed the Inter-American Convention on Forced Disappearance of Persons in 1994 and ratified it by Act No. 16724 of 23 November 1995.
8. The Uruguayan State later played an active part in the *travaux préparatoires* on the International Convention for the Protection of All Persons from Enforced Disappearance, signed the Convention on 6 February 2007 and ratified it by Act No. 18420 of 8 December 2008.
9. The entry into force of the Convention on 23 December 2010 and the subsequent election of the Committee under article 26 are two major events that have not gone unnoticed by the Uruguayan State. It wishes the new Committee every success as the monitoring body for the Convention and assures it of its readiness to work together constructively in order to put a stop to the scourge of enforced disappearance.
10. In that regard, Uruguay notes the positive nature of the Convention and fully shares its underlying philosophy of prevention.

### B. Enforced disappearance in Uruguay in the pre-dictatorship period and during the last military dictatorship (1973–1985)

11. During the pre-dictatorship period and during the last military dictatorship imposed on Uruguay (27 June 1973 to 15 February 1985), adults and children were subjected to the unnatural practice of enforced disappearance. In those years Uruguay began to see serious violations of human rights and fundamental freedoms committed by the State for political

and ideological reasons, the price of which was thousands of political prisoners, the systematic practice of torture in detention centres, summary executions and enforced disappearance of persons.

12. According to information provided by the Secretariat for Follow-up on the Peace Commission, the investigations carried out to date on cases reported as enforced disappearance have confirmed the disappearance of 28 Uruguayan citizens since 1971 and 8 Argentine citizens. As to disappeared children in Uruguay, the complaints included one case, a child who was located in 2000 and whose identity was restored. All cases were duly reported to the United Nations Working Group on Enforced or Involuntary Disappearances.

13. In addition to specific complaints by victims' families, towards the end of the dictatorship civil society started organizing itself as a channel for forwarding complaints and pressing for investigations. This was the starting point for the work of various social and human rights organizations such as the Peace and Justice Service (SERPAJ), Mothers and Families of Disappeared Uruguayan Prisoners, the Uruguayan Institute for Legal and Social Studies, the Workers' Trade Union Confederation-National Convention of Workers (PIT-CNT), the Uruguayan Federation of University Students (FEUU), as well as other civil society bodies and priests, pastors, monks and nuns of various denominations.

### **C. Act No. 15848 on the Expiry of the Punitive Claims of the State ("Impunity Act")**

14. Civil society's attempts to investigate cases were hampered by the adoption of Act No. 15848 on the Expiry of the Punitive Claims of the State, of 22 December 1986.

15. Under article 1 of the Act, "as a logical consequence of the situation established by the agreement between the political parties and the Armed Forces in August 1984 and in order to complete the transition to full constitutional order, any State action to seek punishment for crimes committed prior to 1 March 1985 by military and police personnel, for political reasons, or in the performance of their duties or on orders from commanding officers who served during the period of de facto Government, has hereby expired".

16. Civil society nevertheless continued its work in various areas at the national and the international levels, demanding both inside and outside the country that the cases should be investigated. There have been several landmark events during this campaign, one of the most important being the silent marches organized by the Mothers and Families of Disappeared Uruguayan Prisoners ever since 1996, which rally tens of thousands of people of differing creeds and political convictions who all support the search for truth and justice.

17. Some of the legal obstacles introduced by Act No. 15848 preventing the investigation of serious human rights violations were mitigated by executive decisions taken by the last two Administrations (2005–2010 and 2010 to date), to the effect that these complaints were not covered by the Act.

### **D. Action taken by the present Uruguayan Government**

18. During the presidency of José Mujica, under Executive Decision CM/323 of 30 June 2011, all administrative acts and communications of previous Governments that had deemed all complaints of serious human rights violations to be covered by the Expiry Act were revoked on grounds of legitimacy.

19. Act No. 15848 remained in force until 27 October 2011, when Parliament adopted Act No. 18831 re-establishing the State's punitive claim and suspending the statute of limitations in respect of crimes committed during that period. According to article 1 of the

Act, “the State’s full right to punitive action is re-established in respect of crimes committed in the context of State terrorism up to 1 March 1985 and covered by article 1 of Act No. 15848 of 22 December 1986”.

20. As a result of this legislation, numerous complaints of human rights violations were reopened and are now being dealt with by various criminal courts.

## **E. Institutional and legislative developments**

21. In 2000, while the Act on the Expiry of the Punitive Claims of the State was still in force, the President established the Peace Commission by Executive Decree, to look into the situation of disappeared detainees and of children who had disappeared in similar circumstances.

22. In 2003 the Secretariat for Follow-up on the Peace Commission was established by Presidential Decision of 10 April 2003 as the successor body to the Peace Commission, with administrative powers and the task of dealing with and carrying forward the unfinished proceedings started by the Peace Commission.

23. Since then the Secretariat has changed both membership and mission.

24. Following in the path of the two previous Governments and upholding their commitment to human rights and to the national, regional and international legal instruments that establish and guarantee them, the current Administration continued and intensified the investigations into the fate of prisoners who disappeared between 1973 and 1985, making it possible to take legal action and obtain compensation for damages and taking steps to ensure that same thing would not happen again.

25. One of the institutional developments has been the establishment of an interministerial commission (Executive Decision CM/369 of 31 August 2011) and the broadening of the membership and powers of the Secretariat for Follow-up, which now comprises an executive coordinating committee, a representative of the Public Prosecution Service, a representative of civil society organizations, two representatives of the University of the Republic in the fields of history and forensic anthropology, and an administrative secretariat.

26. As mentioned above, all administrative acts to date deeming criminal proceedings for human rights violations to be covered by the Expiry Act were revoked on grounds of legitimacy, and that made it possible to reopen complaints that had been lodged in timely fashion and brought before the criminal courts. To facilitate that task, the Secretariat for Follow-up made a list of those complaints, which it sent to the Supreme Court and which were published on the web page of the Office of the President.

27. Further, a new agreement was concluded between the Office of the President and the University of the Republic, whereby the parties undertook to work together in a concerted effort to locate the remains of those reported as disappeared or murdered for political reasons during the last dictatorship and to establish the historical truth about those events by combing the State archives and repositories and publishing the results, thereby carrying forward the work done by the anthropological and historical teams.

28. In addition, updates on the investigations by the historical and anthropological teams have been published on the website of the Office of the President, including the results of the work on the “passive files” of the Armed Forces Central Hospital.

29. Since the criminal courts have been seized of these cases of serious human rights violations, the Secretariat for Follow-up is working closely with judicial officials,

systematically handing over all the information in its possession that may be requested by the courts and the victims' families.

## **F. Judgement of the Inter-American Court of Human Rights in *Gelman v. Uruguay***

30. Over and above all the measures described above, taken by the Uruguayan State in order to establish the truth about the fate of those arrested and disappeared under the de facto regime and to investigate the serious human rights violations committed during that period, mention should also be made of the judgement against the State of Uruguay handed down by the Inter-American Court of Human Rights in the case of *Gelman v. Uruguay* on 24 February 2011.

31. In this regard it can be reported that the Secretariat, in coordination with the interministerial commission established by Executive Decision, is now diligently applying the Inter-American Court's ruling and to that end has taken the following action:

(a) It has intervened directly in the administrative procedures for payment of compensation to Macarena Gelman García and her lawyers;

(b) The lines of inquiry into the whereabouts of the remains of María Claudia García Irureta Goyena and the other disappeared persons have been broadened;

(c) In coordination with the interministerial commission and Gelman García, a ceremony led by the President recognizing the responsibility of the Uruguayan State, took place in the Legislative Assembly on 21 March 2012;

(d) The building belonging to the Defence Intelligence Service and used as a secret detention centre has been closed down and handed over to the newly established National Human Rights Institution and Ombudsman's Office. A memorial tablet to María Claudia García Irureta Goyena de Gelman and Macarena Gelman García has been placed there. Mother and daughter had been there together until they were separated;

(e) With a view to completing the genetic databank of families of the disappeared, maintained by the National Institute for Cell, Tissue and Organ Donation and Transplant of the Ministry of Health, an agreement has been signed between the President, the Secretariat for Follow-up and the Institute for the acquisition of the inputs and reagents necessary for the collection and analysis of genetic samples;

(f) Three archivists have joined the Secretariat to help classify the documents produced during the proceedings of the Peace Commission and the Secretariat for Follow-up;

(g) Work has begun on setting up a central database for the documents and investigations of the Secretariat;

(h) Arrangements have been made with the Ministry of Defence and the Supreme Court for access by the Secretariat's historical team to the medical records held at the Military Hospital and the case files of the Military Supreme Court, respectively, a task which is now ongoing.

## **G. Tangible results in combating the inhumane practice of enforced disappearance**

32. Thanks to these measures, as at 31 July 2012 the Government of Uruguay has tangible results to show for its policy of consistently promoting and protecting human

rights, including in its efforts to combat the unnatural and inhumane practice of enforced disappearance.

33. Before the launch of Operation Condor, the coordinated campaign of repression in the Southern Cone of Latin America in 1975, and through all the years it continued, enforced disappearance of Uruguayan men and women took place in Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay. Numbers accounted for to date, according to investigations carried out thus far, is 178 confirmed cases, of which 3 are children who disappeared with their parents.

34. As to disappeared children born in captivity in secret prisons in Argentina, 13 have been located in all and had their identities restored, thanks in part to the commendable work of Argentine human rights organizations.

35. In Uruguay, investigations to date into reported cases have confirmed the disappearance of 28 Uruguayan citizens since 1971 and 8 Argentine citizens. As to disappeared children in Uruguay, the complaints included one case, a child who was located in 2000 and whose identity was restored.

36. The Secretariat is also investigating recent reports of enforced disappearance of Uruguayans in Uruguay during the years in question, so the figures could change in light of these investigations.

37. In all, of the cases reported and confirmed, 25 — in Uruguay, Argentina, Chile and Bolivia — have been clarified as a result of investigations carried out by the Secretariat and in coordination and cooperation with official human rights bodies in the countries where the disappearances occurred.

38. In the most recent development, the investigations clarified two cases of disappearance by establishing the whereabouts of the remains: on 21 December 2011 the remains of Uruguayan citizen Julio Castro Pérez, a teacher who disappeared on 1 August 1977, were discovered at the headquarters of Infantry Battalion 14, and on 15 March 2012 the remains of Uruguayan citizen Ricardo Blanco Valiente, who disappeared on 15 January 1978, were found, also at the headquarters of Infantry Battalion 14.

## **H. Legislative developments in the right not to be subjected to enforced disappearance**

39. In parallel with these steps taken by the Uruguayan State, Uruguay has gradually been bringing its legislation into line with international human rights law, incorporating international norms on enforced disappearance while repealing incompatible domestic legislation.

40. The Constitution of Uruguay establishes (art. 7) that “the inhabitants of the Republic have the right to be protected in their enjoyment of life, honour, freedom, security, labour and property”. No one may be deprived of any of these rights except in accordance with laws which may be enacted in the general interest.

41. In addition, the right not to be subjected to enforced disappearance is implied in article 72 of the Constitution, whereby “the list of rights, duties and guarantees set out in the Constitution does not exclude others that are inherent in the human person or that derive from the republican form of government”.

42. The criminalization of enforced disappearance in Uruguayan law is a recent development following the adoption of Act No. 18026 of 4 October 2006. This Act establishes a framework for cooperation with the International Criminal Court in combating genocide, crimes against humanity, including enforced disappearance, and war crimes.

43. Before the criminalization of enforced disappearance the legislature had established rules for resolving civil matters arising from the enforced disappearance of persons.
44. Under Act No. 17894 of 19 September 2005, for example, persons whose disappearance on national territory was confirmed by the final report of the Peace Commission were declared “absent by reason of enforced disappearance”. This declaration of absence made it possible, after decades had passed, to proceed to the legal opening of successions in respect of those declared “absent” under this provision.
45. Some months after the adoption of that Act, enforced disappearance of persons was incorporated into the Uruguayan legal order as a criminal offence under article 21 of Act No. 18026 (the scope of which will be described in a separate section, as it is a key aspect of this national report).
46. In addition, Act No. 18596 of 19 October 2009 recognized the illegitimate action of the State between 13 June 1968 and 28 February 1985 and the State’s corresponding responsibility: “The breakdown in the rule of law that impeded the exercise of individuals’ fundamental rights, in violation of human rights and international humanitarian law, is recognized” (art. 1). The period covered by the law, which is longer than the period of de facto Government, includes the years preceding the institutional breakdown, during which, as already mentioned, there were cases of enforced disappearance.
47. Act No. 18831 of 27 October 2011 repealed Act No. 15848 on the Expiry of the Punitive Claims of the State, thereby making it possible to proceed with judicial investigations into cases of enforced disappearance. Under article 1, the Act restored “the State’s full right to punitive action in respect of crimes committed in the context of State terrorism up to 1 March 1985”, stipulating that for those crimes no period of limitation or expiry would apply between 22 December 1986, the date of the so-called “clean slate”, and the entry into force of the new law, and declaring those offences crimes against humanity in accordance with international treaties.
48. The above description of a body of legislation that strictly speaking is not formally covered by the reporting period is essential, not just as background to what follows, but also as evidence of the Uruguayan State’s real concern to put a stop to the enforced disappearance of persons and prevent the least repetition of the unfortunate experiences of bygone years.
49. In that regard, and as an example of an administrative measure that is fully consistent with all that has been said thus far, mention should be made of the establishment of the National Human Rights Institution and Ombudsman’s Office, which has been given as its headquarters the emblematic building used by the Defence Intelligence Service at the time of the de facto Government, and which housed a detention and torture centre during the 1970s.
50. For cases not directly covered by the Convention, relating to events that occurred before its adoption, due regard should be had to the Convention as the “most accepted doctrine” — and as such an additional source in the process of being incorporated into domestic law — a procedure explicitly permitted under the Constitution (art. 332) and in ordinary law (Civil Code, art. 16).

## II. Implementation of the Convention in Uruguay

### Article 1

#### Absolute prohibition of enforced disappearance

51. Act No. 18026 of 2006 (Act on Cooperation with the International Criminal Court in Combating Genocide, War Crimes and Crimes against Humanity) incorporates enforced disappearance within the international legal framework in the category of “*crimen*”, a category not previously used in Uruguayan domestic law.

52. According to article 21.1 (part II, title II) of the Act:

Anyone, whether an agent of the State or acting with the authorization, support or acquiescence of one or more agents of the State, who by any means and for any reason deprives a person of liberty and fails to report that deprivation of liberty or the whereabouts or the fate of the person deprived of liberty, or who fails or refuses to provide information on the fact of deprivation of liberty of a disappeared person, or on their whereabouts or fate, shall be liable to 2 to 25 years’ rigorous imprisonment.

53. On the application of article 21.1, article 9 of the Act states as follows:

No one may invoke superior orders or exceptional circumstances such as the threat or state of war, political instability or any other real or alleged public emergency, to justify the crimes defined in part II, titles I to III, of this Act.

54. As can be seen, Uruguay strictly prohibits enforced disappearance in its domestic legislation. Furthermore, the prohibition explicitly applies in all circumstances such as the state of war or the threat of war, domestic political instability and any other public emergency.

### Article 2

#### Definition of enforced disappearance

55. Enforced disappearance is defined in article 21.1 of Act No. 18026 (see paragraph 52 above).

56. Article 21.2 supplements the definition as follows: “The crime of enforced disappearance shall be deemed a continuing offence as long as the fate or whereabouts of the victim remains unknown.”

57. Thus Uruguayan law provides a definition of enforced disappearance that is in line with the definition in the Convention, and recognizes the continuing and ongoing nature of the offence.

58. Consequently, the definition of enforced disappearance provided in the Uruguayan legal order is not more restrictive than the definition given in article 2 of the Convention, as it has each of the following components:

(a) The fact of arrest, detention, abduction or any other form of deprivation of liberty;

(b) The act is carried out by agents of the State or persons or groups acting with the authorization, support or acquiescence of the State;

(c) The act is followed by failure to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person;

(d) The removal of the disappeared person from the protection of the law is an objective outcome.

### **Article 3**

#### **Investigation**

59. As regards investigation by the State into the criminal acts defined in the Convention and the subsequent trial of those responsible, Uruguay wishes to report that there have been no cases or reports of cases of enforced disappearance since the entry into force of the Convention.

60. Nevertheless, the Uruguayan Government attaches the highest importance to investigating acts of this kind involving non-State actors.

61. States parties to the Convention must be able to conduct investigations and take legislative and administrative steps to charge and try those responsible for such offences.

62. Uruguay has no special court for the offence of enforced disappearance but it has put administrative measures in place that made it possible recently to set up two prosecutors' offices and two special courts to try matters related to organized crime.

63. Given that enforced disappearance is by its nature likely to be committed by groups or gangs, the intention is that such offences will be dealt with in this special jurisdiction.

64. The criminal trial courts to deal with organized crime were established in article 414 of Act No. 18362. Supreme Court decision No. 7642 regulates the operation of the courts.

### **Article 4**

#### **Criminalization in domestic law**

65. In Uruguay the crime of enforced disappearance has been established in domestic law since the adoption of Act No. 18026 (art. 21.1).

66. Act No. 18026 also defines other crimes, in accordance with the Rome Statute of the International Criminal Court, including genocide, crimes against humanity and war crimes.

67. The definition in Uruguayan law goes a step further than the Convention as it also covers isolated cases of enforced disappearance as crimes against humanity under title II, chapter 2.

### **Article 5**

#### **Crime against humanity**

68. Uruguay observes the general principle stated in article 5, namely that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

69. As mentioned in the comments on article 4, Act No. 18026 defines not only the widespread or systematic practice of enforced disappearance as a crime against humanity, as established in the Convention, but also isolated cases of enforced disappearance.

70. By establishing that the offence of enforced disappearance is a crime against humanity, the Uruguayan legal order is ensuring the inapplicability of the statute of

limitations (Convention, art. 8), the prohibition of amnesty (art. 7, para. 2) and the recognition of the right of victims to full reparation (art. 24, paras. 4–6).

## **Article 6**

### **Criminal responsibility**

71. The broad definition of criminal responsibility established in article 6, paragraph 1 (a), of the Convention, which refers to “any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance” has been incorporated in the provisions of article 21 of Act No. 18026.

72. A reading of article 21 of the Uruguayan Act (see paragraph 52 above) reveals a very broad approach that is in line with that of the Convention: what is punished is the deprivation of liberty followed by a failure to report that deprivation of liberty or the whereabouts or fate of the disappeared person.

73. The responsibility of superiors, as established in the Convention, article 6, paragraph 1 (b), is covered in Uruguayan legislation by article 10 of Act No. 18026 (Command responsibility), as follows:

The ranking superior official, civil or military, whatever their rank or their position in Government, shall be criminally liable for any offences under part II, titles I to III, of this Act committed by anyone under their authority, command or direct control, when by virtue of their office, post or function, they knew that those individuals were engaged in such crimes or offences and, despite having the power to do so, failed to take the reasonable and necessary measures available to them to prevent, report or punish those crimes or offences.

74. In this way Uruguay has incorporated into its domestic legislation, in compliance with article 6, paragraph 1 (b), of the Convention and with international law, the principle of the criminal liability of those who fail to effectively exercise their authority as superiors (whether military commanders or civilian superior officers) over subordinates committing or attempting to commit an offence, in accordance with their obligations under customary international law.

75. Uruguayan law also meets the obligation under article 6, paragraph 2, of the Convention, whereby no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance. Under article 9 of Act No. 18026 (Due obedience and other exemptions):

No one may invoke superior orders or exceptional circumstances such as the threat or state of war, political instability or any other real or alleged public emergency, to justify the crimes defined in part II, titles I to III, of this Act.

76. Uruguayan law is thus quite stringent and does not permit orders or instructions from superior officers to be invoked as grounds for exemption from criminal liability under any circumstances.

## **Article 7**

### **Penalties**

77. As to penalties, the Convention is clear, stipulating that States parties should punish enforced disappearance with “appropriate penalties which take into account its extreme seriousness”.

78. Under Act No. 18026, article 21.1, Uruguayan law provides for particularly severe penalties for the offence of enforced disappearance in Uruguay, setting a minimum sentence of 2 years' rigorous imprisonment and a maximum of 25.

79. The maximum possible penalty for enforced disappearance is exceeded in domestic law only by the maximum sentence for highly aggravated homicide, which may fetch the maximum penalty permitted by the law, namely 30 years' rigorous imprisonment.

80. As can be seen, Uruguayan law on enforced disappearance provides for appropriate penalties which take into account its extreme seriousness.

81. As well as imposing the maximum penalty under Act No. 18026, the court also has the power to order custodial security measures of up to 15 additional years' imprisonment under the Criminal Code, articles 92ff, as amended by Act No. 16349.

82. In addition, article 12 of Act No. 18026 provides that Uruguayan citizens found guilty of enforced disappearance shall be disqualified from holding office. Under article 12 (General disqualification), paragraph 1, "Uruguayan citizens found guilty of offences under part II, titles I to III, of this Act shall be liable to the accessory penalty of general disqualification from holding public posts or office, and from political rights, for the duration of the sentence."

83. Under article 12, paragraph 2, "where the convicted person is a medical professional or specialist ... they shall also be liable for specific disqualification from exercising their profession or specialism for the duration of the sentence". Under paragraph 3, "where the conviction is handed down by the International Criminal Court, the disqualifications provided for in the preceding paragraphs shall apply".

84. As to mitigating circumstances in respect of the offence of enforced disappearance, as provided in the Convention (art. 7, para. 2 (a)), here again the Uruguayan domestic legal order, as represented by Act No. 18026 (art. 21.3), can be said to be in line with the Convention.

85. Article 21.3 provides for two attenuating circumstances in respect of enforced disappearance, namely that the victim is set free unharmed in less than 10 days, or that information is provided or action taken to permit or facilitate the disappeared person's return alive.

86. As to aggravating circumstances in respect of the offence of enforced disappearance (Convention, art. 7, para. 2 (b)), Uruguayan law includes several of the situations defined in the Convention as aggravating circumstances.

87. Under Uruguayan law, enforced disappearance is a crime of the utmost seriousness and article 15 of Act No. 18026 establishes the following aggravating circumstances for the offences defined in the Act (genocide, crimes against humanity, war crimes, enforced disappearance, inter alia), "where they are not themselves material elements of the offence and without prejudice to other applicable aggravating circumstances": (a) the crime is committed against children, adolescents, pregnant women, or persons with impaired physical or mental health by reason of age, infirmity or any other circumstance; (b) the crime is committed against whole families, meaning a group of individuals bound together by blood or matrimonial ties and by the fact of living together or sharing a common way of life.

88. In no case does Uruguayan law provide for the death penalty for enforced disappearance.

89. Under article 26 of the Constitution, "no one shall be subjected to the death penalty".

90. Uruguay is a State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

## **Article 8**

### **Imprescriptibility**

91. Here, too, domestic law goes beyond the provisions of article 8 of the Convention, as article 7 of Act No. 18026 (Imprescriptibility) is firmer in absolute terms, in respect of both the crime and the penalty: “The crimes and penalties established in part II, titles I to III, of this Act are not subject to the statute of limitations.”

92. To ensure the imprescriptibility of these offences, it should be recalled that, under Uruguayan criminal law (Act No. 18026, art. 21.2), the offence of enforced disappearance is considered a continuing crime as long as the fate or whereabouts of the victim has not been established.

93. Moreover, article 8 of Act No. 18026 (Inapplicability of amnesty or other exemptions) extends imprescriptibility as follows:

“The crimes and penalties established in part II, titles I to III, of this Act may not be declared extinguished by commutation, amnesty, pardon or any other measure of executive or comparable clemency that effectively precludes the bringing to trial of those suspected or the effective serving of sentence by those convicted.”

## **Article 9**

### **Jurisdiction**

94. In accordance with its obligations under the Convention, Uruguay exercises territorial jurisdiction, including in areas or countries where Uruguayan military contingents are engaged in peacekeeping operations and on ships and aircraft under the Uruguayan flag, when the offence of enforced disappearance “is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State”.

95. Thus, under article 4, paragraph 1, of Act No. 18026, the crimes and offences defined in the Act apply to “(a) crimes and offences committed, or producing effects, in Uruguayan territory or in areas under its jurisdiction; (b) crimes and offences committed abroad by Uruguayan nationals, whether or not they are State officials, civilian or military, provided that the accused has not been acquitted or convicted abroad or, where convicted, has not served the sentence”.

96. In addition, under paragraph 2 of the same article, where a person suspected of committing an offence of enforced disappearance is in Uruguayan territory or areas under its jurisdiction, “the Uruguayan State is required to take the necessary steps to exercise jurisdiction over the crime or offence if it has not received a request for surrender to the International Criminal Court or any extradition requests, and should proceed to try the person as though the crime or offence had been committed in Uruguayan territory, regardless of where it was committed or the nationality of the suspect or the victims. The suspicion referred to in the first part of this paragraph must be based on reasonable evidence.”

97. As to the general principles applied to crimes of this nature, under the provisions of article 3 of Act No. 18026 (Principles of criminal law), the crimes and offences defined in the Act are covered by the general principles of criminal law established in domestic law and in the treaties and conventions to which Uruguay is a party and, in particular, where

applicable, the provisions of the Rome Statute of the International Criminal Court, and the principles specially formulated in this Act.

98. In addition, over and above the provisions of the specific Act, the Uruguayan Criminal Code establishes in chapter II (arts. 9 and 10) the general principles for the application of criminal law in this country.

99. Under article 9 of the Criminal Code (Criminal law and territory), offences committed in Uruguayan territory shall be punished in accordance with Uruguayan law, whether the perpetrators are Uruguayan nationals or foreigners, subject to any exceptions established in public domestic law or international law. In the event of conviction abroad for an offence committed in national territory, any sentence served in whole or in part shall be taken into account in the new sentence.

100. Under article 10 (Criminal law. The principle of defence and the principle of individual punishment), offences committed by nationals or foreigners on foreign territory are not subject to Uruguayan law, with the following exceptions:

- (a) Offences against State security;
- (b) Forgery of the seal of the State or use of a forged seal of the State;
- (c) Counterfeiting of State legal tender or of national public credit instruments;
- (d) Offences committed by officials in the service of the Republic by abuse of their powers or violation of the duties of their office;
- (e) Offences committed by a Uruguayan and punished both under foreign and national law, where the author was in the territory of the Republic and was not requested by the authorities of the country where the offence was committed, in which case the most favourable law shall apply;
- (f) Offences committed by a foreigner against a Uruguayan or against Uruguay, subject to the provisions of the preceding paragraph and provided that all the circumstances described in that paragraph apply;
- (g) All other offences subject to Uruguayan law by virtue of special provisions of domestic law or international convention.

101. Lastly, and in order to demonstrate the commitment of Uruguay to ensure that its courts can exercise universal jurisdiction in any case of enforced disappearance, it should be noted that Uruguay has not signed any non-extradition agreement with any country in respect of persons requested by the International Criminal Court.

## **Articles 10 and 11**

### **Precautionary measures; right to communicate with a representative of one's own State and to a fair trial**

102. Under Uruguayan law, where a person suspected of having committed an offence of enforced disappearance is present in Uruguayan territory, the State may take them into custody or take other legal measures as necessary to ensure their presence.

103. The arrest and other measures shall be carried out in accordance with Act No. 18026, articles 2, 5 and 11.

104. Under article 2 of the Act (Right and duty to try international offences), Uruguay has the right and duty to try acts defined as offences under international law, and in particular the right and duty to try, in accordance with the provisions of the Act, crimes recognized in

the Rome Statute of the International Criminal Court, ratified by Act No. 17510 of 27 June 2002.

105. Under article 5 of Act No. 18026, where there is reasonable evidence that a person has committed an offence of enforced disappearance, and that person is in Uruguayan territory or an area under Uruguayan jurisdiction, the competent court shall make a determination and, if the circumstances warrant and duly informing the Public Prosecution Service, shall order pretrial detention.

106. Immediate notification shall also be sent to the State in whose territory the person is suspected to have committed the crimes or offences, the nearest State of nationality of the person and, if the person is stateless, the State where they are normally resident. Notification shall be communicated by the Executive through diplomatic channels and shall contain information concerning the procedure established under this Act.

107. Within 24 hours of the arrest, the court shall hear the detained person in the presence of the Public Prosecution Service, at which hearing:

(a) The person shall be invited to nominate a defender of their choice and informed that the duty defender will otherwise be appointed;

(b) An interpreter shall be appointed and provide any translations required for the defence;

(c) The person shall be informed that there are grounds for believing that they have committed a crime or offence under this Act and that they will be presumed innocent until proven guilty;

(d) A statement shall be taken from the person in the presence of defence counsel.

108. The Act also provides that the detained person shall immediately be allowed to contact the representative of their nearest State of nationality or, in the case of a stateless person, the representative of the State in which they are normally resident.

109. It is important to note that if, within 20 days of the date of notification of the States no extradition request has been received, then, within the next 10 days, the accused shall be released or, where warranted, criminal proceedings shall commence.

110. Lastly, article 11 of Act No. 18026 expressly excludes special jurisdictions, stating that the crimes and offences defined in the Act may not be considered to have been committed in the exercise of military duties, shall not be considered military offences and may not be tried in a military court.

## **Article 12**

### **Obligation to investigate and, where there is sufficient evidence, to proceed to trial**

#### **Article 12, paragraph 1**

111. The Uruguayan legal order recognizes in various legal provisions the right of any individual who alleges that a person has been subjected to enforced disappearance to report the facts to the competent authorities. This right is established in Act No. 15032 (Code of Criminal Procedure, arts. 105 ff).

112. Thus, under article 105, anyone who learns by any means that an offence that is prosecutable *ex officio* has been committed may report it to the judicial or police authorities.

113. The authority receiving the complaint should set down in writing the details required for investigation of the reported offence (Code of Criminal Procedure, art. 106). The complaint may be made in writing or verbally and in person or by a specially mandated agent (art. 107). A written complaint must be signed by the complainant in the presence of the official receiving it or, if the complainant cannot sign, by another person at their request (art. 108).

114. The official shall sign the complaint and date it with the date received and, if the complainant so requests, issue a receipt. A verbal complaint shall be recorded by the receiving official in a document to be signed by the complainant or, if necessary, by another person on request, and by the official concerned.

115. In all cases, the official shall check the complainant's identity from their identity card, civil registry certificate or similar national or foreign identity document; the same shall apply to a person signing on request.

116. As to the content (Code of Criminal Procedure, art. 109), the complaint should give a clear account of the act and the place, time and manner of its occurrence, an indication of the perpetrators, participants and witnesses and any other details that may be used for the purposes of substantiation and legal characterization of the act.

117. Under article 114 of the Code, the court has a duty to investigate when it becomes aware of a report of an ostensibly criminal act.

118. Article 2 of Act No. 18026, referred to above, establishes jurisdiction in respect of the right and duty to try international crimes. Article 13 of the Act governs the involvement of the victim, the admission of evidence and the duty of the judge in the case to take steps to protect the alleged victim and witnesses.

119. Article 13 also states that the complainant, the victim and their families are entitled to see all documents, obtain evidence and submit any evidence in their possession, and take part in all the judicial proceedings.

120. During the proceedings, at the request of the prosecutor or ex officio, the court may take any steps it deems appropriate and necessary to protect the security, physical and mental well-being, dignity and privacy of victims and witnesses. To that end it shall take account of all relevant factors, including age, sex and health, as well as the nature of the offence, particularly when the offence involves sexual violence, gender-based violence or violence against children or adolescents.

121. In cases of sexual violence, no corroboration of the victim's testimony will be required, no evidence concerning the prior sexual conduct of the victim or witnesses shall be admitted, and consent shall not be accepted as an argument for the defence.

122. Exceptionally, and in order to protect victims, witnesses or the accused, the court may order, in a reasoned decision, that evidence should be presented using electronic media or using other special technical means that help prevent secondary victimization. These measures shall apply particularly where victims of sexual assault are involved, or minors, whether as victims or witnesses. The provisions of article 18 of Act No. 17514 of 2 July 2002 shall apply in this regard.

123. Every effort shall be made to ensure that the prosecution has at its disposal specialist legal advisers on specific topics such as sexual violence, gender-based violence and violence against children. Steps shall also be taken to ensure that the court has staff trained in dealing with trauma victims, including victims of sexual and gender-based violence.

124. Article 23 of the Constitution establishes State responsibility for individual rights: "All judges are responsible before the law for the slightest infringement of the rights of individuals and for any deviation from the proceedings established by law."

125. The legal provisions guaranteeing access to justice under domestic law are contained in Act No. 15737, which incorporates the Pact of San José, Costa Rica, and Act No. 13751, which incorporates the International Covenant on Civil and Political Rights into domestic law.

126. On the administrative side, Act No. 18446 establishes the National Human Rights Institution and sets out administrative measures for the reporting and investigation of human rights matters. Under article 4 (j), the National Human Rights Institution shall be competent to “hear and investigate allegations of human rights violations, either on request or of its own motion, in accordance with the procedure set forth in this Act”. In addition, Act No. 17684 establishes a Parliamentary Commissioner for Prisons, who is also entitled to receive complaints on human rights matters in that context. Under article 2 (d), the Parliamentary Commissioner shall be competent to receive complaints from prisoners regarding violations of their rights, in accordance with the established procedure.

127. In practice truly adequate preventive measures for complainants, victims and witnesses are not often applied, a situation that is even more serious where those individuals are deprived of their liberty.

#### **Article 12, paragraph 2**

128. As to ex officio proceedings where there are reasonable grounds for believing that enforced disappearance has occurred, legal mechanisms exist at the national level allowing the authorities to intervene, as provided in article 114 of the Code of Criminal Procedure and article 2 of Act No. 18026 (see previous point).

#### **Article 12, paragraph 3**

129. With regard to the powers and resources needed to conduct effective investigations, national legislation endows both judicial and administrative bodies with such powers and resources. According to the Organic Act on the Judiciary and the Organization of Courts (Act No. 15750), article 4: “In order to have their judgements enforced or implement any other measures they may order, the courts may request from other authorities the aid of their law-enforcement services and other means of action at their disposal. The requested authority should lend its aid without querying the justification for the request or the justice or legality of the sentence, decree or order to be enforced.”

130. In addition, under the General Code of Procedure, Act No. 15982, article 21.3:

“The decisions of the court must be applied by all public and private parties and these must also assist the court in ensuring that its orders are carried out.

“In order to enforce its orders the court may (a) enlist the aid of the law-enforcement services, which shall comply immediately on request; (b) issue sanctions or injunctions, which may be financial (e.g., periodic penalty payments) or personal (e.g., arrest, within the limits established by law and keeping detention or arrest as brief as possible).”

131. Under the Organic Act on the Public Prosecution Service (Act No. 15365), article 7, paragraph 2, the Attorney-General may “request from any Government department any information it deems necessary to the accomplishment of its tasks and, in the exercise of its duties, may solicit the aid of the law-enforcement services in the same way as other members of the Prosecution Service”.

132. As to administrative mechanisms, the Parliamentary Commissioner for Prisons established under Act No. 17684 is authorized under article 2 (e) of that Act to “carry out general inspections of prison establishments, informing the relevant authorities of the visit

no less than 24 hours in advance. Where the Commissioner is required to look into a specific complaint, an unannounced inspection may be made for that purpose alone.”

**Article 12, paragraph 4**

133. The Constitution of Uruguay establishes a republican system of government based on the separation and independence of State powers. In this regard, under articles 233 and 72 of the Constitution respectively, “judicial power shall be exercised by the Supreme Court and the courts and tribunals, as established by law” and “the list of rights, duties and guarantees set out in the Constitution does not exclude others that are inherent in the human person or that derive from the republican form of government”.

134. Similarly, under article 84 of the Organic Act on the Judiciary and the Organization of Courts (Act No. 15750):

“The members of the judiciary shall be completely independent in the exercise of their judicial powers and may not be removed from office as long as they conduct themselves correctly, subject to the provisions of article 250 of the Constitution.

“Appointments of professional judges shall be permanent from the moment they are made, provided that the appointees are Uruguayan citizens who have been members of the judiciary or the Public Prosecution Service, or justices of the peace, for two years, in positions designated for qualified lawyers.

...

“Justices of the peace are appointed for four years and may be removed at any time in the interests of the service.”

135. The General Code of Procedure, too, establishes the independence and powers of the judiciary, as follows:

“Article 21.1. Each court is independent in the exercise of its functions.

...

“Article 23. Mechanisms not to be applied. There shall be no attribution of jurisdiction by means of removal or delegation, other than for judicial assistance in proceedings taking place elsewhere than at the seat of the court.”

136. The laws establishing complaint and investigation mechanisms regulate the independence of those mechanisms so as to prevent them being influenced by third parties, including criminals or persons under investigation.

137. The Public Prosecution Service, in accordance with Act No. 15365, article 2, is “technically independent in the exercise of its functions. It must therefore defend the interests entrusted to it in accordance with its convictions, drawing the conclusions it believes are consistent with the law.”

138. Under article 1 of Act No. 15750, “the judiciary and the Administrative Court are independent of all other authorities in the exercise of their functions”.

139. Under article 2 of Act No. 18446 establishing the National Human Rights Institution (NHRI), the NHRI “shall not be subject to any authority and shall be independent in its functions and may not receive instructions or orders from any authority”.

140. Under article 13 of the Act establishing the Parliamentary Commissioner for Prisons, Act No. 17684, “refusal by officials or their superiors to provide the reports requested of them, and any failure to cooperate in providing aid or assistance formally sought, may be considered obstruction of the work of the Commissioner”.

### **Article 13**

#### **Extradition**

141. The Uruguayan legal order meets the obligations deriving from article 13 of the Convention.

142. In respect of extradition for the offence of enforced disappearance, under article 4, paragraph 4, of Act No. 18026:

“National jurisdiction shall not be exercised where:

A. For crimes and offences subject to the jurisdiction of the International Criminal Court:

(1) There has been a request for surrender by the International Criminal Court;

(2) Extradition has been requested by the competent State under international treaties or conventions in force for Uruguay;

(3) Extradition has been requested by the competent State where no treaties or conventions are in force for Uruguay, in which case and subject to any other legal requirements, in order to grant extradition, the requesting State should have ratified the Rome Statute of the International Criminal Court, action shall be taken in accordance with article 5.”

143. Under article 4.5, “the crimes and offences defined in this Act shall not be regarded as political offences or offences connected with a political offence or as offences inspired by political motives”.

144. Article 6 of the Act establishes the inapplicability of asylum and refugee mechanisms to those guilty of these offences: “No asylum or refuge shall be granted where there are serious grounds for believing that a person has committed a crime or offence defined in this Act, even where they meet the other criteria for asylum or refuge.”

145. The Uruguayan State considers the Convention a sound legal basis for extradition where no extradition treaty exists.

146. However, under the extradition treaties signed by Uruguay before the entry into force of the Convention the offence of enforced disappearance was already considered not to be a political offence.

### **Article 14**

#### **Mutual legal assistance**

147. As a State party to the Convention, Uruguay is obliged to afford the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at its disposal that is necessary for the proceedings.

148. Fortunately, since no cases have occurred in the national jurisdiction or involving persons present on national territory, there are no examples of mutual legal assistance provided under the Convention.

149. The State of Uruguay nevertheless has many examples of legal cooperation treaties.

150. This is an area of foreign relations to which Uruguay has given special attention owing to its great importance in facilitating the required legal assistance in respect of offences of this kind.

## **Article 15**

### **International cooperation**

151. International cooperation in this regard has already been successfully used by Uruguay in the search for victims' remains and their identification.

152. The Secretariat for Follow-up on the Peace Commission has made unremitting efforts to locate victims' remains, and in this it has had the constant cooperation of the Argentine Forensic Anthropology Team, an NGO whose help has been, and still is, crucial in terms of monitoring.

153. One tangible result of this work was that the Argentine Federal Court requested the transfer to Argentina of the remains of eight unidentified individuals found along the coast of the department of Colonia (Uruguay) in 1976 and interred as NN ("nameless") in Uruguay, for examination and identification.

154. Furthermore, the Secretariat for Follow-up has now finished drafting a protocol on the procedure for the search, recovery and analysis of the remains of disappeared detainees.

155. The Secretariat also collaborates extensively with the judiciary to meet the psychological, social, legal and material needs of the families of persons reported disappeared.

156. In addition, two plots in a private cemetery have been donated for the interment of the remains of disappeared detainees.

157. As part of this cooperation with governmental and non-governmental bodies in other countries in the region, members of the Uruguayan archaeological research team and other forensic specialists had training in Argentina, while Chilean specialists gave some training in Uruguay.

158. The Secretariat for Follow-Up has made it a consistent practice to:

(a) Provide a report on progress made in the various inquiries and on clarification of cases of disappearance, whenever requested by international human rights organizations or the judiciaries of countries of the region or other bodies working in the same field;

(b) Supply any documentation required in relevant cases;

(c) Transfer genetic samples and profiles as identifying information, as a contribution to other countries' investigations, and in such cases supplying the infrastructure needed.

## **Article 16**

### **Non-refoulement**

159. Uruguay attaches particular importance to the principle of non-refoulement in respect of enforced disappearance and strictly observes it. This principle has been incorporated into domestic law not only through the Convention but also through other international and regional instruments that require the State not to expel, return, surrender or extradite a person to another State where there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance.

160. Uruguay has incorporated into domestic law the provisions of the American Convention on Human Rights, to which it acceded by Act No. 15737, and article 22, paragraph 8, of which states that in no case may an alien be deported or returned to a country, regardless of whether or not it is their country of origin, if in that country their

right to life or personal freedom is in danger of being violated because of their race, nationality, religion, social status, or political opinions.

161. Uruguay is also a State party to the International Covenant on Civil and Political Rights, article 13 of which states that an alien lawfully in the territory of a State party to the Covenant may be expelled only in pursuance of a decision reached in accordance with law and, except where compelling reasons of national security otherwise require, shall be allowed to submit the reasons against their expulsion and to have their case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

162. The principles applied in this case are similar to those applied in cases of torture and are derived both from the American Convention on Human Rights and the International Convention for the Protection of All Persons from Enforced Disappearance.

## **Article 17**

### **Prohibition of secret detention**

163. Uruguay considers this to be one of the most important principles established by the Convention, as it is this that gives it its preventive force.

164. Uruguay considers that, for effective prevention of enforced disappearance of persons, it is essential to take all necessary steps to completely eliminate secret detention.

165. Uruguay reaffirms its commitment to maintain and strengthen all national review and supervision mechanisms in detention centres in order to minimize this risk, and is committed to consolidating the administrative instruments it has developed for this purpose, namely the National Human Rights Institution and Ombudsman's Office and the Parliamentary Commissioner for Prisons.

166. In addition, the Constitution establishes this principle as a pillar of the national legal order.

167. Thus, under article 15 of the Constitution, no one may be arrested except in flagrante delicto or, where there are reasonable grounds, by written order of a competent judge. In addition, under article 16, in any of the cases envisaged in article 15, it is incumbent on the judge to take the statement of the person under arrest within 24 hours and begin proceedings within 48 hours at the latest. The statement of the accused must be taken in the presence of their defender. The defender shall also have the right to attend all investigative proceedings.

168. In the same vein, under article 118 of the General Code of Procedure, no one may be arrested except in flagrante delicto or, where there are reasonable grounds for suspicion, by written order of the competent judge. In both cases it is incumbent on the judge to take the accused's statement within 24 hours.

169. Article 119 of the Code supplements article 118, stating that the arrest warrant shall be issued in writing and shall contain all the information necessary to identify the wanted person, and the allegation against them. In an emergency the judge may issue the warrant orally but must record it in writing to ensure its validity. The arrest shall be carried out in such a way as to occasion the least harm to the detainee and their reputation.

170. Under article 120 of the Code, even without a warrant the police should arrest:

- (a) Anyone who is on the point of attempting to commit a crime;
- (b) Anyone fleeing after having been lawfully arrested;

(c) Anyone caught in flagrante delicto.

171. The Police Procedures Act (Act No. 18315) establishes the rules governing arrest by law-enforcement officials.

172. Under article 47 of the Act, even without a warrant the police should arrest:

(a) Anyone caught in flagrante delicto. Flagrante delicto covers the following situations:

(i) Catching a person in the act of committing an offence;

(ii) Immediately following the commission of an offence, catching a person fleeing, hiding or in any other situation or condition that gives cause to suspect their involvement, and at the same time being identified by the victim or reliable eyewitnesses as involved in the offence;

(iii) Immediately following the commission of an offence, finding a person with effects or objects resulting from the offence, or with weapons or instruments used in committing the offence, or presenting traces or signs that give strong grounds to suspect that they have just been involved in an offence;

(b) Anyone fleeing after having been lawfully arrested.

173. Under article 48:

(a) The police should take in anyone giving sufficient or reasonable grounds to suspect that they were involved in a recent apparently criminal act and where there is a risk that they may flee from the place where the act was committed or attempt to tamper with any evidence. In all cases, a report shall be made immediately to the competent judge, in accordance with article 6 of Act No. 18315;

(b) Aside from the situation outlined in the preceding paragraph, in investigations into unlawful acts, the police may not detain any person or witness, even where that person refuses to report willingly to the police station, without a warrant from the competent judge.

### **Article 17, paragraph 2**

174. The domestic legal framework also contains regulations covering the provisions of article 17, paragraph 2, of the Convention:

(a) Article 17 of the Constitution establishes the right of every person to invoke the remedy of habeas corpus: "In the event of wrongful arrest, the person concerned or any other person may apply to the competent judge for the remedy of habeas corpus to require the arresting authority to explain and substantiate without delay the legal grounds for the arrest and that authority shall comply with the judge's decision;

(b) In addition, under article 113 of the Code of Criminal Procedure, defence counsel has the right to attend all proceedings from the outset of the investigation.

### **Article 17, paragraph 3**

175. In accordance with the Standard Minimum Rules for the Treatment of Prisoners, Uruguayan law, and notably Act No. 14470 (art. 53), incorporates the provisions of rule 7, namely the obligation to keep and maintain a register of all who are deprived of their liberty.

176. The State of Uruguay registers without exception all those held in its prison system, giving information on their identity, the reason for commitment and the competent

authority, and the day and hour of admission and release. It also includes the medical examination conducted on admission in order to prevent torture and other ill-treatment.

177. Importantly, as part of the prison system reform, a call for tender has been put out for the design of prison administration software. The program will make it possible to maintain an effective and efficient register of persons deprived of their liberty, from admission through to release, with variables and follow-up indicators, allowing the current manual register to be discontinued.

178. In operational terms, the program will coordinate with the National Directorate for Civil Identification and the Technical Police and individuals will be registered by ID No. There will be restricted access to the system and implementation will take place in stages, starting this year.

179. As to the medical examination and the record of that examination, this is carried out as a matter of routine in all prisons in Uruguay in order to anticipate the need for special medical treatment and the provision of medicines, and to establish physical integrity in the event of transfer from other units.

## **Article 18**

### **Right of access to information on the detained person**

180. Around 90 per cent of all persons deprived of liberty in Uruguay have a public defender, that is to say a specialist member of the judiciary who is operationally and technically independent, in accordance with the law.

181. Public defenders nevertheless have an obligation to visit their clients at intervals not exceeding 60 days, thereby providing a guarantee to minimize secret detention and to gather information for the case.

182. The Code of Criminal Procedure establishes the institution of defender as a safeguard from the outset of the proceedings.

183. In this regard, under article 113 of the Code (amended in 2004), when a person is taken or summoned to a court charged with committing an offence, before the first statement is taken they shall be invited to appoint a defence counsel, and if they do not do so, the court shall appoint one.

184. Accused and counsel shall have access to the file during the entire pretrial proceedings except where decided by the judge on the grounds that evidence could be corrupted. Defenders can also submit evidence for consideration and question witnesses.

185. The pretrial proceedings are confidential, although that may change if:

- (a) A committal order is issued;
- (b) The proceedings are ordered to be shelved;
- (c) One year passes since the pretrial proceedings began.

186. If after one year it is decided to pursue the pretrial proceedings, only proceedings after that date shall be confidential.

187. No proceedings may remain confidential for more than one year. It is incumbent on the judge to ensure equality of arms between prosecutors and defence counsel at this stage of the proceedings.

188. As to persons detained by the law-enforcement services, under article 64 of the Police Procedure Act, counsel's intervention on police premises shall be regulated by the

Code of Criminal Procedure. In all cases, the defence shall be informed of the time of arrest and the grounds, and of the time the competent judge was notified of the arrest.

189. Proceedings involving adolescents suspected of criminal offences shall be governed by article 74 (f) of the Code on Children and Adolescents (Act No. 17823 of 7 September 2004).

## **Article 19**

### **Protection of personal information**

190. In Uruguay personal information is regulated by Act No. 18331 on the protection of personal information and the remedy of habeas data, article 1 of which emphasizes that the right to protection of personal information is inherent in the human person and is therefore included in article 72 of the Constitution.

191. The principle of the specification of purpose is referred to in article 8 of the Act, whereby the information to be processed may not be used for purposes other than, or incompatible with, those for which it was obtained. The information should be eliminated when it has ceased to be necessary or relevant to the purposes for which it was obtained.

192. The same Act provides that the cases and procedures in which exceptionally, on grounds of historical, statistical or scientific value, and in accordance with the relevant legislation, personal information may be preserved even where it is no longer needed or relevant, shall be determined by regulation. No information may be transmitted between databases unless permitted by law or with the prior informed consent of the subject.

193. Article 10 refers to the principle of security of information, stating that the person responsible for the database, or the user, should take the necessary measures to guarantee the security and confidentiality of personal information. These measures shall aim to prevent contamination, loss and unauthorized access or handling of the data, and to detect diversion of information, intentional or otherwise, whether the risks are associated with human action or the technology being used.

194. The information should be stored in such a way as to permit the subject to exercise their right of access and it is not permitted to record personal information on databases that do not meet the technical requirements for integrity and security.

195. Article 11 refers to the principle of confidentiality, whereby any physical or moral person who legitimately obtains information from a database where they have had it processed is obliged to use it in a confidential manner and solely for operations that are normal for that profession or activity; any distribution to third parties is prohibited.

196. Anyone who, by virtue of their occupation or other relationship with a person responsible for a database, has access to personal information, or is involved in any stage of processing such information, is required to maintain strict professional confidentiality in that regard (Criminal Code, art. 302), where the information has been gathered from sources not accessible to the public. This provision shall not apply where there is an order from a competent court in accordance with the relevant legislation, or where the subject gives consent.

197. The duty of confidentiality shall persist even after the relationship with the database manager ends.

198. Article 12 of the Habeas Data Act establishes the principle of accountability, whereby the person responsible for the database is also accountable for violations of this Act.

199. Article 25 of the Act regulates databases belonging to the Armed Forces and police and intelligence services. In this regard it states that personal information that has been stored for administrative purposes and must now be permanently registered in the databases of the Armed Forces and police and intelligence services shall remain subject to the provisions of this Act; the same applies to personal information provided by such databases at the request of administrative or judicial authorities in accordance with the law.

200. The processing of personal information for the purposes of national defence or public security by the Armed Forces and police or intelligence services without the prior consent of the subject shall be confined to particulars and types of information strictly necessary in order to carry out the tasks legally assigned to those bodies in the interests of national defence, public security or the prosecution of offences.

201. Databases in such cases must be specialized and designed for that purpose, and should be classified in categories according to a degree of reliability. Personal information registered for police purposes shall be deleted when no longer necessary for the investigations for which they were stored.

## **Article 20**

### **Restrictions on the right of access to information**

202. Uruguayan law also provides for restrictions on information, and these are explicitly referred to in Act No. 18331. Under article 27 (Exceptions to the right to information), the provisions of the Act shall not apply to the obtaining of information on a person where that information has a bearing on national defence, public security or the prosecution of criminal offences.

203. The Habeas Data Act also provides for remedies and legal action to obtain the required information without delay. Under article 37, anyone has the right to take effective legal action to find out what information is held on them in public or private databases and the purpose and use to which it is put and, where the information is wrong, false, discriminatory or outdated, to request rectification, inclusion, deletion or whatever action is deemed appropriate. In the case of personal information protected by legal provisions establishing its confidentiality, the judge shall rule on the lifting of confidentiality taking into account the circumstances of the case.

204. Under article 44 of the Act (Remedy of appeal and a second hearing), in habeas data proceedings only the final sentence and dismissal of the action as clearly inadmissible shall be subject to appeal.

205. An appeal shall be lodged in writing within the mandatory deadline of three days. The court shall refer the case to the higher court without further action when the action has been dismissed as clearly inadmissible, and shall give reasons and notify the other party, within a mandatory deadline of three days, when the final ruling is appealed.

206. The higher court shall give its ruling within four days of receipt of the case. The lodging of an appeal shall not suspend any protective measures ordered, which shall be implemented as soon as the sentence is notified, without waiting for the appeal deadline to pass.

207. Article 45 of the Act refers to the principle of summary proceedings in respect of habeas data applications, and states that such proceedings shall not consider prior issues, cross-claims or subsidiary claims. At the request of a party or of its own motion, the court shall rectify procedural defects and, taking due account of the summary nature of the proceedings, shall guarantee the application of the adversarial principle.

## **Article 21**

### **Verification and release of detained persons**

208. Uruguayan law on criminal procedure provides the necessary guarantees for ensuring effective release, in addition to the administrative procedures provided in that regard.

209. The court takes the decision on release and notifies the administration, and the administration executes the order and records the release. This procedure is supported by the defence counsel, who follows the proceedings up to release.

210. As to measures to protect the person once they have been released, they have the same rights in this regard as any other free person.

211. The National Foundation for the Welfare of Prisoners and ex-Prisoners provides interdisciplinary support in ensuring the full exercise of rights.

212. In addition, article 14 of the Humane Prison System Act (Act No. 17897) establishes mechanisms to facilitate the re-entry of released prisoners to the labour market.

## **Article 22**

### **Measures to prevent and punish delays or obstruction in providing information on the deprivation of liberty**

213. With regard to article 22 (a) of the Convention, Uruguayan law establishes the institution of habeas corpus and *amparo*.

214. As to habeas corpus, the Constitution (art. 17) states that, in the event of wrongful arrest, the person concerned or any other person may apply to the competent court for the remedy of habeas corpus to require the arresting authority to explain and substantiate without delay the legal grounds for the arrest, and that authority shall comply with the judge's decision.

215. Article 30 of the Constitution supplements that provision, stating that every resident has the right of petition before any and all authorities of the Republic.

216. As to *amparo*, under article 1 of Act No. 16011, any physical or moral person, public or private, may apply for *amparo* in respect of any act, omission or circumstance of State or parastatal authorities or of individuals, the actual or imminent effect of which is, in their opinion, to damage, restrict, alter or threaten in a manifestly illegal fashion any of the rights or freedoms expressly or implicitly recognized in the Constitution (art. 72), with the exception of cases to which the remedy of habeas corpus applies.

217. With regard to article 22 (b) of the Convention, the system of criminal law in Uruguay contains all the guarantees of due process and, as mentioned, the remedy of habeas corpus. There are no cases in Uruguay of unregistered prisoners at the disposal of the court.

218. Lastly, with regard to article 22 (c) of the Convention, the Uruguayan civil service has administrative rules and procedures that allow officials to be disciplined for the conduct mentioned in the Convention, without prejudice to criminal action.

## Article 23

### Training of State officials

219. The Uruguayan State is steadily making progress with the training of officials in the promotion and protection of human rights.

220. In addition to its obligations under article 23 of the Convention, it should be noted that, in accordance with the judgement of the Inter-American Court of Human Rights in *Gelman v. Uruguay*, the State must “implement, at the Centre for Judicial Studies of Uruguay, in a reasonable period of time and with the corresponding budgetary means, permanent human rights programmes, offered to district attorneys and judges of the judicial branch of Uruguay, that entail courses or training programmes on the diligent investigation and judgement of acts which constitute enforced disappearance of persons and abductions of minors” (judgement, para. 278).

221. In response to this order, the Centre for Judicial Studies organized a day of discussion and exchange in October 2011 on “Disappearance of persons and the international human rights system”, sponsored by the Office of the United Nations High Commissioner for Human Rights and the United Nations Children’s Fund (UNICEF). The course focused on the international human rights system and its standards, guarantees and operation, the International Convention for the Protection of All Persons from Enforced Disappearance, the new challenges facing the international and inter-American human rights systems, and protection against enforced disappearance.

222. In addition, the Centre for Judicial Studies, together with the National Directorate for Human Rights of the Ministry of Education and Culture, the Public Prosecution Service and the judiciary, has designed a rolling training programme for those working in the administration of justice, comprising 42 teaching hours and with nationwide coverage.

223. As part of the prison reform, the Prison Training Academy is being overhauled, a process supported by the Ibero-American Conference of Ministers of Justice and the Argentine Federal Prison Training Academy in respect of the design of the new curriculum.

224. Thanks to the support from the Office of the United Nations High Commissioner for Human Rights, it has been possible to include all the standards of human rights protection in prisons and the provisions of the Convention in the induction courses for the new civilian officials (1,500 persons).

225. In parallel, the Ministry of the Interior has distributed the full panoply of national and international human rights standards in its daily bulletin, thereby guaranteeing national coverage and obliging all officials to take note.

226. One purpose of the current reforms is to gradually exclude the police, paving the way for a new civilian prison service within the Ministry of the Interior itself.

227. Also as part of the reform, the Ministry of the Interior has introduced general human rights training at the National Police College and the Junior Staff Training Centre.

228. At the National Police College, human rights is a one-semester course. The curriculum is the same as the one used in the legal-notarial course at the Law Faculty of the University of the Republic. It includes the following units: Constitution of the Republic — rights, duties and guarantees; the role of the police in a rights-based regime; the concept of human rights and their classification; Universal Declaration of Human Rights — what it is and what rights it proclaims; international protection mechanisms; code of conduct for law-enforcement officials; Pact of San José, Costa Rica; internal instruction in bulletin No. 12/97; and xenophobia, racism and discrimination.

229. In addition, in January 2012 the Ministry of the Interior ran the first in-service prison training course for prison directors and the first in-service prison management training course for prison staff. Participants received up-to-date material on international human rights standards, the international instruments that may be invoked in the event of human rights violations, and practical examples.

230. In the training course given by the National Rehabilitation Institute to its officials, there are four subjects that address the topic directly or indirectly, namely prison legislation, prison practice, police methods and human rights. In communicating these ideas, the trainers try to deal with all the situations that might arise in the daily life of a prison and analyse cases of human rights violations, with an emphasis on best practices in avoiding them.

## **Article 24**

### **Victims' rights**

231. The Uruguayan legal order meets the six direct or implied obligations towards victims of enforced disappearance under article 24 of the Convention.

#### **Article 24, paragraph 1**

##### **Definition of victim**

232. It must be said that this definition is not explicitly enshrined in Uruguayan law, and not only for this type of offence. The State of Uruguay recognizes that the situation of victims is not properly regulated and covered in domestic law; this is one of the shortcomings of the national system and is being addressed by the Uruguayan penal reform projects.

233. That having been said, it should be recalled that article 13 of Act No. 18026 (Participation by the victim) establishes the right of the complainant, the victim and their families to see all documents in the case, obtain evidence and submit any evidence in their possession, and to take part in all judicial proceedings.

#### **Article 24, paragraph 2**

##### **Right to know**

234. The Uruguayan Parliament recently adopted Act No. 18831 re-establishing the State's punitive claim in respect of crimes of State terrorism committed up to 1 March 1985, i.e., offences covered by article 1 of Act No. 15848 of 22 December 1986, known as the Expiry Act.

235. Under Act No. 18831, no period of limitation or expiry shall apply between 22 December 1986 and the entry into force of the Act, in respect of offences covered by article 1 of the Act. It also declares those offences crimes against humanity in accordance with the international treaties to which Uruguay is party.

#### **Article 24, paragraphs 4 and 5**

##### **Right to full reparation**

236. Under article 14 of Act No. 18026, the State shall be responsible for reparations to the victims of offences defined in the Act that are committed in the territory of the Republic or committed abroad by agents of the State or anyone acting with the authorization, support or acquiescence of agents of the State.

237. Article 14 goes on to state that the victim shall obtain full reparation, including compensation, restitution and rehabilitation, and that it shall cover the family, group or

community to which they belong. “Family” shall mean a group of individuals bound together by blood or matrimonial ties and by the fact of living together or sharing a common way of life.

238. Act No. 18596 covers reparation to victims of unlawful acts by the State in the period between 13 June 1968 and 28 February 1985. To date the Uruguayan State has paid out US\$ 9,119,000 in compensation to victims.

#### **Article 24, paragraph 6**

##### **Legal situation of disappeared persons**

239. Uruguayan law not only establishes the legal obligation to continue the investigation until the fate of the disappeared person has been clarified, it also addresses the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights.

240. In this regard, under Act No. 17894 persons whose disappearance on national territory was confirmed by the Peace Commission established in August 2000 were declared “absent by reason of enforced disappearance”. This will also include cases initiated by the Peace Commission if so decided by the Executive on the basis of a report by the Secretariat for Follow-Up.

241. This declaration of absence will permit the legal opening of succession in respect of an “absent” person (Civil Code, art. 1037).

242. Also under this Act, anyone with a legitimate interest may begin the relevant succession proceedings in respect of a person declared absent under article 1. For the purposes of this law, the partner of any absent person shall also be considered to have a legitimate interest in undertaking succession proceedings. A statement by two witnesses attesting to the relationship shall suffice to establish the partner’s status. No fee shall be payable in respect of any procedure carried out as part of succession proceedings in respect of a person declared absent under this Act.

243. Thirteen cases have been brought under the Act on Absence by Reason of Enforced Disappearance by the families of disappeared persons; eight received the appropriate compensation.

244. To date the Uruguayan State has paid out US\$ 1,126,430; the remaining cases are still pending before the court.

#### **Article 24, paragraph 7**

##### **Right of association**

245. The Uruguayan State guarantees the right to form associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons.

246. There are several militant human rights NGOs in Uruguay whose purpose is to search for disappeared persons and establish their fate, and to obtain truth, justice and non-repetition of these crimes; they enjoy complete freedom and non-interference by the State.

#### **Article 25**

##### **Removal of children subjected to enforced disappearance**

247. Domestic law does not define an offence of wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is

subjected to enforced disappearance, or children born during the captivity of a mother subjected to enforced disappearance.

248. Neither does the law define an offence of falsification, concealment or destruction of documents attesting to the true identity of such children.

249. Such acts could nevertheless be covered by the offences of suppression of civil status (Criminal Code, art. 258), whereby anyone who in any way obliterates a person's civil status or creates a risk of obliteration shall be liable to between 18 months' ordinary imprisonment and 8 years' rigorous imprisonment, and assumption of civil status (Criminal Code, art. 259), whereby anyone who in any way establishes a false civil status or creates a risk that one could be established shall be liable to between 18 months' ordinary imprisonment and 8 years' rigorous imprisonment.

250. It should also be noted that, under article 15 of Act No. 18026, an aggravating circumstance at the time of sentencing is the fact that the victim of the enforced disappearance is a child, an adolescent, a pregnant woman, or persons with impaired physical or mental health by reason of age, infirmity or any other circumstance, or a family. "Family" means a group of individuals bound together by blood or matrimonial ties and by the fact of living together or sharing a common way of life.

251. The best interests of the child as a general framework for dealing with all matters relating to children is established in Uruguay under Act No. 17823, the Code on Children and Adolescents.

252. Article 14 of the Code establishes as a matter of general principle that the State shall protect the rights of children and adolescents under its jurisdiction, regardless of their ethnic, national or social origins, their sex, language, religion, political or other opinion, financial status, mental or physical impairments, birth or any other condition of the child or the child's legal representatives.

253. The State shall make every effort to guarantee recognition of the principle that both parents or their legal representatives, whose basic concern shall be the best interests of the child, have joint obligations and rights in respect of their child and its development.

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