



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

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Summary record of the 43rd meeting

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Chairperson: Mr. Decaux

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties to the Convention (continued)

Initial report of Uruguay (continued) (CED/C/URY/1; CED/C/URY/Q/1 and CED/C/URY/Q/1/Add.1)

At the invitation of the Chairperson, the delegation of Uruguay took places at the Committee table.

1. **Mr. Perazza** (Uruguay) said that his country had signed various judicial cooperation agreements, mainly with Argentina, the Latin American country with the largest number of enforced disappearances of Uruguayan citizens. Agreements on information exchange had been concluded between the two countries since the 1980s, but cooperation had been stepped up since the middle of the 2000s. The Secretariat of the Follow-up to the Commission for Peace, in particular, had based its activity on a variety of mechanisms for cooperation with various Argentine institutions, such as the National Commission for the Right to an Identity (CONADI). Act No. 18,026 expressly provided for aggravating circumstances if the victim of an enforced disappearance was a child, teenager, disabled person or pregnant woman or a family. He confirmed that the international treaties ratified by Uruguay were directly applicable within the national territory.
2. **Mr. Miranda** (Uruguay) pointed out that the ban on exercising public office was a special feature of the national legislation on missing persons. The ban remained in force throughout the punishment served.
3. **Mr. López Ortega** said he wished to know whether the guarantee of non-refoulement had become national law and whether responsibility for enforcing that principle lay with a judicial or administrative authority. He asked for clarification on the specific regime of incommunicado detention, which the police could apparently apply on its own initiative, e.g. to prevent a suspect from destroying evidence, and on the remedy of habeas corpus. The fact that habeas corpus was being applied even though the bill on habeas corpus had yet to be adopted raised the question as to whether the remedy was applied systematically and coherently. The delegation was also invited to explain whether judges could visit detention centres and what measures had been taken to monitor detentions ordered by judicial, as opposed to administrative, authorities. If, as he had understood it, the right of access to data was restricted in cases involving victims of enforced disappearances, the delegation should explain why and indicate whether it might consider changing that stance. It would also be useful if the State party could make known its intentions with regard to training and the dissemination of information on the Convention. The delegation should clarify whether genetic samples were collected only once the consent of the individual concerned had been obtained and what rights that person would have, particularly in the case of minors. Similarly, the delegation might wish to express its opinion on the fact that not all the extremely serious acts referred to in article 25, paragraph 1, of the Convention were proscribed under Uruguayan law and that no specific procedure existed for reviewing decisions on the adoption or custody of children following enforced disappearance. It might also indicate whether it considered it necessary to revise legislation in order to take better account of the best interests of the child. The delegation was invited to clarify the differences between the two legal regimes available to victims depending on whether they were filing complaints against acts committed during the dictatorship or at another time, including in terms of protection of the right to privacy, and the current status of compensation claims emanating from other human rights bodies, including the Inter-American Court of Human Rights.
4. **Mr. Camara** observed that although considerable efforts had been made to bring legislation into line with the Convention, no specific provision had been adopted to define

the removal of children (Convention, art. 25) in national law. The concept of a “victim” had not been defined in Uruguayan legislation and he wondered whether jurisprudence gave any indication of a definition. He requested more detailed information on applications for *amparo*, and especially how they differed from habeas corpus and habeas data applications.

5. **Mr. Hazan** asked what was done to protect victims and witnesses, and to ensure that they did not suffer further trauma during trials.

6. **Mr. Mulembe** commended the State party’s detailed description of the various training programmes introduced in the civil service, and asked, first, how it ensured that the programmes were sustainable and, second, whether they had already yielded tangible results, particularly, with respect to changing attitudes.

7. **Mr. Huhle** added that it would be interesting to know the distribution of competence with regard to the initial and further training of lawyers and judges.

8. **Ms. Janina** asked whether there were exceptional circumstances in which the prohibition on refoulement could be lifted; whether diplomatic assurances were applied during the return of individuals; to what extent the State party’s services took into account the specific needs and sensibilities of women and children; and how children and adolescents were defined, since both terms appeared in legislation.

The meeting was suspended at 10.45 a.m. and resumed at 11.10 a.m.

9. **Mr. Perazza** (Uruguay) explained that the principle of non-refoulement was enshrined in article 3 of the Asylum Act. The application of that fundamental principle, therefore, was primarily the responsibility of the Refugees Commission, which comprised representatives of various public institutions (not all of which were linked to the executive) and civil society.

10. **Ms. Fulco** (Uruguay) confirmed that no procedure had been established for the incommunicado detention regime.

11. **Mr. Miranda** (Uruguay) said that the guarantee of habeas corpus was provided for in article 17 of the Uruguayan Constitution, and that it had always been applied directly. Nevertheless, his country recognized the need for further regulations, and so a bill on habeas corpus reflecting judicial practice was currently in course of adoption. Any criminal judge could rule on a habeas corpus application. The application was made in writing, and the judge summoned the person to appear and called for the reasons for the deprivation of liberty to be explained. There was therefore contact with the person held in detention. In general, judges could visit persons deprived of their liberty and, like civil society organizations, had free access to detention centres and young offenders’ institutions. No article of the Constitution was devoted to the remedy of *amparo*, which fell within the scope of article 72. A law on *amparo* was due to be enacted soon. Habeas corpus concerned only situations involving deprivation of liberty, whereas *amparo* applied to all other situations in which fundamental rights were violated or under threat.

12. **Ms. Fulco** (Uruguay) said that reform of the prison system had begun in 2005, and that the law governing the new system stipulated that registers should be kept of persons detained in Uruguay. Information on detainees had always been carefully recorded and archived; the Uruguayan authorities knew the exact number of persons deprived of liberty, as well as their state of health and criminal record. However, steps were needed to harmonize legislation and were in fact being taken, with Spain’s assistance, on the basis of the Catalan model. In that context, Uruguay would soon have sophisticated software to ensure that the register was very accurate.

13. **Mr. Perazza** (Uruguay) said that victims of enforced disappearance could access information relating to them either by sending a direct request to the competent authorities

or through the national human rights institution. The law on habeas data provided that the right to protection of personal data was guaranteed by article 71 of the Constitution. Each person had the right to obtain all information relating to him or her contained in public or private databases. For information relating to a deceased person, his or her successors could request access to public information. Under the law, a person denied the right to access information relating to him or her could seek legal remedy.

14. **Ms. Jorge** (Uruguay) said that the National Institute for Cell, Tissue and Organ Donations and Transplant was responsible for obtaining, keeping and protecting genetic samples linked to missing persons and for managing the DNA database, with the consent of the parties concerned. The samples were kept in a supervised environment and could only be transferred at the request of the Office of the Secretary for Human Rights or a judge, again with the consent of the parties concerned.

15. **Mr. Perazza** (Uruguay) acknowledged that, although there were many human rights training programmes in his country, no course was specifically devoted to enforced disappearances and the provisions of the Convention. The topic was not covered in the training of police officers or detention centre staff. The police should take the opportunity afforded by the revision of its training programme to remedy that shortcoming. Uruguay might wish to seek international assistance in the matter. He recalled that, in its judgement in the *Gelman v. Uruguay* case, the Inter-American Court of Human Rights had asked Uruguay to organize specific training for staff of the Public Prosecution Service and judges. His country was working in collaboration with the Inter-American Court to fulfil that obligation.

16. **Mr. Miranda** (Uruguay) said that a recent crisis in human rights teaching at his country's Centre for Judicial Studies, a body answerable to the judiciary, demonstrated the sensitivity of that issue. Uruguay would need to step up its efforts to organize human rights training at all levels, including under the national plan which had recently been introduced.

17. **Mr. González** (Uruguay) said that his country had made great strides in the field of human rights training, particularly in universities; however, the progress made still needed to be extended to the entire country, with emphasis being placed on knowledge and promotion of the Convention.

18. **Mr. Miranda** (Uruguay) said that the Uruguayan Civil Code included provisions on the question of a person's absence in situations of war or accidents at sea. The families of individuals who had been victims of enforced disappearance during the dictatorship had requested specific action by the State to resolve issues such as inheritance and parentage in cases of missing persons. The Truth Commission had drafted a law on the matter, which did not amend the Civil Code but made it easier to prove a person's absence. A judge could therefore declare a person absent if he or she was on the Truth Commission's list. In Uruguay, absent status did not imply a presumption of death. The declaration of absence could thus not be used as a ground for dissolving a marriage. The question had arisen as to how specifically to deal with absence in the family book. After lengthy debate, a page had been added to the section on births as opposed to the section on deaths. That example illustrated the deep ethical discussion which had been held with the aim of bringing about compensation for moral injury – a vital element in cases of enforced disappearance.

19. With regard to the definition of the victim, article 14, paragraph 2, of Act No. 18,026 provided that reparation must be comprehensive and include compensation, restitution and rehabilitation measures, and also extend to the victim's family members and the group or community to which the victim belonged. It was not only a matter of financial compensation, but also moral compensation, and so perhaps the symbolic measures taken in Uruguay were still insufficient. The concept of the victim contained in article 14 of the Act conformed to the provisions of the Convention and the Declaration of Basic Principles of

Justice for Victims of Crime and Abuse of Power. It was planned to include a definition of the concept of the victim in the future revision of the Code of Criminal Procedure.

20. With regard to the protection of enforced disappearance victims who were minors, the offences of substituting and cancelling civil status had hitherto been invoked to enable children to recover their identity. Nevertheless, criminal law should include a provision specifically relating to minors. He recalled that adopted children's right to their identity was guaranteed, and provisions preventing them from having access to their records and information concerning their parentage had been rescinded.

21. **Ms. Jorge** (Uruguay), replying to the question by Mr. Hazan on victims and witnesses in judicial proceedings, explained that the authorities were looking for a solution but the problem had not been completely resolved.

22. **Ms. Dupuy Lasserre** (Uruguay), replying to Ms. Janina's question about children and adolescents in relation to article 15 of the Convention, pointed out that the legislation referred to children up to 18 years of age, while the Code on Children and Adolescents referred to children up to 13 years and adolescents between 13 and 18 years. The distinction meant that minors could be treated differently according to their degree of maturity.

23. **Mr. López Ortega**, referring to the subject of habeas corpus, a procedure which was irrefragable, asked whether the State would be happy to accept a recommendation by the Committee urging it to continue its reform. As to adoptions, he asked whether there was a judicial channel readily available for revoking an adoption and restoring a child's original parentage.

24. **Mr. Camara** asked, in relation to habeas data, whether there was a remedy through which a person could consult personal information relating to them contained in registers.

25. **Mr. Hazan** asked whether there was an administrative mechanism, in addition to the criminal jurisdiction, for suspending members of the armed forces implicated in cases of enforced disappearance. He also inquired whether Uruguay planned to establish a special department under the Public Prosecution Service with responsibility for enforced disappearances, so as to make efforts to counter such disappearances more effective. Lastly, he asked whether it was possible to revoke an adoption following an enforced disappearance or other serious crime such as trafficking in children.

26. **Mr. Huhle** said that the concept of a victim as contained in the Convention included any person who had suffered a disappearance, as a partner or colleague. The definition in Uruguayan legislation should be amended if it was not broad enough.

27. **Mr. González** (Uruguay) said that his country did indeed plan to reform the habeas corpus procedure in the way suggested by Mr. López Ortega. With regard to habeas data, he confirmed that Uruguayan law had a remedy of the type mentioned by Mr. Camara. Regarding the possible suspension of members of the army implicated in enforced disappearances, the cases were judged under ordinary law, which therefore required a complaint, a procedure and a conviction.

28. **Mr. Miranda** (Uruguay), referring to the very interesting idea of creating a special department within the Public Prosecution Service with responsibility for enforced disappearances, said that the question had already been raised by civil society and the national human rights institution. The Uruguayan investigation system had occasionally shown weaknesses and the possibility of creating such a department was being considered.

29. **Mr. González** (Uruguay) explained that the Act on Children and Adolescents explicitly provided for the possibility of revoking adoption under an expedited extraordinary procedure. In accordance with the Children's Code, the information on a

child's parentage was always saved. In his view, Uruguayan law contained a broad definition of the concept of a victim.

30. **Mr. López Ortega** said that the dialogue had helped to clear up numerous issues. The delegation had, among other things, clearly established the place of the Convention in the Uruguayan legislative system and competently assessed the national human rights institution; its role should be strengthened and it should be made more independent. He encouraged Uruguay to continue its legislative reforms and especially to guarantee the independence of judges, which was vital in the area of enforced disappearances.

31. **Mr. Camara** asked whether there were specific provisions on the protection of women and children who were victims of enforced disappearance; whether the principle of non-refoulement was applicable in cases of terrorism; and how Uruguay ensured that a person whose extradition was requested would not risk the death penalty or cruel or degrading treatment in the country of destination. He suggested three areas for consideration and urged Uruguay: to revise the minimum prison term for the crime of enforced disappearance, which stood at 2 years; to consider the situation of pregnant women, children and other vulnerable victims of enforced disappearance; and to examine the duration of the accessory penalty which prohibited the exercise of public office.

32. **Mr. González** (Uruguay) said he was pleased to note that Committee members had expressed satisfaction at the replies to a large number of issues; his delegation had wished to work in a spirit of openness, particularly since Uruguay had long suffered on account of the crime of enforced disappearance. The contributions of the members of the Committee would be valuable to Uruguay in its struggle against enforced disappearances and in the improvement of relevant legislation. The delegation would provide written responses to the additional questions which had been asked.

33. **The Chairperson** thanked the delegation for the substantive, constructive and frank dialogue. It was the first oral consideration of a country report and set a good example. He also emphasized the importance of the contribution of NGOs.

The meeting rose at 12.50 p.m.