



International Covenant on Civil and Political Rights

Distr.: General
28 October 2013

Original: English

Human Rights Committee 109th session

Summary record of the 3023rd meeting

Held at the Palais Wilson, Geneva, on Thursday, 24 October 2013, at 10 a.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Fifth periodic report of Uruguay (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Uruguay (continued) (CCPR/C/URY/Q/5, CCPR/C/URY/5)

1. *At the invitation of the Chairperson, the delegation of Uruguay took places at the Committee table.*
2. **Mr. Miranda** (Uruguay) said that Act No. 18.026 of 2006 incorporated the Rome Statute of the International Criminal Court in national law. It amended article 2 of the Criminal Code and divided breaches of the law into three categories: crimes, offences and misdemeanours. According to article 7 of the Act, the former, which included genocide, war crimes and crimes against humanity, were not subject to a statute of limitations. Moreover, crimes against humanity did not have to be widespread or systematic – isolated acts could also fall under that category.
3. Responding to questions about the ruling by the Supreme Court of Justice on Act No. 18.831, he said that it was the result of a flaw in the judicial system. The principle of legality had obliged courts in Uruguay to treat cases of enforced disappearance as aggravated murder.
4. Lastly, responding to a question about criminal proceedings for cases of torture, he said that 227 cases involving human rights violations were currently being tried.
5. **Mr. Garcé** (Uruguay) said that the Parliamentary Commissioner on Penitentiaries served as an ombudsman and was responsible for monitoring the rights of persons deprived of their liberty. The Commissioner had the authority to investigate complaints and inspect places of deprivation of liberty without prior notice. The National Human Rights Institution conducted around 500 prison inspections every year. Some were planned, while others were prompted by complaints.
6. The writ of *amparo* was granted for any case in which a fundamental right had clearly been interfered with, restricted, altered or threatened, on the condition that no other effective judicial or administrative measures were available. Complaints had to be heard within three days and sentences handed down within 24 hours. Delays to trials involving *amparo* were not due to problems with the procedural structure.
7. Article 17 of the Constitution provided for habeas corpus. The fact that it had not been regulated did not prevent it from being applied. Three projects had been brought before parliament, one of which would seek to apply habeas corpus to cases in which legitimate detention had become illegitimate. If approved, it had the potential to alter the country's criminal policies, which were geared towards prevention and led to many Uruguayans being deprived of their liberty. The three projects would also explicitly provide for the right to habeas corpus during states of emergency.
8. Article 11 of Act No. 18.026 stated that crimes and offences defined in the Act could not be considered military offences and could therefore not be tried in a military court. The Act also provided for the participation of victims in criminal proceedings.
9. **Ms. Waterval** asked for clarification on the status of the bill aimed at the criminalization of marital rape.
10. **Mr. Salvioli** asked when the State party would adopt legislation to bring its national law into line with the provisions of article 4 of the Covenant. He wished to know when the three projects relating to habeas corpus might be approved, and noted that proceedings in the Juan Peirano Basso case were still in the pretrial stage.

11. **Mr. Rodríguez-Rescia** asked whether the delegation could make a positive commitment to strengthening the National Human Rights Institution, which currently had no full-time staff of its own. The State party should also indicate whether future amendments could be made to its Constitution to bring it into line with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. **Mr. Shany** asked why there were so many instances of pretrial detention in Uruguay, and whether the Government was planning to introduce any measures to address the issue. He wished to know whether there were plans to revise the list of non-bailable offences and encourage judges to consider alternatives to pretrial detention. What alternatives were available or ready to be introduced?

13. With regard to electronic monitoring devices, he asked whether there were plans to extend their use to all suspects. He also wished to know the maximum period during which a person could be detained before the start of a trial and before its conclusion.

14. **Mr. Perazza** (Uruguay) said that paragraph 91 of the State party report (CCPR/C/URY/5) recognized that there was no bill aimed at the criminalization of marital rape. Uruguay had, however, taken steps to bring its Criminal Code into line with the provisions of the Covenant. In 2006, an article that extinguished the offences of rape and abduction if the perpetrator subsequently married the victim had been repealed. The Committee's concerns would be conveyed to parliament, which was in the process of reviewing the Criminal Code.

15. **Mr. Miranda** (Uruguay) said that approving the amended Criminal Code and Code of Criminal Procedure was a priority. The Committee's concerns with regard to states of emergency would be conveyed to parliament.

16. Responding to concerns about the National Human Rights Institution, he said that it was a very important body that had taken seven years of hard work to institutionalize. His personal commitment to strengthening it could not be greater. He agreed with Mr. Rodríguez-Rescia that it would be appropriate for the Government of Uruguay to discuss a reform of its Constitution.

17. **Mr. González** (Uruguay) said that the National Human Rights Institution would perform the functions of a national mechanism for the prevention of torture.

18. **Mr. Garcé** (Uruguay) said that directors of detention facilities could be prosecuted for failing to report acts of torture. There had been no such cases because the justice system had, in the past, been promptly informed of any offences committed.

19. The amended Code of Criminal Procedure provided for habeas corpus. The parliament had to decide whether to approve the Code as it stood or amend it further by incorporating the content of the three drafts under review.

20. Responding to questions about pretrial detention, he said that the problem in Uruguay lay in detention during the trial, rather than before it. Under article 16 of the Constitution, it was incumbent on judges to take the statement of persons under arrest within 24 hours and begin proceedings within 48 hours at the latest. In October 2013, the Ministry of the Interior had adopted a resolution declaring that persons remanded in custody could not be returned to police custody and should instead be detained within the prison system. There was no time limit for criminal proceedings and the concept of trial within a reasonable time was applied.

21. For offences that carried a minimum prison term of at least 2 years, pretrial detention was mandatory. Moreover, Act No. 16.058 had limited the discretionary power of

judges to grant bail even when the offence carried a term of under 2 years, and provided that pretrial detention was mandatory if the person under arrest had a criminal record.

22. **Mr. Salvioli** said that, according to alternative sources, serious problems subsisted within the prison system in Uruguay, and there was a high proportion of persons imprisoned without trial. He asked what public policy measures were being considered to address the issue, in addition to those contained in the State party's report. He also noted that no information had been provided with regard to the status of investigations into alleged abuses by various officials from the Uruguayan Institute for Children and Adolescents.

23. **Mr. Flintermann** asked the delegation to provide information on the training given to law enforcement officials on the prevention of torture, as well as more recent data on the complaints filed in relation to ill-treatment in detention. Since only one of the dozens of cases filed by the Parliamentary Commissioner for the Prison System had resulted in a person being prosecuted for torture, he would like the delegation to explain whether the Commissioner's perception of torture differed from that of the prosecution service. He also enquired whether the Observer Committee for Adolescents Deprived of their Liberty and the Inspector-General for Psychopaths could receive complaints from individuals and forward them to the public prosecution service and, if that was the case, on how many occasions they had done so.

24. As to the family courts, given that only 4 per cent of domestic violence cases were prosecuted, largely because the courts were overloaded, he asked whether the measures taken to tackle the problem had in fact improved the situation, how long it currently took for a case to come to court and what proportion of domestic violence cases were being referred for criminal prosecution.

25. The Committee would like to know whether the bill to raise the minimum age for marriage to 16 had been adopted by parliament, and he asked the delegation to explain the cultural, religious or historical reasons there had been for setting the minimum age so low, namely at 12 for girls and 14 for boys. The Committee would also like to hear why the State party had decided to raise it to 16 instead of 18 since that would still allow child marriages in Uruguay. Data on the number of marriages in which one or both spouses were under 18 and on the average age at which people married would be appreciated, as well as information on the minimum ages for driving, voting, standing for election, buying alcohol and other activities.

26. **Mr. Rodríguez-Rescia** said that changing from an inquisitorial system to an accusatory one would not necessarily reduce the proportion of persons in pretrial detention. What was required was a change in the culture of the judiciary. He therefore asked what other measures the State party was planning to take to end what amounted to the criminalization of innocence. In relation to the rights of the child, Uruguay had very progressive legislation, but he wished to know how the State would ensure that detention pending trial would not be the rule for adolescents. The use of electronic ankle bracelets should possibly be extended to adults as well.

27. As to impunity for crimes against humanity, the Committee was concerned because, although the Government had taken steps to eliminate the obstacles of the amnesty laws, the sentence of the Supreme Court declaring Act No. 18.831 unconstitutional had complicated matters. Crimes against humanity, which included the systematic use of torture as well as enforced disappearances, were not subject to any statute of limitation. They should, however, be prosecuted as crimes against humanity and not, for example, as types of homicide in order to circumvent the problem of applying laws retroactively.

28. The State party had not mentioned indigenous persons or persons of African descent in connection with the protection of vulnerable people. He asked what tangible measures

were being taken to implement the Brasilia Regulations Regarding Access to Justice for Vulnerable People and to ensure that such people received legal advice. He also asked why no reference had been made to access to justice for those seeking the vindication of their indigenous origins.

29. **Ms. Waterval** asked the delegation to describe the impact that the recent legislative and administrative reforms had had on national and international adoptions. She also wished to know how the State party intended to bring the new procedure for registering the family name of a child born outside wedlock into line with its international obligations, given that the procedure was identified as unfair and discriminatory in the report. Information on the impact of the integrated health-care system on indigenous and Afro-descendant children and about their access to education would be appreciated.

30. **Mr. Neuman** said that the Committee would like to have more information on the government strategy for discouraging child labour, specifically on the sanctions and incentives established, not only for employers, but also for parents who employed their own children unlawfully or encouraged them to work for someone else. The delegation was also asked to clarify whether the implementing regulations of the statutes passed to address the problems that child migrants had in obtaining documentation and accessing services had been adopted and whether those problems continued to arise.

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

31. **Ms. Fulco** (Uruguay) said that the critical overcrowding in Uruguayan prisons would be resolved in 2014 and there would in fact be surplus space by 2015. In addition to expanding the physical infrastructure, the Government was overhauling the administration of the prison system. One prison had been converted into an assessment centre to ensure that detainees ended up in the right type of institution. Steps to improve admission and release procedures would be implemented in 2014. Prisons would be increasingly run by civilians, not the police, in keeping with international standards. A prison officers' academy had been opened to prepare 1,500 civilians for the transition, and training in international human rights law formed part of the curriculum. Corruption in the system was also being tackled: 48 officers had been prosecuted in 2013 for abusing their position, and guidebooks on the rights of persons deprived of their liberty and on the services available to them had been distributed nationwide.

32. **Mr. Garcé** (Uruguay) said that a huge investment had been made in prison facilities in recent years, but that prison overcrowding would not be resolved so long as criminal policy favoured the deprivation of liberty. He agreed that, in addition to changes in criminal law, a change in the legal culture was required. He recommended approving the new draft Code of Criminal Procedure, refraining from enacting any more punitive legislation, implementing the 10 alternatives to deprivation of liberty currently established by law and restoring the discretionary powers that judges had enjoyed under Act. 15.859 of 1987 before they had been curtailed by Act No. 16.058. The Committee's observations on that last recommendation would be appreciated.

33. In reply to the observation that only one officer had been prosecuted for torture, he wished to state that dozens of officers had been prosecuted for other offences, such as causing bodily harm and abuse of authority. Since the establishment of the National Human Rights Institution in June 2012, the institution received all complaints of human rights abuses. Those related to treatment in prisons were forwarded to the Parliamentary Commission for the Prison System, which was also responsible for prison visits. Other bodies, such as the Office of the Inspector-General for Psychopaths, would be subsumed into the new Institution.

34. **Mr. Perazza** (Uruguay) said that a number of special procedures mandate holders and other members of the international human rights system, as well as national bodies and

the general public in Uruguay, had repeatedly called on the Uruguayan Institute for Children and Adolescents to improve its conditions of detention and to follow up on reported cases of abuse occurring in the Institute. In response, the Institute's Board of Directors had initiated administrative investigations, which were still under way. Cases of corruption had also been reported, in which staff members had allegedly turned a blind eye to the escape of children from the Institute. The Government was well aware that it needed to address the issue, and would do so as part of its plans to increase transparency throughout the juvenile justice system through monitoring by local NGOs and international bodies.

35. **Ms. Fulco** (Uruguay) said that national and international human rights law was a key focus of the training provided to prison staff, in the form of both initial and continuous training. Ambitious training programmes had been established with the cooperation of various international partners, with the aim of changing attitudes and mindset among staff members.

36. As part of the restructuring of the National Rehabilitation Institute, new mechanisms had been created to monitor and investigate cases of abuse within the system, and the Parliamentary Commissioner for the Prison System, NGOs and other organizations had been granted full access to the facilities and to any relevant information.

37. **Mr. Miranda** (Uruguay) said that the Observer Committee for Adolescents Deprived of their Liberty had been dissolved in 2012 because it had not been fulfilling its mandate to conduct regular visits to juvenile detention facilities. That role had been transferred to the National Human Rights Institution.

38. **Mr. Perazza** (Uruguay) said that, in addition to the multidisciplinary teams established to deal with family affairs, five mediation centres dealing mainly with family disputes had also been established, and another five were expected to open in 2014. Of the more than 23,000 reported cases of domestic violence in 2012, more than 16,000 had been resolved within the court system. It was hoped that with the establishment of the mediation centres more cases would be resolved through mediation rather than through the courts.

39. When raising the minimum age for marriage from 12 years for girls and 14 years for boys to 16 years for both sexes, the priority had been to eliminate the gender-based discrimination of the old law. Raising the minimum age to 18 would have required amending more chapters of the Civil Code, and it had been feared that the necessary consensus would not be reached. The change to the minimum age was a direct result of pressure from the human rights treaty bodies and the universal periodic review. Some political parties were currently campaigning to lower the age of criminal responsibility from 18 to 16 years of age, but the executive branch of the Government believed that doing so would violate the State's international obligations.

40. **Mr. González** (Uruguay) said that, while the law still stipulated that minors in conflict with the law should be detained only as a last resort, recently judges had tended to make greater use of custodial measures against minors. There was significant pressure from society in that regard, as the number of minors in conflict with the law had increased in recent years, and the media had also played a key role in publicizing juvenile crime.

41. **Mr. Miranda** (Uruguay) said that in February 2013 the Supreme Court had declared unconstitutional articles 2 and 3 of Act No. 18.831, which stated that no statute of limitations should apply to dictatorship-era abuses committed by the State, and that those abuses constituted crimes against humanity. That Supreme Court decision was not legally binding, and some lower courts had chosen to ignore it. The issue was still being hotly debated in Uruguay. The classification of enforced disappearance as an offence was a separate issue, and Uruguayan case law had consistently taken the position that acts committed before 2006 could not be classified as enforced disappearances. The discrepancy

in the number of disappeared persons was explained by the fact that, due to the coordinated campaign of repression known as “Operation Condor” in the Southern Cone of Latin America, many Uruguayan citizens had disappeared in Argentina, Chile and other neighbouring countries. The Working Group on Enforced or Involuntary Disappearances had not included those persons in its list of Uruguayan victims of enforced disappearance.

42. **Ms. Jorge** (Uruguay) said that, in addition to the 178 Uruguayan citizens recognized by the State as victims of enforced disappearance, the Government was currently investigating another 40 cases to determine whether or not they should also be classified as enforced disappearances.

43. **Mr. Miranda** (Uruguay) said that the Brasilia Regulations Regarding Access to Justice for Vulnerable People were applied by all courts in Uruguay and that judicial officials were trained in implementing the Regulations. Obstacles hindering access to justice had more to do with poverty than the fact of being an indigenous person or belonging to a racial minority. Nevertheless, the courts rarely issued convictions for racially motivated crimes, and further training was needed among judicial officials in that regard.

44. **Mr. Perazza** (Uruguay) said that new legislation on adoption had been passed with the intention of serving the best interests of the child. Under the new law, various measures were used to encourage expecting parents to keep their child rather than putting the child up for adoption. Failing that, a specific procedure was followed to place the child in the most appropriate setting, with placement in an institution used only as a last resort.

45. No cases of slavery or forced labour among children had been reported in Uruguay, and the ratification of the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) and the ILO Minimum Age Convention, 1973 (No. 138) had provided the necessary framework to prevent such situations. As for street children, 919 had been incorporated in programmes established by the Government in cooperation with NGOs. As a deterrent measure, the Government provisionally withdrew family allowances from parents found to be sending their children out into the streets to beg or sell merchandise instead of sending them to school. All migrants, regardless of whether they were in a regular or irregular situation, were granted full access to all public services, including education and health care. The State’s refugee policy was fully in line with international law, and the identification cards issued to refugee children were the same as those issued to all Uruguayan citizens.

46. **Mr. González** (Uruguay) said that the requested statistical data on trafficking in persons would be provided in writing as soon as possible. He thanked the Committee for the constructive dialogue, which his delegation had entered into with a spirit of openness, recognizing the areas where further progress was needed while highlighting the areas where the State was working effectively to protect and promote human rights. Reaffirming his country’s commitment to the human rights cause and to the proper functioning of the international human rights system, he expressed his delegation’s willingness to provide any additional information the Committee might require.

47. **The Chairperson** acknowledged the huge strides made by Uruguay in recent decades in the protection of human rights, but expressed frustration at the fact that impunity for human rights violations remained such a great concern in the State party. The Supreme Court decision regarding the statute of limitations for human rights violations committed during the dictatorship was shocking, and he hoped that the State would find a way to overcome that obstacle to providing proper reparations, including justice, for the victims of those violations.

48. The Committee was also concerned about the excessive use of pretrial detention and hoped that the planned amendments to the Code of Criminal Procedure would effectively address the issue. He commended the State party for attempting to make the prison system

more transparent, and for setting a positive example for other States by opting for the simplified procedure of a list of issues prior to reporting.

The meeting rose at 1.10 p.m.