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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

URUGUAY*

[25 March 1996]

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* For the initial report submitted by the Government of Uruguay, see documents CAT/C/5/Add.27 and 30; for its consideration by the Committee, see documents CAT/C/SR.95, 103 and 105 and the Official Records of the General Assembly, forty-seventh session, Supplement No. 44 (A/47/44), paragraphs 160-180.

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Introduction

1. The Eastern Republic of Uruguay submitted its initial report in July 1991 and it was considered by the Committee at its seventh session in November 1991.

2. Accordingly, under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Uruguay is submitting the periodic report covering the years 1991-1995 for consideration by the Committee. The annexes referred to in the report may be consulted in the files of the United Nations Centre for Human Rights.

3. This report was prepared by the Human Rights Section of the Directorate for Special Affairs of the Ministry of Foreign Affairs with the cooperation of public and private institutions working in the field of the protection and promotion of human rights at the governmental or non-governmental level. These include:

(a) Official institutions: Supreme Court of Justice, Ministry of Education and Culture, Ministry of the Interior;

(b) Non-governmental institutions: Service Peace and Justice, Institute for Legal and Social Studies of Uruguay (IELSUR).

Article 1

Direct application of the Convention in domestic law

4. In its comments on the initial report concerning article 1, the Committee expressed doubts about how the direct application of international instruments was ensured in the domestic sphere.

5. The following considerations may be noted in this regard. The national Constitution now in force contains no specific provision dealing with the question of the relative status of national and international instruments. In the absence of such a provision, the solution has been sought in the legal literature. Most Uruguayan legal writers consider that international treaties ratified and in force in Uruguay have a normative status identical to that of ordinary law. The arguments in support of this conclusion relate to the way in which international treaties are approved in the domestic sphere. Treaties signed on behalf of the State by its agents are submitted for approval to the Legislature. According to article 85, paragraph 7, of the 1967 Constitution, the Legislature is competent: "To declare war and to approve or disapprove, by an absolute majority of the full membership of both chambers, the treaties of peace, alliance or commerce and conventions or contracts of any nature which the Executive may make with foreign Powers".

6. Thus, in order to become effective in the domestic sphere, signed treaties must be approved by the legislative body. The act whereby a treaty is approved has the same juridical nature as any enacted law. It is therefore held that acts approving treaties have no other character than that of an ordinary law. This indicates that the rules contained in the treaty are of

lower rank than the Constitution. Once ratified, international instruments are applied by the national courts as obligatory domestic norms.

Absence of a separate offence designated as "torture"

7. As stated in the initial report, the Uruguayan Bar Association submitted a "Crime against humanity" bill to the Parliament in 1985. Articles 7 and 8 of this bill were aimed at adapting national legislation to the obligations arising from the relevant international instruments. Between the time of its submission and 1989, when it was shelved, the bill never came before the full Legislature.

8. In 1991 the bill was reintroduced at the request of a deputy. During this period, it was improved with the input of professionals and academics, who substantially enhanced the original draft. 1/ Nevertheless, a further parliamentary session ended without it being considered in plenary by the Legislature. Finally, on 5 March 1995, at the request of a deputy, the bill was introduced once again and is now awaiting consideration by the Legislature. The text submitted to the chambers and an explanatory introduction to it are annexed. 2/

Article 2

Legislative measures proposed to avoid the occurrence of torture in detention centres

9. A concern raised by the Committee during its consideration of the initial report was the lack of a specific mechanism for judicial supervision of the custody of detainees in prisons. In this regard, several bills that would make it possible to remedy this situation are under consideration.

10. First of all, an Honorary National Commission for the Amendment of the Code of Penal Procedure was established by Act No. 15,844 of 1990. The Commission consisted of three members designated by the Executive, two by the Universidad de la República and two by the Uruguayan Bar Association. Eminent criminal jurists served on this body, among them Ofelia Grezzi, Juan Mario Mariño, Adolfo Gelsi Bidart and Edgar Varela Méndez.

11. In its final report, the Commission pointed to several of the main human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights, as sources of law on which it had drawn in its drafting work.

12. One of the central reforms proposed in the draft new Code of Penal Procedure consists in the establishment of courts of enforcement and supervision. These judicial bodies will have exclusive competence for the enforcement of judgements in criminal cases and the supervision of detention facilities. They will thus be responsible, in respect of the execution of enforceable sentences, for the consideration of pleas for conditional release, supervision of the execution of alternative punishment, hearing of

applications for early release, termination of accessory penalties, declaration of the abatement of an offence in the case of a suspended sentence or revocation of the right to release from custody.

13. As regards the tasks of supervision, article 301 of the proposed text reads:

> "The court of enforcement and supervision shall in particular have responsibility for:
>
> 1. Safeguarding the rights of inmates serving a sentence or subject to a security measure and reporting any abuses or irregularities that may occur in the observance of the rules governing the prison system;
>
> 2. Deciding as sole authority, at the suggestion of the director of the institution, on disciplinary sanctions lasting more than 10 days;
>
> 3. Deciding, with advice from the director of the institution and from such centres of classification, diagnosis and treatment as may exist, on classification and promotions or demotions in grade;
>
> 4. Receiving any petitions or complaints made by inmates acting on their own behalf or through counsel regarding the prison regime and treatment where this affects fundamental rights, and reporting to the competent court;
>
> 5. Authorizing all leave of absence for work or home visits;
>
> 6. Authorizing the transfer of an inmate to another penal institution;
>
> 7. Authorizing hospitalization. In emergency cases, notice must be given immediately after admission for such hospitalization to be approved;
>
> 8. Authorizing a prisoner's departure from the country under the conditions provided for in article 203;
>
> 9. Making visits to or inspections of penal institutions whenever it deems necessary and at least once every 30 days;
>
> 10. Reviewing the respective files at least twice a year until the inmate has served his sentence."

14. Secondly, in April 1990 a political body with parliamentary representation put before the Chamber of Representatives a bill proposing the creation of an office of parliamentary commissioner with exclusive competence in prison matters. 3/ The commissioner would have terms of reference

similar to those of an ombudsman, with an advisory and executive role concerning the rights of persons deprived of their liberty in connection with a judicial proceeding.

15. The functions of the new body include:

(a) Receiving reports about violations of the human rights of prisoners;

(b) Carrying out agreed or unscheduled general and special inspections;

(c) Making recommendations to the prison authorities;

(d) Reporting to the legislative General Assembly.

16. The review of the lawfulness and propriety of judicial decisions is expressly excluded in order to safeguard the principle of separation of powers.

17. The bill was approved by the Human Rights Commission and was submitted to the plenary of the Chamber of Representatives on 14 July 1994. In the general discussion, comments were made on some provisions that were thought likely to affect the constitutionality of the proposed text. 4/ For this reason, it was judged appropriate that a more thorough study should be undertaken by the Commission on the Constitution, Codes, General Legislation and Administration of the Chamber. The Commission declared itself generally in favour of the bill, save for some specific provisions relating to the institutional setting of the new entity.

18. For its part, the Inter-party Commission on Public Security, meeting at the initiative of the then President-elect of the Republic, in February 1995 approved by a majority the initiative to appoint a parliamentary commissioner for issues relating to prisons.

19. In the light of these proceedings, the bill was completely revised and submitted again to the plenary on 13 March 1995. 5/ It is expected to be put to the vote shortly. 6/

Administrative measures designed to prevent torture

20. Regarding the administrative measures adopted to prevent acts of torture, the information given in the initial report may be supplemented with reference to the work of the Police Attorney's Office (Fiscalía Letrada Policial), which is concerned with following up on and attributing administrative responsibilities for police conduct. This mechanism represents a step forward in the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment.

21. The Police Attorney's Office was established by Act No. 16,170 of 28 December 1990 with the task of providing legal advice to the Ministry of the Interior, the administrative authority responsible for the national police. The Office is empowered to receive complaints and suggest the

administrative or functional corrective measures it deems appropriate. A statistical table describing action taken by it from its inception up to May 1995 is annexed. 7/

22. According to non-governmental sources, approximately 18 police officers under the responsibility of the Ministry of the Interior were prosecuted in 1994 for offences against the physical integrity of persons under arrest, in detention or on trial.

Measures undertaken by non-governmental bodies

23. A working group was established at the non-governmental level in 1990 to analyse the national prison system. The following organizations are represented in the working group: Service Peace and Justice, the Institute for Legal and Social Studies of Uruguay, the Bar Association, the Medical Association of Uruguay, the Medical Federation of the Interior, the Coordinating Committee of Psychologists, the Association of Social Workers, the Catholic Church, the Methodist Church, the Coordinating Committee for Reintegration of Social Prisoners and the Centre for Law Students.

24. The group's methods of work include systematic visits to penal institutions, with the support of a multidisciplinary team comprising a doctor, a social worker and a lawyer. The findings of the in situ visits 8/ enabled the team to draw up a series of recommendations which were submitted for the consideration of the legislative, judicial and executive branches. This work has had a significant impact on the public authorities. In the legislative body there is a bill proposing the appointment of a parliamentary commissioner for the prison system charged with overseeing, receiving reports about and investigating the general situation of prisons and prisoners. In the judicial sphere, the Supreme Court has urged the application of alternative measures to deprivation of liberty and institutionalization of offenders. Furthermore, at the Executive's initiative, the Parliament has established a commission under the Ministry of the Interior to study and analyse the issue of the prison system. This provides a common forum for diagnosis and problem-solving in regard to prison matters, with joint governmental and non-governmental input.

The defence of "due obedience" in Uruguayan law

25. During the consideration of the initial report, Mr. Gil Lavedra expressed concern about the treatment of exemption from criminal liability in Uruguayan positive law and its impact on the issue of torture. As explained in the initial report, the Uruguayan Penal Code regards obedience to a superior as a justification in respect of an offence.

26. Uruguayan doctrine and jurisprudence consider that obedience provides a ground for exemption from criminal liability and hence for not holding the subordinate culpable.

27. "For the codifier", argues Milton Cairoli, "obedience to a superior is a form of compliance with the law, constituting a reason for exonerating the official". 9/ For this to be so, certain objective and subjective requirements must be satisfied.

28. The objective requirements are, first, that the order must emanate from an authority. The authority to which the rule refers is understood to be the "public" authority, cases of private or family ties not being covered by this hypothesis. This conclusion derives from the inclusion of the term "administrative rank" in the last part of article 29 of the Uruguayan Penal Code. 10/ Secondly, the order must be direct and not general, i.e. it must be issued by a superior to a subordinate orally or in writing. As regards the nature of the order, four situations may be distinguished: (a) legitimate order with lawful content; (b) legitimate order with unlawful content; (c) illegal order of which the subordinate did not realize the illegality; and (d) manifestly illegal order which nevertheless has to be executed because acting to the contrary would have grave consequences for the subordinate. In the first two cases there is no statutory offence and hence the official carrying out the order is not subject to criminal punishment of any kind. In the third case, if the error is inevitable and not culpable, the official is relieved of responsibility. In the fourth case, there is coercion on the part of the superior and therefore the "obedience" of the subordinate becomes a means of justification.

29. The subjective element consists in the possibility that the subordinate may interpret the order. This element will be evaluated by the judge on a case-by-case basis, and for that purpose he will take account of three elements:

(a) The subordinate's administrative rank;

(b) His level of education;

(c) The gravity of the act entailed by the execution of the order.

30. Judgement No. 12,754 of the Administrative Court 11/ is cited for the purpose of illustrating to the Committee how the Uruguayan courts evaluate the limits of "due obedience". This case relates to the conduct of a public official who, under the de facto Government, was entrusted with diplomatic functions in the city of Porto Alegre and who, in the discharge of those functions, carried out acts contrary to human rights.

31. In the performance of his duties, the official committed serious irregularities and was dismissed by the democratic Executive. With respect to the tasks performed, he argued in his defence that he had been carrying out orders from a superior.

32. In response to these arguments, the Court stated: "Although the perpetrator acted under direct orders from the ambassador, his actions were blatantly excessive, reaching totally abnormal limits ...". "Furthermore, the perpetrator's claim of due obedience is to be dismissed entirely, since the concept of obedience cannot include any kind of violation of rules. As has been maintained by the Italian court of cassation, a limit to the duty of obedience consists in the manifest illegality of the order, in which case the subordinate has 'not the right but the duty to disobey'. In the case before the court, the order did not call for the performance of the acts proven, and had he been given such an order the perpetrator would have had the duty to disobey."

33. It is worth noting, furthermore, that present article 46 of the Penal Code, as amended by the entry into force of Act No. 16,707 of 12 July 1995, known as the Citizens' Security Act, provides that the responsibility of the official is mitigated by:

> "3. Compliance with the law and obedience to a superior. The authority of law and obedience to a superior, when an error may be presumed in the interpretation of the former, or any of the requirements which characterize the latter is lacking."

34. Lastly, it should be noted that the bill before Parliament designed to introduce new offences, such as torture, enforced disappearance and political murder, contains a special provision intended to eliminate due obedience as a justification in cases of crimes against humanity. 12/

Article 3

35. As regards the levels of application of this provision in the domestic sphere, there are few legal or administrative precedents. However, the judgements delivered by the Second and Third Rota Criminal Appeal Courts are considered illustrative. 13/

36. In May 1992, the Uruguayan police detained several foreign citizens of Spanish nationality resident in Uruguay for their involvement in the commission of offences consisting in the forgery of documents bearing a public seal in Uruguayan territory. In the same month, the Kingdom of Spain requested the arrest for purposes of extradition of the said persons, who were accused of having committed multiple offences against human life and the security of the State as members of the Basque separatist organization (ETA).

37. The extradition request was made under an old extradition treaty between Uruguay and Spain dating from 1885.

38. The judges considering the matter prima facie rejected the request for extradition in five cases and granted it in three of them. The judgements delivered in this connection set forth Uruguayan doctrine and jurisprudence in regard to international judicial cooperation. 14/

39. Thus, the judgement delivered by the Third Rota Criminal Appeal Court on 23 July 1993 confirms that treaties take precedence over domestic law by stating:

> "Every State has the duty to abide by the provisions of a treaty and domestic laws may not be invoked against them ...". "Such provisions must be fulfilled, even if they do not suit us, unless the treaty is denounced." 15/

> "The rules of domestic ordinary positive law cannot prevail over the provisions of a treaty, which constitutes at once a norm of international law and a norm of domestic law and which as such, by virtue of its international force deriving from a convention and as a special norm, cannot be invalidated by one that is of lower unilateral status and, moreover, of a general character." 16/

40. Once the judicial decision allowing the extradition of the three aliens came into effect, the counsel for the defence lodged an appeal with the Ministry of the Interior, calling on it not to hand over the said persons for reasons connected with the protection of their physical integrity.

41. In response to this request and the concern expressed by some international human rights organizations, the Minister for Foreign Affairs of that time 17/ remained in permanent contact with the Spanish Minister for Foreign Affairs, from whom he obtained assurances concerning respect for the human rights of the extradited persons when they were handed over to the Spanish police authorities. On direct instructions from the President of the Republic, the Uruguayan Ministry of Foreign Affairs arranged for a Uruguayan Red Cross doctor to accompany the detainees on the flight back to Spain. In this way, the Government of Uruguay fulfilled the requirements of article 3 of the Convention, taking all the measures within its power to ensure and guarantee that no detained person's fundamental rights would be infringed. The text of the official Uruguayan press release on the implementation of the extradition orders is annexed to this report. 18/

Article 4

The definition of torture

42. As already stated in paragraphs 7 and 8, Uruguayan criminal law does not contain a separate offence designated as torture. A bill submitted in this connection has been pending since 1985.

43. The proposed legislation seeks to fill the gaps in domestic law by providing a definition of torture covering three different forms of conduct:

(a) Acts by which physical or mental suffering is inflicted in order to obtain information or for the purpose of intimidation;

(b) Subjection to cruel, inhuman or degrading punishment or treatment;

(c) The application of treatment tending to depersonalize or diminish the physical or mental capacity of the victim, but without causing pain to body or mind.

44. Discussion of the bill over the years appears to have centred on the accepted Uruguayan penal doctrine in this matter which, together with the theory of minimal criminal law, questions the appropriateness of introducing new types of offence.

45. One of the reasons frequently put forward is that torture is a historical phenomenon which has been observed since the time of the Inquisition. "Spontaneous" torture, by persons who are not specialized in applying it, can be eradicated if the control mechanisms of a law-governed democratic system work effectively. "Specialized" torture, as a systematic practice of human rights violations and as institutionalized violence during the periods of dictatorship in Latin America, has disappeared since the restoration of democracy.

46. In this view, the problem lies not in establishing new types of offence but in tightening controls over action by the officials responsible for enforcing the law. Other eminent Uruguayan jurists believe that the country's Penal Code contains in various articles all the constituent or material elements that characterize the offence of torture under the Convention. Inasmuch as the penal system provides for, prosecutes and punishes any act against a person's physical or mental integrity committed by a public official or by a private individual, whatever may have been the motive, it seems irrelevant to establish a separate type of offence. In practice, they contend, no proven case of torture has gone unpunished for want of such a specific offence.

47. However, non-governmental organizations such as the Institute for Legal and Social Studies of Uruguay (IELSUR) and Service Peace and Justice, as well as professors specializing in criminal law, 19/ have made a public appeal to the Parliament in favour of classifying torture as a separate offence.

48. The non-governmental organizations consider that Uruguayan law should criminalize acts which involve violations of human rights. This would clearly define such acts and give expression to the political will of the democratic State to prosecute and punish practices that are harmful to human rights. The introduction of a separate offence, in their view, should be accompanied by adequate penalties to punish acts involving torture or ill-treatment more severely.

49. Whichever view is taken, all segments of Uruguayan society agree that the country's penal system performs its role of protecting the human person as the single overriding purpose of criminal justice.

50. Regarding the description of the offence in question - torture - the qualifying adjective of severity ("severe pain or suffering") used in article 1, paragraph 1, of the Convention has been deliberately deleted from the bill referred to above. The sponsors of the bill believe this to be justified in view of the difficulties of appreciation that are inherent in this qualifier.

51. As to the person who performs the act, the aim is to overcome the difficulties posed in the national legislation by making an indeterminate subject ("any individual") the perpetrator of the offence and by increasing criminal liability where public officials or members of the medical profession are concerned.

52. Lastly, with regard to the penalty, a severe custodial sentence of between two and eight years' rigorous imprisonment is provided for.

Current punishment for acts involving torture

53. The annexed legal case 20/ shows how a criminal court of second instance reversed a decision rendered by a departmental criminal judge and instead ordered a police officer and a commissioner under the responsibility of the Ministry of the Interior to be brought to trial on charges of causing injury and of failing to act, respectively, in connection with an offence against a citizen's physical integrity.

54. Applying the criteria of healthy criticism, the court found that the police officers involved had been responsible for causing physical and moral harm, the offence being defined as wilful serious injury.

55. The case involved a mock execution and a jawbone fracture resulting from the application of force about the neck, which are obviously intentional acts inflicted in order to cause suffering and whose purpose was to obtain information about those responsible for the beating of a police officer the night before.

56. Technically speaking, torture occurred, although the absence of a specific offence designated as "torture" obliged the judge to apply a different categorization, i.e., wilful serious injury. However, the acts were still penalized and punished with heavy sentences by the competent criminal court.

Severity of the penalty

57. When the initial report was considered, Mr. Gil Lavedra 21/ said that the penalty incurred for abuse of authority lacked the severity required by article 4, paragraph 2, of the Convention. We believe that a number of aspects of this issue merit clarification.

58. The offence of abuse of authority, which is covered by article 286 of the Uruguayan Penal Code, concerns the conduct of public officials who carry out "arbitrary acts or punishment not authorized by the regulations" against detainees. This typically involves ill-treatment, which may be assimilated to other cruel, inhuman or degrading treatment or punishment in the terminology of article 16 of the Convention. However, if the official's action causes physiological damage to the detainee's body or mind, the applicable category is that defined in articles 316 et seq. of the Penal Code, which cover the different types of offences involving injury and provide for distinctly harsher penalties.

59. The cases covered by article 286 include unjustified inspections, striking the cell bars with truncheons, refusal to allow visits, unjustified sanctions, etc.

60. However, if such ill-treatment leads to serious or extremely serious personal injury, the penalty ranges from 20 months' ordinary imprisonment to six years' rigorous imprisonment in the first case and from 20 months to 8 years in the second. If the offence is committed by a "public official responsible for the administration of a prison, for the custody or transfer of a person under arrest or convicted", the penalty is increased by one third.

61. The provision of article 320 bis of the Penal Code 22/ was incorporated into the current Code by Act No. 15,068 of 10 July 1972, known as the State Security and Internal Order Act. At a historical juncture, when Uruguay was facing serious problems of political instability, in particular following the accusations made in the Legislative Assembly concerning the use of torture in detention centres in 1971 and 1972, Parliament introduced this

provision whereby the use of physical pressure against persons deprived of their liberty constitutes a special aggravating circumstance in offences involving injury.

62. Needless to say, there is a reliable history behind the adoption of the criminal provision to punish more severely those public officials who physically abuse persons deprived of their liberty for any reason.

63. In such cases the increase in the penalty entails loss of the right to release from custody and of the possibility of obtaining a conditional release.

64. A conditional release may not be granted under Uruguayan domestic law if the offence stated in the indictment is one that carries a minimum penalty of rigorous imprisonment.

Articles 5, 6 and 7

65. Regarding these articles please refer to the initial report, as there has been no change in the relevant legislation.

66. In conformity with article 10, paragraph 7, of the Penal Code, 23/ all offences coming under Uruguayan jurisdiction by virtue of special domestic provisions or international conventions are subject to Uruguayan law.

67. In this regard, and where paragraph 7 in particular is concerned, our Penal Code follows the doctrine of "universality" since it affirms that Uruguayan law applies to acts which by their seriousness offend and injure higher interests.

Articles 8 and 9

68. Uruguay considers that extradition is an effective means of judicial cooperation in the fight against crime.

69. The obligations entered into under bilateral or multilateral treaties constitute the law with which the contracting States must comply. Even in the absence of a treaty and despite the fact that the criminal law sets definite limits to the procedure of extradition, the Uruguayan courts have interpreted these provisions with flexibility taking into account the seriousness of the offence and of the damage caused by the criminal act. Although there are no legal precedents relevant to the application of article 8 in Uruguay, the State pursues a policy of permanent cooperation in the sphere of international judicial assistance.

70. This may be illustrated by the doctrinal opinion of the First Rota Criminal Appeal Court in a case where extradition was granted despite the absence of a treaty. 24/

Article 10

71. The initial report described the technical cooperation agreement signed in 1992 between the Centre for Human Rights and the Ministry of Foreign

Affairs of the Eastern Republic of Uruguay. Unfortunately, the agreement encountered difficulties in implementation and has been suspended. Nevertheless, it was possible to organize three significant events aimed at promoting and providing training in the application of the international human rights instruments.

72. The first of these events was held from 20 to 27 July 1992, and provided training for prison officers in Uruguay's three main prisons (the Santiago Vázquez penitentiary, the Libertad prison and the women's prison). The session was held at the trainees' regular place of work and was attended by a total of 66 officials:

2 officials of senior rank (governors);

6 deputy governors;

2 chief officers;

25 junior officers;

17 sergeants;

1 corporal;

8 warders;

5 prison instructors.

73. The seminar covered the following topics:

(a) The concept of human rights and international systems of protection, taught by Marcelo Cantón (a lecturer from the Faculty of Law);

(b) Human rights in domestic law, the Constitution and statutes. Application of international standards in domestic law, taught by Ofelia Grezzi (a public prosecutor);

(c) The role of the International Committee of the Red Cross in protecting the rights of detainees, taught by Prene Delacoste (ICRC subregional delegation);

(d) International instruments for the protection of the human person: the International Covenant on Civil and Political Rights and the American Convention on Human Rights, taught by Hebert Arbuet Vignali (a lecturer from the Faculty of Law);

(e) International instruments for the protection of the human person: the Convention against Torture, taught by Hugo Lorenzo, a United Nations expert;

(f) Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials and current national prison regulations, taught by Carlos Uriarte (a lecturer in criminal law at the Faculty of Law).

The assessment of the seminar confirmed the need for further training in these areas, with particular reference to Ministry of the Interior staff working as prison officers.

74. The second course, attended by judges, court clerks and defence lawyers from Montevideo and Uruguay's interior, was held from 6 to 8 November 1992.

75. The seminar addressed the following topics:

(a) Principal international instruments for the protection of human rights (Universal Declaration and American Declaration, United Nations Covenants, Pact of San José, Convention against Torture, Convention on the Rights of the Child), taught by Héctor Gros Espiell, Minister for Foreign Affairs;

(b) Application of international law in the domestic sphere, taught by Judge Bernadette Minvielle;

(c) Universal system and regional system for the protection of human rights within the United Nations and the Organization of American States, taught by Belter Garré from the Faculty of Law;

(d) Influence of the Convention on the Rights of the Child in the sphere of inter-American law, taught by Eduardo Tellechea of the Faculty of Law;

(e) Procedure for individual petitions to various international human rights bodies, taught by Fernando Urioste of the Faculty of Law;

(f) Weight of decisions taken by the international human rights bodies and their enforceability in the domestic sphere, taught by José María Gamio of the Faculty of Law.

76. The seminar concluded with the adoption of a set of recommendations as follows:

> "Recommendation No. 1: International human rights norms should be applied directly by the courts in the Uruguayan domestic sphere, with precedence being given to those which afford greater protection of fundamental rights.
>
> Recommendation No. 2: In order to avoid problems of interpretation, steps should be taken to include in the Constitution of the Republic a provision stipulating that constitutional and legal rules for the protection of human rights are to be interpreted in conformity with the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man and such international human rights treaties and agreements as have been ratified by Uruguay.
>
> Recommendation No. 3: A meeting covering similar topics and for a similar audience should be held to analyse ways of better protecting the rights and guarantees of detainees, accused persons, convicted prisoners and persons serving sentences, in the light of national procedural and

criminal norms and practices and of the provisions of the American Convention on Human Rights adopted at San José, Costa Rica, as well as of other international human rights instruments.

Recommendation No. 4: The juridical aspects of international protection for human rights should be disseminated as widely as possible. This includes knowledge of the relevant international instruments by which Uruguay is bound and of the relevant domestic and international case law. It is also important to publicize the analyses of legal doctrine that concern, in particular, the impact on domestic law of the international human rights instruments which are binding on Uruguay.

Recommendation No. 5: The competent authorities - the Ministry of Foreign Affairs and the Legislature - should be called upon to expedite the procedures for approval of the inter-American conventions on conflicts of law in respect of the adoption of children, concluded at La Paz, Bolivia, on 24 May 1984 and already ratified by Colombia and Mexico, as well as on maintenance obligations and on the international return of children, concluded at Montevideo on 15 July 1989, bearing in mind that the Council of the Southern Cone Common Market - MERCOSUR (Act No. 01/92, Decision No. 6/92) has furthermore recommended that the member States of MERCOSUR ratify the 1989 Inter-American Convention on the International Return of Children."

77. Lastly, a seminar on "Health and rights", primarily intended for members of the different branches of the medical profession in Montevideo and Uruguay's interior was held from 18 to 20 December 1992. The seminar took place in the lecture hall of the Ministry of Foreign Affairs and was attended by over 20 participants. 25/

78. The following topics were covered:

(a) The concept of human rights, taught by Serrana Sienra (an expert hired for the cooperation project);

(b) Principles of medical ethics, taught by Gregorio Martirena and Omar Franca;

(c) The protection of the rights of persons deprived of their liberty, taught by Eduardo Lombardi, the Minister of Justice;

(d) The role of forensic medicine in detecting ill-treatment;

(e) Human rights, health and violence against women, taught by Beatriz Balbela;

(f) Human rights, health and ill-treatment of children, taught by Judge Irma Gentile;

(g) Mental health and human rights, taught by Yubarandt Bespali, Paulo Alterwain and Milton Cairoli;

(h) Human rights, health and work, taught by Raúl Barañano;

(i) Doctors in situations of armed conflict, taught by Roberto Puig.

Initiatives by the State in the sphere of education

79. The training given to police at the National Police College covers the subject of human rights, including the prohibition of torture and the criminal and administrative responsibilities deriving from its use. In addition, the courses for candidates for promotion at the Higher Police College include practical modules and lectures on these topics. Furthermore, the recently adopted Citizens' Security Act 26/ contains various provisions to prevent abuse of authority by the police, especially through educational measures.

80. Article 28 of the Act, which amends the Police Organization Act of 22 May 1971, states as follows:

> "The police are responsible for ensuring compliance with the laws, regulations, orders and decisions whose effective observance they are charged with monitoring; they are also responsible for cooperating with the judicial authorities and departmental governments. To achieve these objectives, the police shall employ, under their responsibility, reasonably appropriate means and shall also consider the opportuneness of their use."
>
> "In order to fulfil the institutional objectives and tasks set out in article 2, members of the police shall use weapons, physical force and any other means of constraint in a rational, progressive and proportional manner, after first having exhausted the appropriate deterrent measures available to them in the circumstances. The Ministry of the Interior shall instruct police personnel in accordance with the guidelines contained in the Code of Conduct for Law Enforcement Officials (United Nations General Assembly resolution 34/169 of 17 December 1979)."

81. In addition, article 33 of the Act empowers the Ministry of the Interior to coordinate, through the Ministry of Education and Culture, the National Public Education Administration and other competent agencies, the conclusion of agreements between the National Police College and the Universidad de la República and the Universidad del Trabajo to improve police training.

82. Finally, article 38 of the same Act charges the executive and judicial branches, within their respective fields of competence, with implementing ad hoc programmes to provide comprehensive assistance to the victims of abuse of authority, as well as to their relatives, having due regard to the relevant international instruments.

83. The General Assembly (the legislative branch) will be informed annually by the executive branch about the public security situation and the measures necessary to improve it.

Medical ethics

84. When the Committee examined the initial report, a number of experts, and in particular Mr. Sorensen, 27/ expressed their concern at the absence of measures governing the behaviour of members of the medical profession with regard to torture.

85. Substantial progress has been made in Uruguay in this respect.

86. The establishment of a Committee on Medical Ethics and Academic Conduct, within the Faculty of Medicine of the Universidad da la República, 28/ as approved by the Council of the Faculty of Medicine meeting on 12 June 1985, has been supplemented by the adoption of Decree No. 258/992 of 9 June 1992 by the executive branch.

87. Decree No. 258/992 29/ for the first time in domestic law regulates the ethical standards applicable to medical conduct.

88. In conformity with article 2 of the Decree, doctors are required:

> "To protect those human rights connected with their professional practice, and in particular the right to life from the moment of conception".

89. The decree requires the heads of the various departments of the Ministry of Public Health to disseminate these standards of conduct among their personnel.

90. On 27 April 1985, the medical profession, as represented in the Uruguayan Medical Association, democratically adopted by a direct vote its own Code of Medical Ethics. 30/

91. Article 2 of the Code states as follows:

> "Members of the medical profession must care for the health of individuals and of the community without discrimination of any kind and must show respect for life and for human rights. It is their fundamental duty to prevent disease and to protect and promote the health of the community. Doctors must be inspired by humanitarian motives. They shall never act so as to give rise to suffering without medical cause, or cruel, inhuman or degrading treatment, or to exterminate human beings, or to cooperate in or conceal violations of physical or moral integrity. As members of the health service, doctors must take the necessary steps to ensure that human beings develop in an environment that is healthy for the individual and society, to which end they shall receive approved professional training and be guided by the ethical principles and standards established in this Code."

92. Article 47 of Chapter V, entitled "Specific ethical problems", specifically prohibits torture and cruel, degrading or inhuman treatment. It stipulates as follows:

> "In cases of torture or cruel, inhuman or degrading treatment:
>
> 1. Any medical act that signifies cooperation of any kind in action that is reprehensible according to the profession's ethical principles is prohibited.
>
> 2. The prohibition shall include active participation, silence and obedience to orders, concealment, acquiesence or any other conduct that

signifies advising, suggesting, consenting to or assisting in the commission of acts that are incompatible with the respect and security to which human beings are entitled.

3. In particular, direct or indirect professional involvement in acts intended to exterminate or injure the dignity or physical or mental integrity of a person is prohibited.

4. Doctors shall not be present prior to, during or after any procedure in which torture or other forms of degrading treatment are used, even as a threat.

5. Full endorsement is given to the action taken by the Secretary-General of the World Medical Association (WMA) on 11 September 1981 and the resolution of the 34th WMA Assembly session, held at Lisbon on 29 September 1981, concerning the participation of medical practitioners in the application of the death penalty."

93. Article 49 lays down the obligation for doctors to inform their association and national and international organizations of any torture or cruel, inhuman or degrading treatment of persons for whose medical care they are responsible.

94. Finally, article 50 stipulates as follows:

"Any doctor who works for military or police institutions must comply with the same ethical standards as the rest of his colleagues. This Code of Ethics takes precedence over any regulations."

95. In order to disseminate international and national standards of medical ethics, the Executive Committee of the Uruguayan Medical Association has published a compendium of such standards, 31/ which is distributed free of charge to all new students entering the Faculty of Medicine and to those graduating from it. The Association thereby helps to strengthen the new generations' knowledge of and commitment to the non-derogable principles which govern the practice of medicine.

Article 11

96. The rules and instructions for the treatment of persons subject to any form of detention or imprisonment are kept under constant review. A number of these instructions relating to detainees in special circumstances, including persons in a state of inebriation, are provided in annex. 32/ In such cases, and regardless of the reason for the deprivation of liberty, the police are required to bring the persons concerned to the out-patient service of the Ministry of Public Health for proper care. In regard to detainees in general, the use of undue roughness or humiliating behaviour is prohibited.

Articles 12 and 13

97. As already stated in the initial report to the Committee, in Uruguayan positive law there are various ways of initiating an investigation into a case of torture or ill-treatment. It will be necessary here to distinguish the various stages at which the proceeding may be commenced.

The period of administrative detention

98. In this case, torture may occur in connection with the arrest or immediately after, when the detainee is held on administrative (police) premises.

99. Furthermore, the detention may have been ordered by a judge or result from the enforcement of a police administrative order. In the first case, when the detainee appears before the judge he may lodge a complaint of ill-treatment. If he does so, the judge who receives the complaint is required to initiate an investigation into the alleged acts and take all the necessary steps to elucidate them (Code of Penal Procedure, art. 114).

100. In the second case, when the detention is effected pursuant to a police administrative decision and the individual is released without being brought before a judge, after his release the victim may ask the competent judicial authority to determine the relevant criminal liabilities.

101. He may at the same time lodge a complaint with the Police Attorney's Office for the police officers involved in the act to be identified. The Police Attorney's Office is required to investigate the case and may suggest what it considers to be appropriate administrative penalties or refer the person or persons responsible to the criminal courts.

102. During the consideration of the initial report, the Country Rapporteur referred to Decree No. 690/980 (CAT/C/SR.105, paras. 10-11), which allows the police to hold a suspect in custody without a court order to obtain information from him, and he made a number of specific comments in that respect. The Decree is still formally in force, but the adoption of the Code of Penal Procedure is awaited for the purpose of effecting its express repeal.

Imprisonment

103. Torture may also occur during a period of imprisonment, either when the detainee is in pre-trial detention or when he is serving a sentence.

104. In Uruguay's experience, the system of visits to national penal institutions by judges, on the basis of article 317 of the Penal Code, has proved an effective means of ensuring that the physical integrity of persons held in prisons is respected.

105. Under this procedure, the judges enter the cell blocks, normally accompanied by forensic experts and other judicial auxiliaries, and interview the prisoners in private. During these visits, the judges receive information and complaints from prisoners on various aspects of prison treatment. Their report includes all such information and is submitted immediately after the visit to the prison's administrative authorities. A copy is also sent to the Supreme Court.

The 1993 riot

106. In May 1993 a serious riot took place among the prisoners held in the "Libertad" prison. 33/

107. On 17 May, in order to restore discipline, the then Minister of the Interior 34/ ordered a combined operation by police units involving the transfer of the most dangerous prisoners to a special floor so as to isolate them from the rest of the prison population and thereby prevent the riot from spreading, with the foreseeable violent results.

108. Subsequently, a number of unofficial accounts suggested that the police had used excessive measures to stop the riot and that the prisoners had been subjected to various forms of physical ill-treatment.

109. In June, criminal judges Zulma Casanova, Narro, Lobelcho and Borges visited the Libertad prison under the procedure provided for in article 317 of the Code of Penal Procedure.

110. The accounts contained in their reports are provided in annex. 35/

111. The working group on the national prison system 36/ has actively monitored the situation in prisons and made a number of suggestions on the basis of a multidisciplinary approach to improve the current system.

112. Some of the proposals were taken up by the Government and significant reforms have been made both in the prison regulations and in prison management, as described below.

(a) Development of forums for political and technical discussions on the situation in prisons. In July 1995, at the proposal of the Executive, the Legislative Assembly adopted Act No. 16,707, dated 12 July 1995, known as the Citizens' Security Act. Article 34 of the Act establishes an Honorary Commission, comprising nine members, which is responsible for advising the Executive on all matters relating to the improvement of the prison system. The Commission comprises a representative of the Judiciary, who is proposed by, and must be a former member of, the Supreme Court; a member proposed by the Ministry of Public Health; a member proposed by the Legislative Assembly to represent the legislative branch; a representative of the universities, proposed by the Faculty of Law of the Universidad de la República; a member proposed by the Uruguayan Bar Association representing the legal profession; a former criminal judge; a former prosecutor; a specialist proposed by the Ministry of the Interior and another representative chosen from a list of three submitted by non-governmental human rights organizations. The Commission has the following tasks:

(i) To contribute to updating penal legislation and bringing it into line with the relevant international instruments to which Uruguay has acceded;

(ii) To propose means of improving the classification of prisoners, using the progressive system;

(iii) To review maximum security facilities;

(iv) To draft regulations on work by prisoners and apprenticeship and to harmonize them with the labour and social security legislation;

(v) To consider the appointment of judges of enforcement and supervision for penal matters;

(vi) To examine any other proposals considered useful;

(b) Amendment of various articles of Act No. 14,470. In order to avoid arbitrary handling of prisoners' rights, Act No. 16,707 stipulates that temporary leave must be requested in writing and that the prison authorities must submit a substantiated report to the officiating judge. If the police authorities oppose the leave, they must so inform the judge, who will take a final decision on the application; 37/

(c) Implementation of programmes for victims of abuse of authority. The Act charges the executive and judicial branches, within their respective fields of competence, with formulating ad hoc programmes to provide comprehensive assistance to the victims of abuse of authority, as well as to their relatives. In this regard, article 38 of the Act requires that due account be taken of the relevant international instruments;

(d) Introduction of a prison service career structure. As part of the national budget and the classification of posts and grades within the executive branch, an independent career structure has been introduced, under the item corresponding to the Minister of the Interior, for the technical and managerial staff of the National Directorate of Prisons, Penitentiaries and Rehabilitation Centres. In connection with this exercise, police wages are being improved and prison warder duties reflected in the career structure; 38/

(e) Improvement of buildings. The investment programme for the 1995-2000 five-year period makes provision for the construction of a new prison on the outskirts of Uruguay's capital, which will add a further 200 places to those that exist. 39/ In addition to this investment, rehabilitation work has already been carried out at the Libertad detention centre, which was made unfit for use by the violent events in 1993 and 1994;

(f) Alternatives to incarceration. In the same connection, the Judiciary has gradually promoted a series of measures as alternatives to deprivation of liberty. The bill prepared by the Supreme Court is provided in annex;

(g) Protection of witnesses. As already explained in the previous section, there are various ways of lodging a complaint in respect of torture or ill-treatment. As regards proper protection for informants or witnesses, the Legislature recently passed an act calling for the Executive to implement a programme of protection for witnesses and persons supplying information about alleged offences. 40/

Article 14

113. As stated in the initial report, the Uruguayan Constitution establishes the liability of the State to pay compensation for injury caused by its agents. Articles 24 and 25 of the Constitution stipulate as follows:

> "The State, the departmental governments, the autonomous entities, the decentralized services and, in general, any agency of the State shall bear civil liability for injury caused to third parties in the performance of the public services under their management or direction."
>
> "Whenever the injury has been caused by their officials in the performance of their duties or in connection therewith, and if the latter have been guilty of gross negligence or fraud, the public agency concerned may reclaim from them whatever has been paid in compensation."

114. These rules have constituted the legal basis for claims by a number of Uruguayan citizens who suffered ill-treatment and torture under the de facto Government. The annexes contain background information concerning the exercise of the right to fair compensation in Uruguayan jurisdictional and administrative practice. 41/

Article 15

115. Under Uruguayan positive law, the only confession that is juridically valid is the one made before the officiating judge. The annexes 42/ include a judgement of the Fourth Rota Appeal Court in 1989 concerning the case of a person who was arrested by the police in 1982 and tortured into making an incriminating judicial confession about his involvement in a homicide; the confession was later retracted. In this case, the court found that confinement in pre-trial detention for a period extended to 584 days on the basis of a confession that was invalid because it had been obtained through violence constituted grounds for ordering the State to pay compensation for the material and moral injury suffered by the victim. In the second preambular paragraph of the judgement, the higher court recognizes "the irregularities committed by the judge of first instance" who, after having been informed by the victim of the torture he had suffered, "failed to order an investigation into these acts".

116. The case already referred to in annex 13 shows how, in Uruguayan judicial practice, by applying the rules of healthy criticism, the Appeal Court interpreted the reticence and contradictory statements of the police officers responsible for torture as evidence of a serious violation by the police of the plaintiff's physical integrity.

Article 16

117. Please refer to paragraphs 58 and 59 of this report with regard to the means used to punish ill-treatment under Uruguayan positive law.

Notes

1/ Annex 1. Statement by Rodolfo Schurmann Pacheco and Beatriz Rovira de Pessano of the Uruguayan Bar Association. Stenographic record of the meeting of the Human Rights Commission of the Chamber of Representatives on 6 August 1992.

Annex 2. Statement by Javier Miranda, official guest. Stenographic record of the meeting of the Human Rights Commission of the Chamber of Representatives on 29 April 1993.

Annex 3. Statement by Fernando Urioste, coordinator and lecturer in human rights at the Faculty of Law. Stenographic record of the meeting of the Human Rights Commission of the Chamber of Representatives on 17 June 1993.

2/ Annex 4. Bill on crimes against humanity, Actas de la XLIV Legislatura, No. 2,471, vol. 696, pp. 74-79.

3/ Annex 5. Record No. 1097, December 1993, Human Rights Commission. Bill on the appointment of a parliamentary commissioner.

4/ Annex 6. Comments on the bill. Diario de Sesiones de la Cámara de Representantes, 14 June 1994, p. 235.

5/ Annex 7. Record No. 18 of the Chamber of Representatives.

6/ Annex 8. Bill submitted, Acta de Sesiones de la Cámara de Representantes, No. 2,473, vol. 696, pp. 160-165.

7/ Annex 9. Statistics on action by the Police Attorney's Office.

8/ Annex 10. The voices of silence. Working Group on the National Prison System.

9/ Milton Cairoli, Curso de Derecho Penal Uruguaya, vol. I, p. 306.

10/ Cited in document CAT/C/5/Add. 27, para. 48.

11/ Annex 11. Judgement No. 12,754 of the Administrative Court.

12/ Document reproduced in annex 4.

13/ Annex 12. Judgements No. 12,433, Lizarralde Izaguirre case, and No. 12,434, Goitía Uruzurraga case. La Justicia Uruguaya, vol. CVII, 1993.

14/ See Annex 12.

15/ See Annex 12.

16/ Annex 13. La Justicia Uruguaya, vol. CVII, 1993, case No. 12,434, pp. 444-453.

17/ Sergio Abreu.

18/ Annex 14. Press release of 31 August 1994.

19/ Gonzalo Fernández, professor of criminal law, article entitled "La represión penal de la tortura en el marco de la Convención de Naciones Unidas", Revista IELSUR, No. 6, July 1990.

20/ Annex 15. Judgement No. 12,934 of the First Rota Appeal Court.

21/ CAT/C/SR.95, para. 9.

22/ "If the offence has been committed by the public officials referred to in article 286 against the victims described therein, the penalty shall be increased by one third."

23/ "All other offences coming under Uruguayan jurisdiction by virtue of special domestic provisions or international conventions."

24/ Annex 16. La Justicia Uruguaya, vol. CX, case No. 12,724, pp. 22-29.

25/ Annex 17. Final report of the course held from 20 to 27 July at the Santiago Vázquez prison complex.

26/ Annex 18. Act No. 16,707 of 12 July 1995.

27/ See CAT/C/SR.95, para. 35.

28/ Annex 19. Regulations of the Committee on Medical Ethics and Academic Conduct.

29/ Annex 20. Text of Decree No. 258/992 of 9 June 1992.

30/ Annex 21. Code of Medical Ethics of the Uruguayan Medical Association.

31/ Annex 22. Compendium of international standards, codes and declarations. Uruguayan Medical Association.

32/ Annex 23. Police internal regulations and circulars.

33/ Named after the town where Uruguay's largest prison is located.

34/ Juan Andrés Ramírez.

35/ Annex 24. Reports of the visit to prisons.

36/ A non-governmental organization comprising several human rights institutions, academics and groups of former prisoners.

37/ See annex 18.

38/ Annex 25. The text of the relevant Act is provided.

39/ Annex 26. El País, 27 June 1995.

40/ See annex 18. Article 36 of Act No. 16,707.

41/ Annex 27. Claims, judgements and settlements by the State in favour of Margarita Michelini, Raúl Altuna, Raúl González Cardozo, María Elizabeth Pérez Lutz and Nelson Eduardo Dean Bermúdez.

42/ Annex 28. Judgement No. 11,700 of the Fourth Rota Criminal Appeal Court.
