I. Uruguay

234. The Committee considered the fourth periodic report of Uruguay (CCPR/C/95/Add.9) at its 1653rd and 1654th meetings, on 27 March 1998, and at its 1665th meeting (sixty-second session), on 6 April 1998, adopted the following observations.

1. Introduction

235. The Committee welcomes the timely submission of the fourth periodic report of Uruguay and takes note of the useful information contained in the report concerning recent legislative changes. It appreciates, in particular, that the report in general takes into account a number of comments made by the Committee during the consideration of the State party's third periodic report.

236. The Committee expresses its appreciation to the delegation for its thorough introduction of the report and responses to questions raised by members of the Committee. The valuable additional information provided by the State facilitated an open, frank and fruitful dialogue between the Committee and the State party.

2. Positive aspects

237. The Committee welcomes the achievements during the period under review in bringing domestic law into conformity with the provisions of the Covenant. Considerable progress has also been realized with the enactment of new laws and codes and with the strengthening of democratic institutions and processes aimed at promoting and protecting human rights. Notable among these legislative achievements is the enactment of the new Code of Criminal Procedure (Act No. 16.893).

238. It also welcomes the constitutional amendment of January 1997, which makes the electoral system more transparent and brings it in line with international norms, as well as various legislative acts to ensure equality between men and women and to prevent domestic violence, including that against women, children and old people.

239. It further welcomes the steps taken to improve the training of law enforcement officers and wardens in detention centres, as well as the agreements between the Ministry of the Interior and the universities in order to improve police training.

3. Principal subjects of concern and recommendations

240. The Committee expresses once again its deep concern about the Ley de Caducidad de la Pretensión Punitiva del Estado (Expiry Law of the Punitive Powers of the State) and its profound anxiety about the implications of the Law with regard to compliance with the Covenant. In this regard, the Committee emphasizes the obligation of States parties, under article 2, paragraph 3, of the Covenant, to ensure that all persons whose rights or freedoms have been violated shall have an effective remedy through recourse to the competent judicial, administrative, legislative or other authority. The Committee notes with deep concern that in a number of cases the maintenance of the Expiry Law effectively excludes the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. The Committee also considers that the Expiry Law violates article 16 of the Covenant in respect of the disappeared persons and article 7 in respect of their family members. Therefore:

In the light of the information provided by the delegation, the Committee encourages the State party to promote and facilitate every opportunity to discuss this issue within the country, in order to find a solution that is in full compliance with Uruguay's obligations under the Covenant.

241. The Committee reiterates its concern about the constitutional provisions relating to the declaration of a state of emergency. In particular, the Committee notes that the grounds for declaring an emergency are too broad and that the range of rights which may be derogated from does not conform with article 4 of the Covenant. Additionally, the Constitution fails to make reference to non-derogable rights. Therefore:

The Committee reiterates its observations on Uruguay's third periodic report, that the State party restrict its provisions relating to the possibilities of declaring a state of emergency, and constitutionally specify those Covenant rights which are non-derogable.
242. The Committee appreciates the new Code of Criminal Procedure that will come into force in July of 1998. However, it notes with concern that the following aspects thereof are not in conformity with the Covenant:

(a) The Committee is particularly concerned with article 55 of the Code in accordance with which a suspect may be placed in "incommunicado" detention until a decision is taken as to whether he should be committed to stand trial, and with the fact that during this period the judge may restrict contact by the suspect with a lawyer. The Committee recommends that this provision is brought into conformity with the Covenant;

(b) The Committee is concerned that the regulations relating to pre-trial detention both in respect of suspects (imputados) and accused are not in conformity with article 9 of the Covenant. In this regard, it underlines that, in accordance with the principle of presumption of innocence, pre-trial detention should not be mandatory. It is also concerned with the wide possibilities which exist to restrict a suspect's liberty as set forth in article 185 of the Code, in the light of the broad definition of "imputado", contained in article 51 (1) of the Code. The Committee recommends that detention procedures and other restrictions on the liberty of suspects and accused should be revised with a view to facilitating full application of the rights provided for under the Covenant, having particular regard to the principle of the presumption of innocence;

(c) The Committee is concerned that, in accordance with the new Code, the trial judge is the same judge who has supervised and/or ordered investigations, and who subsequently charged the defendant. This raises serious concerns about possible impartiality of the trial. The Committee recommends that the new Code ensure true impartiality in accordance with the Covenant;

(d) The Committee is concerned about articles 89 and 90 of the Code which provide that the marriage to the accused of a victim of rape, even statutory rape, and of other criminal offences, extinguishes the criminal offence or the sentence handed down at the trial, to the benefit of a perpetrator who has subsequently married the victim, and particularly of all other participants in the offence. The Committee recommends that these provisions be modified to conform to the Covenant.

243. Although the new Press Law (Act No. 16,099) is in general a positive achievement, the Committee is concerned that it still includes provisions that might impede the full exercise of freedom of expression. Foremost among these are certain provisions relating to offences committed by the press or other media, in particular articles 19 and 26 of the law, relating to false information and to slander through the media. Therefore:

With respect to freedom of expression, there should be greater freedom to seek information, as provided for under article 19 (3) of the Covenant. Additionally, the sanctions provided for under chapter IV of the Press Law are too wide and may hinder the full enjoyment of article 19 of the Covenant. In this regard, the law is not adequate.

244. The Committee, while recognizing the progress made by the State party in respect of children's rights and in particular the future Code Relating to Minors (Código del Menor), remains concerned with the information provided by the delegation, that the future Code discriminates against female minors and fails to protect fully the new born child, as unmarried minor mothers may register their children at any age, whereas minor fathers may only do so from the age of 16 onwards. In this regard:

The Committee urges the State party in the course of drafting this Code to bring the whole of it into full conformity with articles 3 and 24 of the Covenant. It wishes to receive the text of the Code when it is enacted.

245. The Committee is concerned about the statement of the State party that no minority group exists in Uruguay and recommends that the State party continue to develop its efforts in identifying the minority groups within the country and adopt the pertinent measures to ensure that the rights under article 27 are respected.

246. The Committee recommends that the State party proceed as rapidly as possible with the Bill before Parliament on the Ombudsman (Defensor del Pueblo), and that the Office should be independent of the Government, have jurisdiction to deal with human rights violations, and be adequately staffed to deal with complaints of abuse.
247. The Committee is concerned with the information provided by the State party, in respect of the follow-up on the Committee's decisions in individual cases, where the Committee has established a violation of the Covenant. In particular, the Committee does not consider it appropriate to expect a person found to be a victim of a human rights violation to have to initiate new procedures before the domestic courts to establish the violation, and considers that the statute of limitations should not apply. Therefore:

The Committee recommends that the State party provide a remedy in accordance with the views adopted by the Committee on individual cases considered under the Optional Protocol.

248. The Committee further recommends that greater publicity should be given to the Covenant and the Optional Protocol to ensure that the provisions of these instruments are made widely known to the legislature, the executive, the judiciary, law enforcement officials and members of the legal profession, as well as to the general public.

249. The Committee draws the attention of the Government of Uruguay to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 21 March 2003, contain material which responds to all of these concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Uruguay.

250. The Committee fixed the date for the submission of Uruguay's fifth periodic report as June 2003.