

## Addendum

### Mission to Uruguay

#### Summary

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, paid an official visit to the Eastern Republic of Uruguay from 30 September to 4 October 2013. During his visit, he was able to make note of and evaluate the measures taken in the areas of truth, justice, reparation and guarantees of non-recurrence in order to address the serious human rights violations committed during the dictatorship and the period that immediately preceded it. In the present report, the Special Rapporteur has attempted to analyse both the progress made and the obstacles encountered in these four areas, with a view to introducing recommendations that contribute to the processes under way.

Deliberations and efforts in this area have largely focused on the issue of justice, while the actions of civil society have focused to a great extent on legal cases. Few countries have made as much progress as Uruguay in investigating, trying and punishing high-ranking government officials, including former presidents and ministers. However, the Expiry Act (Law No. 15848), as well as the deliberations and decisions by the courts — including the Supreme Court of Justice — regarding the possible re-establishment of the punitive claims of the State, have set the tone and limited the scope of initiatives aimed at justice in Uruguay.

Regarding the issue of truth, the Special Rapporteur takes note of important initiatives that have made it possible to document the reality of disappearances in Uruguay, despite the absence of official mechanisms for determining the truth and a lack of cooperation from certain entities, such as the security forces. However, he regrets that more attention has not been paid to the victims of (often prolonged) arbitrary detention and (systematic) torture, or to child abduction or sexual violence. The Special Rapporteur recommends the establishment of an archival policy and an official mechanism for determining the truth, among other measures.

The Special Rapporteur acknowledges the progress made in the area of financial reparations, but would also note problems with the current approach, which conflates financial reparations and pension benefits, belying the central notion that the issue of reparations is an issue of rights. Furthermore, current laws and their restrictive interpretations leave out large groups of victims, including victims of detention and torture. The report also points out significant shortcomings with regard to symbolic reparations for individuals and groups.

The report welcomes the creation of the National Human Rights Institution, along with other initiatives for protecting human rights and preventing abuses, which have helped Uruguay establish itself as a stable democracy. The report also notes the importance of efforts to democratize State institutions — in particular those that played a role in the dictatorship's repressive regime, such as the armed forces and the judiciary — by promoting a culture of human rights, and by raising awareness of and providing training on human rights.

The Special Rapporteur emphasizes that it is generally the victims, their family members and victims' associations that have promoted and continue to promote, tirelessly and with admirable dedication, initiatives for truth, justice, reparation and guarantees of non-recurrence in Uruguay.

Uruguay has yet to adequately deal with an important chapter in its recent history. The country cannot truly move forward and continue on the path toward development unless the rights to truth, justice, reparation and guarantees of non-recurrence are respected, a responsibility which falls to the three branches of the State.

This is not about seeking revenge or dwelling on the past, but about creating a solid foundation for a just and equitable society that will enable future generations to tackle the challenges to come.

## I. Introduction

1. In accordance with Human Rights Council resolution 18/7, and at the invitation of the Government, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, paid an official visit to the Eastern Republic of Uruguay from 30 September to 4 October 2013. The purpose of the visit was to ascertain and evaluate the measures taken in the areas of truth, justice, reparation and guarantees of non-recurrence — the four pillars of the Special Rapporteur's mandate — in order to address the serious human rights violations committed under the dictatorship and the period that immediately preceded it.

2. During his visit, the Special Rapporteur met with the President of Uruguay, José Alberto Mujica. He also met with various representatives from the executive, legislative and judicial branches of government — including the Minister of Foreign Relations, the Minister of National Defence, the Minister of the Interior and the auxiliary judicial team dedicated to cases of State terrorism — as well as senior-level representatives from the Ministry of Foreign Relations and the Ministry of Education and Culture, the Supreme Court of Justice and other officials from various levels of the judiciary, the Attorney-General, the Human Rights Secretariat for the Recent Past (previously named the Secretariat for Follow-up on the Peace Commission), the Human Rights Commission of the House of Representatives, the National Human Rights Institution and Ombudsman's Office, and the Parliamentary Commissioner for Prisons, along with various members of civil society, including victims and their family members, representatives of victims' associations and non-governmental organizations, as well as academics and attorneys.

3. The Special Rapporteur would like to thank the Government of Uruguay for its invitation and for its cooperation and support during the visit. The Special Rapporteur also wishes to thank the victims and their family members for sharing their experiences, which revealed not only their hardship but also their strength. The Special Rapporteur likewise thanks the Office of the United Nations Resident Coordinator in Montevideo for its invaluable cooperation and assistance, as well as every member of civil society who took the time to share his or her opinions and perspectives.

## II. General considerations

4. The civil-military dictatorship of Uruguay (1973-1985), established following a coup d'état supported by the then president Juan María Bordaberry and the armed forces, used the power of public institutions to carry out a campaign of "State terrorism", which entailed the persecution of political opponents and dissidents, mass arbitrary detentions and the systematic use of torture (leading to the highest per capita percentage of detained and tortured persons among the dictatorships of the Southern Cone), as well as approximately 200 forced disappearances, 116 documented summary executions, the dismissal of thousands of public officials, the prohibition and repression of all political and union activities and the exile of hundreds of thousands of people. The dictatorship also actively participated in operations of coordinated repression, along with the dictatorships of Argentina, Brazil, Chile and Paraguay, as part of "Operation Condor". Serious human rights violations were also perpetrated during the period prior to the 1973 coup, under supposedly constitutional governments that had nonetheless established systems of political repression and social control targeting the opposition (including labour organizations) and guerrilla groups, such as the Tupamaros National Liberation Movement.

5. It must be acknowledged that in each area some advances have been made that deserve recognition. Over the last ten years, the pace of these initiatives has accelerated, in some areas more than others; the question is whether the pace of progress and the scope of these measures are sufficient. The present report attempts to analyse some of these advances, as well as the challenges that remain.

6. The Special Rapporteur stresses that it has been the victims of these serious human rights violations and their family members — sometimes organized into associations — who have promoted and continue to promote, tirelessly and with admirable dedication, the implementation of initiatives for truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur notes that the lack of progress in some of these areas and the passage of time (it has been nearly 30 years since the end of the dictatorship) have proved extremely exhausting for the victims and their family members. Given the advanced age of many among them, it is urgent that their complaints be addressed.

## III. Justice

7. Many of the efforts made by victims and their associations and representatives have focused on court cases, i.e. the possibility of initiating them, their pace and direction once initiated, and their ultimate outcome. These efforts have included organizing the 1989 referendum and the 2009 plebiscite, which sought to remove the legal obstacles to criminally prosecuting human rights violations committed during the dictatorship.

### A. The Expiry Act

8. The Special Rapporteur notes with great interest that, following the restoration of democracy in 1985, the Amnesty Act (Law No. 15737), which sought the release of political prisoners, expressly excluded crimes committed by the police and military in the exercise of their duties.

9. Despite the pressure exerted by the military in favour of military jurisdiction, the Supreme Court of Justice confirmed at the end of 1985 that the ordinary courts had jurisdiction to try crimes committed under the dictatorship. Nevertheless, pressure from the military, on the one hand, and, on the other, a lack of political will on the part of elites and the government at the time to move the cases forward led to the adoption of the Expiry Act (Law No. 15848) on 22 December 1986, which deemed the punitive claims of the State to have expired with respect to crimes committed by military and police officials under the dictatorship, including human rights violations. Moreover, article 3 of the Expiry Act grants jurisdiction to the executive, and not the judiciary, to determine whether the facts of a complaint fall within the scope of this law. Consequently, the Government may order a case to be dismissed and closed, in contravention of the relevant principles of international law.

10. All complaints still pending subsequent to the promulgation of the Expiry Act were dismissed. Various constitutional challenges were filed, but in 1988 the Supreme Court of Justice ruled against these petitions, without providing any justification based on international human rights norms, thereby denying access to justice to victims and their family members.

11. Since then, the Expiry Act has functioned as a de facto amnesty law for the majority of human rights violations committed under the dictatorship, in contravention of the country's international obligations, including the International Covenant on Civil and Political Rights (ratified in 1970) and the American Convention on Human Rights (ratified in 1985), the provisions of which prohibit amnesty for human rights violations.

12. On two occasions the Uruguayan people were consulted, once by referendum in 1989, and again by constitutional plebiscite in 2009, on the partial or total repeal of the Expiry Act, and both times there were not enough votes for repeal. The reasons for these results are many and complex. While maintaining respect for the mechanisms of democracy and popular expression, the Special Rapporteur stresses that it is the responsibility of the State to ensure that the legislation in force is compliant with international human rights obligations. The Special Rapporteur notes that the State cannot hide behind the will of the majority in order to avoid complying with these obligations, particularly when they concern fundamental rights.

13. In 2000, the judiciary allowed investigations to be reopened into the disappearance of Elena Quinteros, noting that the Expiry Act did not apply to civilians or high-ranking members of the police and armed forces, as article 1 of the law deems the punitive claims of the State to have expired solely with respect to crimes committed by military and police officials "in obeying orders from superiors during the de facto period." On 18 October 2002, the former Minister of Foreign Relations, Juan Carlos Blanco, was charged with the aggravated deprivation of liberty of Elena Quinteros and was thus the first person to be charged and arrested for human rights violations committed under the dictatorship.

14. The change of government in 2004 marked a turnaround in the position of the authorities, who exercised the jurisdiction granted

by the Expiry Act to take a stance on the law's scope, finding that the judiciary had jurisdiction over crimes committed by civilians or high-ranking military and police officials, crimes committed abroad, child abductions and crimes committed for economic gain. As a result of legal proceedings brought in approximately 25 cases, in March 2009 the Uruguayan courts for the first time sentenced eight members of the military to 20 and 25 years' imprisonment for the murder of 28 persons; in October 2009, the former de facto president, General Gregorio Conrado Álvarez, was sentenced to 25 years' imprisonment for aggravated homicide; in March 2010, the former elected president, Juan María Bordaberry, was sentenced to 30 years' imprisonment for aggravated homicide; in April 2010, the courts sentenced former minister Juan Carlos Blanco to 20 years' imprisonment for highly aggravated homicide.

15. In October 2009, in the Sabalsagaray case, the Supreme Court of Justice declared that the Expiry Act was unconstitutional in this specific instance, and the criminal trial concluded in April 2013 with the sentencing of Miguel Ángel Dalmao to 28 years' imprisonment, making him the first general on active duty to be convicted. Few countries have made as much progress as Uruguay in investigating, trying and punishing high-ranking officials responsible for human rights violations.

## **B. Re-establishment of the punitive claims of the State and adverse decisions of the Supreme Court of Justice**

16. In 2011, the Inter-American Court of Human Rights ruled against Uruguay in the Gelman case, declaring that the Expiry Act was inconsistent with the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons. The court ordered Uruguay to ensure that this law did not impede the investigation of this case or the identification and punishment of those responsible, adding that no other analogous norm, such as a statute of limitations, the non-retroactivity of criminal law, *res judicata*, *ne bis in idem* or any other similar law exonerating responsibility, may be applied.

17. The Special Rapporteur welcomes the measures taken by Uruguay in order to comply with this judgement, including the 2011 repeal of the administrative decisions ordering the dismissal of such legal cases (which had been adopted in accordance with article 3 of the Expiry Act). However, it appears that the Office of the Attorney-General has not been adequately included in this process, hindering any effective follow-up to these cases, and that various civil society organizations have had to lodge requests in order to reopen legal cases reinstated by the Government.

18. The Special Rapporteur also welcomes the adoption of Law No. 18831 in 2011, which restored the State's punitive claims. However, the Special Rapporteur adds his voice to the dissatisfaction expressed by various international human rights mechanisms and the Inter-American Court of Human Rights regarding various decisions of the Supreme Court of Justice, which declared articles 2 and 3 of Law No. 18831 to be unconstitutional, while upholding article 1 (which fully restores the State's punitive claims with respect to these crimes). The Supreme Court of Justice argued that articles 2 and 3 (which establish that no statute of limitations may apply to crimes committed in the context of State terrorism, and which define these as crimes against humanity) were unconstitutional, as they violated the principle of legality in criminal matters and the principle of non-retroactivity of criminal law relating to serious offences.

19. The Special Rapporteur recalls that the definition and particular characteristics of crimes against humanity, as well as the international obligations of States with respect to the investigation, prosecution and punishment of such crimes and their reparation, have been incorporated into domestic law not only through positive law but also through customary law and international jurisprudence, and that both sources categorically ascribe the status of *jus cogens* to crimes against humanity, a status which predates the ratification of the aforementioned conventions by Uruguay.

20. The Special Rapporteur regrets that the decisions of the Supreme Court of Justice have, in effect, deprived the victims of their rights and, in the process, disregarded international jurisprudence, including the jurisprudence emanating from the trials of Nuremberg, Tokyo, Rwanda and the former Yugoslavia, as well as the jurisprudence of the Inter-American Court of Human Rights.

21. The Special Rapporteur regrets that these decisions signal a change in course for the Supreme Court from the Sabalsagaray case in 2009 and expresses concern regarding public statements made by certain representatives of the Court, which have created uncertainty over the Court's resolve to comply with the international human rights obligations of Uruguay.

22. The Special Rapporteur recalls that, as an integral part of the State, the Supreme Court of Justice is subject to the country's international obligations, and therefore its judges must proactively ensure compliance with international human rights norms, both in their deliberations and in the conduct of judicial proceedings.

23. The longer-term effect of the Supreme Court's decisions on ongoing cases, and on the possibility of bringing new cases, remains to be seen. However, as at the end of 2013, at least two cases have reportedly been dismissed for having surpassed the statute of limitations, pursuant to the decisions of the Supreme Court of Justice. Hopefully, the Supreme Court will realign itself with the jurisprudential line adopted by the courts in various countries throughout the world where there have been mass human rights violations and where the courts have managed to take into consideration not only the guarantees that are *always* due to alleged perpetrators, but *also* the rights of the victims.

## **C. Other obstacles impeding access to justice**

24. The Special Rapporteur notes with concern the Supreme Court's decision in 2013 to transfer to civil court judge Mariana Mota, who in her previous post at criminal court had presided over the proceedings in a large number of cases on human rights violations committed under the dictatorship. The lack of transparency in the process that led to her transfer has cast doubt on the motivations for this decision. The Special Rapporteur recalls the international principles on the independence of the judiciary, which apply to transfers and other judicial administrative actions. In addition to causing delays in legal cases, this decision could require the victims to give testimony again before a new judge, forcing them to relive extremely painful and traumatic experiences and to potentially feel victimized all over again.

25. According to the 1985 Organizational Act on the Judiciary and the Organization of Courts, the Supreme Court of Justice, in addition to its judicial functions, has authority over the selection, hiring, training, promotion and transfer of judges, as well as the disciplinary regime to which judges are subject. In every sphere — judicial review, constitutional review and even the administration of the judicial branch — there is probably greater complexity to be confronted today than in the past.

26. Furthermore, the Special Rapporteur notes with concern the significant difficulties impeding the progress of currently opened cases, owing to a lack of investigative capacity on the part of the State. Accordingly, the Special Rapporteur welcomes the creation, in 2013, of the auxiliary judicial team dedicated to cases of State terrorism under the auspices of the Ministry of the Interior, an initiative that was advocated by civil society organizations in order to address investigative shortcomings. However, various stakeholders have noted that, because judges have received little information on this new tool, the special team has received few requests for aid. Initiatives seeking to promote greater and more effective use of the special team will require adequate resources and personnel.

## IV. Truth

### A. Institutional mechanisms for determining the truth

27. The Special Rapporteur notes the early measures taken by Uruguay to determine the truth regarding disappearances. The final report of the Parliamentary Investigative Commission on the Situation of Disappeared Persons and the Underlying Facts, conducted between April and November 1985, reported on 164 cases of forced disappearances. The Special Rapporteur regrets that the State (subsequent to the entry into force of the Expiry Act in 1986) has not initiated any legal action based on the information provided regarding the facts and perpetrators identified in the final report of the Commission presented to the House of Representatives. The Special Rapporteur likewise regrets that neither the investigative commission on the kidnapping and assassination of former legislators Héctor Gutiérrez Ruiz and Zelmar Michelini (created in 1985) nor the investigative commission on the actions of former Minister of Foreign Relations Juan Carlos Blanco in the case of Elena Quinteros (created in 1990) have yielded satisfactory results with respect to determining the truth.

28. Faced with the vacuum left by formal institutions, civil society organizations have assumed leadership in establishing mechanisms for determining the truth, without always receiving the necessary support from the State. The report “Uruguay Nunca Más” (*Uruguay: Never Again*) of March 1989, a result of the hard work, dedication and commitment of the human rights association Servicio Paz y Justicia (SERPAJ), is the only initiative to have attempted and achieved a systematic account of what transpired during the dictatorship and the period immediately prior to it, based on the testimonials and experiences of the victims and their family members. The report analyses patterns of repression in cases involving executions, assassinations, disappearances, arbitrary detentions and exile, as well as restrictions on political rights, work and freedom of expression.

29. Notwithstanding the obvious limitations of the report (due partly to a lack of personnel, financial resources and support from the State), the Special Rapporteur stresses that without the efforts of SERPAJ a large number of victims’ testimonials would have been lost or never given at all. For this reason, the Special Rapporteur emphasizes the importance of officially recognizing this report and points out that, together with subsequent results achieved by other initiatives, it could serve as a solid foundation for developing a comprehensive mechanism for determining the truth.

30. In 2000, the Commission for Peace (COMIPAZ) was founded pursuant to article 4 of the Expiry Act. COMIPAZ represents the first genuine step taken by the State to assume some measure of responsibility regarding its duty to investigate and reveal the truth. Although the commission was tasked with “receiving, analysing, categorizing and compiling information” while enjoying “full powers to receive documents and testimonials”, its mandate was limited to cases of forced disappearances, leaving out the considerable number of detainees and torture victims. COMIPAZ had no investigative authority, nor did it have the power to determine individual liability or to refer information to the judiciary. Its work was based primarily on the materials and testimonials received, and its objective was limited to determining how and why forced disappearances occurred, drawing up a list of confirmed victims and, for any confirmed deaths, inquiring as to the fate of their remains. In addition, the commission was reportedly not allocated the necessary personnel and financial resources. The work of COMIPAZ was further impeded by the time that had lapsed since the victims’ disappearances (in some cases almost 30 years) and by the lack of institutional cooperation on the part of the police and armed forces, who have on occasion described the conclusions of COMIPAZ as “tendentious revisionism”.

31. The final report of COMIPAZ, released in 2003, indicated that the commission was “completely certain” that serious human rights violations had been perpetrated under the dictatorship. However, it only reported 26 cases of forced disappearances, whereas the association Mothers and Families of Disappeared Uruguayan Detainees, for example, had reportedly provided information on 222 cases. In only one case did they manage to locate the remains of one of the disappeared persons. Many persons interviewed during the mission considered these results insufficient, and the fact that some of the report’s conclusions later proved to be false supports this negative evaluation. Despite these limitations, the final report of COMIPAZ was accepted by the executive as the official account of the situation of disappeared detainees. While recognizing these significant limitations, the Special Rapporteur emphasizes the catalyst effect of the commission’s work, which has increased the visibility and legitimacy of the issue of disappeared persons.

32. The Special Rapporteur also emphasizes the eminently valuable work initiated in 2005 by teams of historians and forensic archaeologists at the University of the Republic, in collaboration with the Human Rights Secretariat for the Recent Past, which examined the context surrounding the repression and forced disappearances. The Special Rapporteur welcomes the publication, in 2007, of the results of the first phase of this work, as well as the subsequent updates to these results. This work deserves to be incorporated into a formal mechanism and process for determining the truth that conforms to the characteristics of a commission on the truth. Given the advanced age of most of the victims, this is a task that must not be postponed.

33. Truth-seeking mechanisms, in particular truth commissions, can be important instruments in seeking redress for serious and systematic human rights violations, as long as they are implemented comprehensively. These mechanisms give voice to the victims and

affirm their status as rights holders, contribute to social integration, help set reform priorities and provide information essential to the implementation of other transitional justice measures.

## **B. Recognition for all victims**

34. One of the fundamental challenges in determining the truth, other than the fact that the majority of disappearance cases remain unresolved, relates to the focus of such initiatives. It is noteworthy that the majority of efforts with respect to past human rights violations in Uruguay have focused on cases of forced disappearance. The much greater number of victims of (often prolonged) arbitrary detention and (systematic) torture have received comparatively less attention. In addition, other types of violations and victims continue to emerge that have not been adequately addressed, such as child abductions and sexual violence against women, as well as sexual violence against men and adolescents.

35. The Special Rapporteur is certainly not arguing that cases of forced disappearance merit less attention than they have received. Quite the contrary, they deserve more and better attention. However, the authorities cannot ignore the clearest manifestation of the dictatorship's modus operandi for exerting social control, which in Uruguay was not primarily forced disappearances and executions, but rather detention and torture. The myriad victims of these practices have a right to be heard and acknowledged. Society has a right to the benefits that may result from establishing the facts, i.e. the strengthening and reform of institutions.

## **C. Archives and access to information**

36. The dictatorship in Uruguay was characterized by a very high degree of social control that could be qualified as a "totalitarian system", which set up complex mechanisms for monitoring and controlling the population, including the categorization of all citizens into three groups based on their degree of support for the regime and its ideology. In order to achieve this level of sophistication, the dictatorship had to meticulously collect, preserve and archive an enormous amount of information. It is therefore very surprising and difficult to believe that virtually no pertinent information or documents remain.

37. The Special Rapporteur welcomes the creation, in 2008, of the National Archive of Remembrance within the National Archives (Law No. 18435), along with its mandate to promote human rights, democracy, and the right to truth, memory and access to public information on human rights violations committed under the dictatorship. The recovery of information and organization and regulation of archival access constitute a key component of any effort to promote truth.

38. However, it appears that there continue to be significant challenges impeding such access. Various interlocutors have called attention to bureaucratic obstacles and restrictions on data classified as confidential, as well as the lack of cooperation from certain public entities, particularly the armed forces. The Special Rapporteur recognizes the challenges involved in striking a balance between the accessibility of archives, on the one hand, and confidentiality and the right to privacy, on the other. Nevertheless, the Special Rapporteur stresses that the criteria of confidentiality and privacy must not be exploited in order to conceal the truth and maintain impunity with respect to human rights violations. The development of a clear and comprehensive policy for archival access could help to resolve some of these difficulties.

39. The Special Rapporteur stresses that any information or documents held by public institutions — such as the armed forces or Ministry of Defence — or by private persons — particularly current and former members of the military — that pertain to human rights violations or actions of State institutions during the dictatorship must be transferred to the State's civilian custody. Accordingly, the Special Rapporteur welcomes the decision of the Ministry of the Interior to transfer, in November 2013, the archives of the National Directorate for Information and Intelligence to the Human Rights Secretariat for the Recent Past, and through the latter to the University of the Republic for safekeeping and research. This is an initiative that ought to be repeated for other archives.

## **V. Reparations**

### **A. Measures for restitution, pension entitlements and the Recognition and Reparations Act**

40. Following the restoration of democracy, a series of laws were passed that sought to institute certain measures, including the restitution of confiscated property, the reimbursement of bail bonds and prison expenses, as well as the restitution of pension and retirement benefits. These measures also reinstated any public officials and military personnel who were dismissed or who lost their employment for political or ideological reasons during the dictatorship, while also providing restitution for their lost years of professional service and restoring their pension and retirement benefits. Compensation was also granted to other former workers who were dismissed for their trade-union activities.

41. In 2006, Law No. 18033 was adopted as a social security and pension law providing for the calculation of years of service for, and restoration of retirement and pension benefits to, persons who were denied private employment during the dictatorship on political grounds or because of trade-union affiliations, including exiles, detainees, persons in hiding and persons dismissed by order of the dictatorship. The law also provides for a special compensatory pension for persons detained and tried by the military or civilian junta between 1973 and 1985.

42. In 2009, the enactment of the Recognition and Reparations Act (Law No. 18596) marked the first legal provision to formally recognize victims' rights to comprehensive reparations and the State's responsibility (characterized as "State terrorism" in the law) with respect to human rights violations committed under the civil-military dictatorship (1973-1985) and the period that immediately preceded it (1968-1973), while also acknowledging the systematic use of torture, forced disappearance, arbitrary detention, exile and violations of the right to life. In addition, the law supplemented the provisions of Law No. 18033 relating to social security or retirement benefits, and granted the right to a lump-sum compensation for certain categories of victims, such as deceased or disappeared persons, victims of grievous bodily harm or children who were disappeared, detained or born in captivity. As at June 2014, only 360 documents granting financial reparations have reportedly been issued.

## **B.Challenges remaining**

43. Although these legal provisions represent important measures for the recognition of victims and seek to redress the harm suffered, there continue to be significant shortcomings and difficulties impeding the victims' right to comprehensive reparations. The Special Rapporteur reiterates the recommendations of the National Human Rights Institution in this matter, which remain current.

44. Some of the remaining challenges stem from these very laws, which conflate, on the one hand, rights owed to victims of human rights violations in their capacity as such, and on the other hand, the labour rights of these victims, including pension benefits, which have a distinct character and rationale. The Special Rapporteur expresses concern over the provisions that require victims to choose between their rights to reparation (such as through the special compensatory pension) and to other pension and retirement benefits. This conflation of reparations and pension benefits belies the central notion that the issue of reparations is an issue of rights, making it seem to be a favour or privilege granted by the State.

45. Neither do the laws in question include all relevant categories of victims, and qualification procedures serve to exclude many potential beneficiaries. The National Human Rights Institution has formulated recommendations aimed at eliminating eligibility restrictions based on age, years of service, minimum length of detention and maximum income, which determine who can receive benefits under reparation laws. The provisions in force also seem to disregard different kinds of detention, including that of children. The Special Rapporteur expresses concern over the lack of specific provisions that expressly take into account the rights of women, as well as the consequences and specificities of any suffering they may have endured. In addition, the burden of proof in qualification proceedings would appear to fall on the victims, who must provide evidence or documentation to which, generally, they have no access.

46. The Special Rapporteur expresses additional concern over certain provisions of the law and their implementation, whereby, in order to obtain reparations, victims of torture and ill-treatment are required to prove that the harm they suffered reaches the threshold for "serious bodily harm" or "grievous bodily harm", under a rigid and restrictive interpretation based on the Criminal Code. In many cases, forensic experts or other qualified authorities find it impossible to verify the status of these victims, owing to the peculiar nature of the harm and suffering inflicted by torture (including psychological harm), the passage of time, and the lack of documents confirming the damage, or difficulties encountered in obtaining such documents. As a result, the victims lose the right to be recognized as such, as well as their right to effective reparation. Considering that torture was used systematically during the dictatorship, this situation is a matter of particular concern and contravenes the obligations of Uruguay in this area. In addition, given the advanced age of many of the victims, it is urgent that the State take measures to address these concerns. A comparative study of the experiences of other countries in this area would be extremely useful for tackling these outstanding issues; the Special Rapporteur reiterates that he is fully willing to assist the authorities in this process.

47. The Special Rapporteur expresses concern over the opinions voiced, in some cases even by members of the Government, to the effect that members of guerrilla groups in particular knew the risks they were facing when they took up the struggle and therefore should not expect any compensation from the State. First, the Special Rapporteur stresses that the right to reparation is a right that must be freely claimed, based on the individual decisions of each victim as to whether they wish to receive the benefits or not. Second, human rights violations are never acceptable under any circumstances, regardless of the political or ideological convictions of the victims or the decisions they might have made at any given moment. The fact that one side of a conflict would predictably violate the human rights of their opponents if the latter were captured, for example, does not make the practice acceptable, nor does it in any way attenuate the rights that such violations may entitle them to.

48. The Special Rapporteur welcomes the fact that Laws Nos. 18033 and 18596 provide for the creation of special commissions — tasked, in particular, with supervising the implementation of these laws, and handling and ruling on requests submitted by victims and their family members — as well as the participation of victims and civil society organizations in the process for appointing the members of such commissions. However, the commissions are apparently not receiving the resources or technical personnel necessary for them to effectively perform their duties. It also appears that their personnel are still not receiving the training and awareness-building necessary for them to assist the victims and avoid unnecessary forms of revictimization. In addition, the Human Rights Secretariat for the Recent Past has been unable, it appears, to effectively address the remaining challenges and shortcomings with respect to reparations.

## **C.Symbolic reparations**

49. The Special Rapporteur welcomes the provisions of Law No. 18596 regarding symbolic measures for reparation, including commemorative plaques, symbolic memorials and documents recognizing the victims' status as victims and the State's institutional responsibility. However, as at June 2014, only 517 such documents have reportedly been issued and, with a few exceptions, the State has made practically no effort toward implementing symbolic reparations.

50. The Special Rapporteur takes note of certain acts of remembrance and public apology — such as the apology given in the Gelman case, pursuant to the decision of the Inter-American Court — and other symbolic acts, such as turning the former Defence Intelligence Service building into the headquarters of the National Human Rights Institution, or other recent initiatives promoted by the Montevideo city council to establish 20 memorial sites in the city by decree. However, it has generally been the victims, their family members, civil society organizations and trade-union associations that have spearheaded initiatives for symbolic reparations, whether individual or collective.

51. The Special Rapporteur expresses concern over the fact that the State has not prioritized the adoption of this sort of measure, and stresses that the lack of a State policy on reparations hinders the allocation of institutional support and resources in this area.

## **VI.Guarantees of non-recurrence**

## **A. Democratization and institutions for the protection of human rights**

52. Uruguay has made significant progress in the consolidation of its democracy and the strengthening of its institutions. The State has ratified all international and regional human rights treaties, and the country is making international news for its progress in recognizing the rights of various groups. The Special Rapporteur has taken note of the Government's commitment to human rights and international law. These elements are significant gestures toward democratic stability and represent important guarantees of non-recurrence.

53. The Special Rapporteur emphasizes the positive role played by institutions for the protection of human rights, such as the office of the Parliamentary Commissioner for the Prison System (established in 2003 and in operation since 2005) and the Human Rights Department of the Ministry of Education and Culture, created in 2005, whose Memorialization Section played a particularly important role in the discovery of documents and archives from the Ministry of Defence and the Ministry of the Interior, information which was essential to the trials against former president Bordaberry and former minister Blanco. This department ceased to exist and was subsumed under the Human Rights Secretariat of the Presidency in March 2014.

54. The Special Rapporteur welcomes the creation of the National Human Rights Institution in 2008, which represents a significant advance in the promotion of human rights and the prevention of human rights violations. The mandate and powers of the National Human Rights Institution undoubtedly constitute important instruments for guarantees of non-recurrence. The Special Rapporteur also notes positively that the National Human Rights Institution has assumed the role of the national mechanism for the prevention of torture. The Special Rapporteur reiterates the recommendations of various human rights mechanisms regarding the crucial importance of providing the National Human Rights Institution with an adequate legal-administrative framework, an adequate and appropriate budget and the technical personnel necessary for it to effectively perform its duties.

## **B. Reforms of the armed forces**

55. The full reinstatement of the constitution, which subordinates the armed forces to civilian authority, and the adoption of new national security laws reined in (albeit not without tension) the role of the armed forces within the democratic institutional order, although these measures did not reform or recast their role. On the contrary, certain sources affirm that the armed forces have re-established, without any substantial changes, the traditional relations they maintained during previous democratic periods, retaining a certain "relative autonomy". They fully participated in the discussions that led to the transition from a civil-military dictatorship to a democracy, maintaining an advantageous position throughout. In the opinion of many, this greatly contributed to shaping the process of democratic transition and neutralizing demands for truth, justice and reparations for the victims.

56. There are various interpretations regarding the impact that the armed forces' participation in United Nations peace operations had on the country's democratization. Perceived by the governments, the armed forces and the population as a legitimate, appropriate and prestigious operation, this participation has, according to certain writers, helped make the military more disposed toward accepting the democratic process and subordinating itself to elected governments. Others add that this participation not only gave a new direction to the armed forces, but also yielded rewards that had a "dampening" effect on tensions resulting from the gradual but sustained budget cuts imposed by the democratic governments, which little by little were eroding the considerable political and military power still held by the armed forces.

57. Only in recent years have any processes been initiated in order to reform the role of the armed forces. In particular, the Special Rapporteur takes note of the adoption, in 2010, of the first Defence Act (Law No. 18650) and the adoption, in May 2014, of the National Defence Policy by the Defence Council. However, important reforms are still pending, such as the revision of the Organizational Act on the Ministry of National Defence and the Organizational Act on the Armed Forces, as adopted under the dictatorship. In addition, the Special Rapporteur received information about military personnel being used as security and perimeter guards for various detention centres, as well as performing functions in domestic security, including policing roles. The Special Rapporteur regrets that legislative discussions on legal reforms to address these problems have not gained any momentum.

58. In addition, various interlocutors have indicated that, while certain reforms regarding military personnel have increased the number of civilian personnel, and generational turnover has led to changes in military leadership, the objectionable elements of the armed forces were never expelled, and various persons responsible for serious human rights violations remain in their positions. The Special Rapporteur received information about the prevalence of an *esprit de corps* and the lack of cooperation on the part of military institutions during investigations into human rights violations committed under the dictatorship.

## **C. Reform of the judiciary and the Office of the Attorney-General**

59. During the visit, various persons interviewed indicated that some judicial officials were implicated, by action or omission, in the commission of serious human rights violations under the dictatorship. However, no investigations, punishments or expulsion procedures were brought against any judicial institutions, nor were these institutions subject to any far-reaching reforms. The Special Rapporteur received information indicating that within judicial institutions there continue to be accounts of the past and attitudes that would seem to deny the judiciary's responsibility for human rights violations committed under the dictatorship.

60. The Special Rapporteur recalls the key role that the Office of the Attorney-General played in the criminal prosecution of human rights violations committed under the dictatorship. In particular, its autonomy is essential for establishing general guidelines and setting up specialized units, which, while respecting the independence of prosecutors, allow for investigative strategies to be formulated that are in keeping with the systematic nature of this type of human rights violation. Accordingly, the Special Rapporteur takes note of the bill to reform the Organizational Act on the Public Prosecution Service, which would grant more autonomy to the institution, removing it from the purview of the Ministry of Education and Culture. The reform would also allow prosecutors a certain degree of specialization, and enable the use of common guidelines issued by the Attorney-General. The Special Rapporteur stresses the

importance of holding inclusive consultations on this reform to ensure that it meets the relevant international standards and that the Attorney-General's ability to issue common guidelines does not encroach upon the independence of prosecutors.

#### **D. Training public officials and promoting a culture of human rights**

61. Regarding the armed forces, some sources indicate that the training provided to military officials reproduces patterns of behaviour typical of institutional corporatism and characterized by interpretations and narratives that deny the responsibility of military institutions during the dictatorship. The Special Rapporteur expresses concern over these narratives, which justify the use of torture as a method of obtaining confessions in the “fight” against subversion. The Special Rapporteur reiterates the importance of taking measures necessary for the prevention of human rights abuses and violations, in particular through extensive and specific training and awareness-building.

62. The Special Rapporteur also recalls the recommendations of other human rights mechanisms that call for the strengthening of programmes providing human rights training and awareness-building to police and prison personnel. The Special Rapporteur notes with interest the legislative bill to comprehensively redesign police and military education — which reaffirms the general guidelines of the General Education Act — as well as the Government's intention to present the bill to Parliament in 2014.

63. Regarding the judiciary, the Special Rapporteur welcomes the creation of the Human Rights Advisory Service of the Judicial Branch, which answers administratively to the Legal Secretariat of the Supreme Court, and whose duties include “compiling, sorting and systematizing all relevant regulations” and “advising and guiding judges, as needed, in the up-to-date application of international standards relating to fundamental rights”. Although this measure represents progress, the Special Rapporteur received information indicating that human rights training for judicial officers and prosecutors is insufficient and does not include, for example, any specific, ongoing and mandatory courses on international human rights law.

64. The Special Rapporteur also received information indicating that doctors participated or were complicit in the commission of acts of torture during the dictatorship. However, few of them have been subjected to disciplinary measures by the National Medical Ethics Commission.

#### **E. Legislative reforms**

65. The Special Rapporteur welcomes the adoption in 2006 of Law No. 18026, which defines genocide, war crimes and crimes against humanity, as well as torture and forced disappearance. However, the Special Rapporteur recalls the recommendations of various human rights mechanisms regarding the necessity of bringing the Criminal Code definition of torture into line with international standards, and regarding measures for investigating, trying and punishing the crimes of torture and forced disappearance. The Special Rapporteur welcomes the fact that this law allows victims to participate in judicial procedures and establishes mechanisms to protect victims and witnesses, but recalls the recommendations of the Committee on Forced Disappearances that this participation be broadened in the Code of Criminal Procedure, a reform of which was initiated in 2010 but has yet to be completed.

66. The Special Rapporteur welcomes the constitutional provisions on habeas corpus, which could represent an important mechanism for prevention and protection. The Special Rapporteur takes notes of the bill regulating habeas corpus, which was approved by the Senate in 2010. The Special Rapporteur endorses the recommendations of the National Human Rights Institution on this subject, in particular those relating to excessive restrictions on the right to habeas corpus and the importance of having preventive and collective recourse to the right to habeas corpus.

#### **F. Human rights education and school studies on the dictatorship**

67. The Special Rapporteur welcomes the provisions of the General Education Act (Law No. 18437) that include, as part of the law's overall approach, a focus on tolerance, full respect for human rights, peace and understanding between peoples and nations. The Special Rapporteur also welcomes the fact that this law includes human rights education among the cross-cutting themes covered in the National Education System, and incorporates it into the curricula for primary, secondary and technical/vocational education, as well as teacher training. In addition, the National Commission for Human Rights Education reportedly initiated, in 2012, a participatory process for developing a National Plan for Human Rights Education. The Special Rapporteur was unable to confirm the impact of these measures, nor did he have access to any studies evaluating the implementation of these programmes in practice.

68. The Special Rapporteur received information indicating that modules on the country's recent history are included in civics and social studies textbooks and syllabuses for primary and secondary schools. However, study of the dictatorship and serious human rights violations continues to be marginal, despite the wide range of literature and educational resources available.

### **VII. Conclusions and recommendations**

69. In this report, the Special Rapporteur has attempted to analyse the progress and obstacles that Uruguay has encountered within the four areas of his mandate — justice, truth, reparation and guarantees of non-recurrence — with a view to presenting recommendations to support the transitional justice process that the Uruguayan authorities embarked upon many years ago, as well as helping the victims and their family members, as far as possible, to obtain full respect for their rights.

70. Some progress has been achieved (generally in a belated fashion and through the admirable persistence of the victims and their associations in particular) in each of the four areas of the Special Rapporteur's mandate. It is worth highlighting that:

(a) In the area of justice, criminal proceedings for serious human rights violations have been brought against a former elected president, a former de facto president, a former minister and various high-ranking members of the armed forces and the security forces. A significant number of legal cases (around 140) are open;



(b) In the area of truth, despite the absence of official mechanisms for determining the truth and promoting cooperation between major sectors of the State, especially the security forces, the reality of disappearances in Uruguay has been fully established;

(c) In the area of reparations, Uruguay has set up a legal framework that provides for various material benefits, compensatory pensions, restored pension benefits, and health services for many victims; and

(d) In the area of guarantees of non-recurrence, the creation of the National Human Rights Institution is to be applauded, along with other initiatives that seek to prevent human rights abuses and have enabled Uruguay to establish itself as a stable democracy.

71. There is no doubt that Uruguayan democracy today is well entrenched. With the institutional progress highlighted in this report, the spectre of a return to military power has faded. However, the country has yet to adequately deal with a significant chapter in its recent history. It has not made as much progress as might have been hoped, given the foregoing, in establishing the truth and dispensing justice for the crimes of the dictatorship, providing comprehensive restitution to all of the victims, and strengthening guarantees of non-recurrence.

72. If Uruguay is to make real progress toward the future and continue on the path of development, the rights to truth, justice, reparation and guarantees of non-recurrence must be respected, which is a responsibility that falls to the three branches of government.

73. The Special Rapporteur stresses that the Expiry Act has defined the trajectory of transitional justice in Uruguay, representing an obstacle, both real and symbolic, to achieving accountability for the crimes of the past. Uruguay cannot hope to keep making progress while ignoring this reality and the effects it has had on the victims' lives, as well as on the country's compliance with its international and regional human rights obligations.

74. This is not about seeking revenge or dwelling on the past, but about creating a solid foundation for a just and equitable society that will enable future generations to tackle the challenges to come.

75. The Special Rapporteur presents his main recommendations below and reiterates that he is fully willing to assist the authorities with their implementation. The Special Rapporteur urges the Government and the relevant authorities of the State, including the Supreme Court of Justice, to:

## **Justice**

(a) Remove all obstacles to filing and advancing legal cases without undue delays, in accordance with the right to an effective remedy and other international human rights laws, including the ruling of the Inter-American Court of Human Rights in the Gelman case;

(b) Proceed with the reform of the judiciary, ensuring that the provisions of the Organizational Act remain in harmony with international human rights instruments relating to judicial independence. In particular, the procedures governing the transfer, promotion and punishment of judges must guarantee their independence, which depends on transparency, objectivity and sound reasoning in all decisions; take measures to establish a Higher Council of the Judiciary, responsible for the proper administration of the courts, as well as a Higher Constitutional Court;

(c) Secure the reform of the Public Prosecution Service, in accordance with international human rights principles, including those contained in the report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19), while holding consultations with prosecutors, civil society and the National Human Rights Institution, among others;

## **Truth**

(d) Formulate and adopt a State policy on truth, in consultation with victims and their family members, civil society organizations and other interested parties;

(e) Seriously consider establishing, as part of this policy, an official mechanism for determining the truth, designed to complement and support on a continuing basis the work begun by COMIPAZ, the Human Rights Secretariat for the Recent Past and the University of the Republic;

(f) Emphasize the importance of giving visibility to all types of human rights violations committed under the dictatorship, in particular arbitrary detention (in conditions of systematic ill treatment) and torture, including sexual violence and the detention of children and adolescents: crimes which cannot be "normalized" or "lived with", as if they had not occurred, or had not been serious or imposed burdens on both individuals and institutions;

(g) Collect and preserve, on all possible media, the testimonials of every victim, with maximum consideration given to the victims and the suffering that such an effort may cause. This effort is urgent, given the advanced age of many victims;

(h) Collect, systematize and disseminate information on all the factors that led to the enormous number of human rights violations committed under the dictatorship;

(i) Develop a clear and comprehensive archival policy, and expand efforts to recover documents and archives that are not yet under the supervision of the General Archives or accessible for enquiries and investigations, as is the case with some archives of the armed forces;

## **Reparation**

- (j) Formulate and adopt a State policy on reparations supported by an appropriate budget and encouraging a comprehensive approach, incorporating material and symbolic reparations and recognizing the specificities of different groups of victims, including women and children. Encourage the participation of victims, their family members and associations in formulating this policy;
- (k) Amend legislation to increase the coverage of reparation measures and eliminate incompatibilities between the right to reparations, on the one hand, and pension and retirement entitlements, on the other;
- (l) Amend exclusionary and restrictive criteria and requirements, as well as the procedures for recognizing victims (such as restrictions based on time periods, age or length of detention), in order to prevent entire categories of victims from being excluded from reparation measures. In particular, amend the provisions and procedures that require proof of the “serious” or “grievous” nature of injuries in order for the rights of victims of torture and ill-treatment to be recognized;
- (m) Ensure that the burden of proof is reversed so that the victims are not required to provide evidence or documents that are almost impossible to obtain in order to be recognized as victims;
- (n) Ensure that adequate training is provided to personnel responsible for attending to victims, and modify the procedures for preventing revictimization, including in cases of sexual violence;
- (o) Increase the resources of personnel belonging to the special commissions created by Laws Nos. 18033 and 18596, and improve their capacity to perform their functions;

### **Guarantees of non-recurrence**

- (p) Strengthen the processes for reform and democratization of the armed forces, including the reforms of the Organizational Act on the Ministry of National Defence and the Organizational Act on the Armed Forces; prevent military personnel from performing domestic security roles or acting as perimeter guards for detention centres;
- (q) Carry out a process of deep reflection on the responsibility of various State authorities in the commission of human rights violations under the dictatorship, including the armed forces, the judiciary and medical personnel, with a view to identifying and promoting the necessary institutional and legislative reforms, in order to guarantee the non-recurrence of any circumstances — whether legal factors, institutional culture or lack of awareness of human rights — that may have contributed to the commission of serious human rights violations. The Special Rapporteur stresses the importance of including civil society organizations in these reform processes;
- (r) Strengthen training programmes for public officials, both civilian and military, incorporating a specific, ongoing and mandatory human rights training course. Programmes intended for judicial officials, such as members of the judiciary and the Public Prosecution Service, must include human rights modules, as well as professional training in the investigation and prosecution of acts constituting human rights violations. The Special Rapporteur reiterates the importance of developing effective methods and mechanisms for evaluating and, if necessary, modifying training manuals and programmes in order to maximize their potential and promote a substantial change in public officials’ knowledge of and respect for human rights;
- (s) Approve a new Code of Criminal Procedure ensuring, in particular, that as much attention is paid to the rights of the victims as to the rights of the accused during criminal proceedings;
- (t) Modify domestic legislation so that it meets the country’s international obligations with respect to the definition of the crime of torture, the punishments imposed for the crime of forced disappearance, the participation of victims in criminal proceedings and the regulation of writs of habeas corpus, in accordance with international human rights standards and the recommendations of international human rights mechanisms;
- (u) Modify the National Plan for Human Rights Education to include more extensive study, at various levels of education, of the dictatorship and human rights violations committed during this period;
- (v) Ensure that an appropriate budget is allocated to the National Human Rights Institution to enable it to effectively and independently perform its duties, and urge all State authorities to take the necessary measures to implement its recommendations.