



# Economic and Social Council

Distr.: General  
10 January 2011

Original: English

---

## Committee on Economic, Social and Cultural Rights Forty-fifth session

### Summary record of the 31st meeting

Held at the Palais Wilson, Geneva, on Tuesday, 2 November 2010, at 10 a.m.

*Chairperson:* Mr. Marchán Romero

## Contents

### Consideration of reports

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

*Combined third and fourth periodic reports of Uruguay*

---

\* Reissued for technical reasons.

---

This record is subject to correction.

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

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

*The meeting was called to order at 10.10 a.m.*

### **Consideration of reports**

#### **(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant**

*Combined third and fourth periodic reports of Uruguay (E/C.12/URY/3-4; E/C.12/URY/Q/3-4 and Add.1; HRI/CORE.1/Add.9/Rev.1)*

1. *At the invitation of the Chairperson, the delegation of Uruguay took places at the Committee table.*
2. **The Chairperson** said that it was regrettable that it had not been possible to translate the State party's extensive reply to the list of issues (E/C.12/URY/Q/3-4/Add.1) from the Spanish into the other working languages of the Committee on Economic, Social and Cultural Rights.
3. **Mr. González** (Uruguay), introducing the combined third and fourth periodic reports of Uruguay (E/C.12/URY/3-4), said that the protection of human rights was the foundation for public policy in Uruguay and that the State party's respect for international law and support for multilateralism were pillars of its foreign policy. Uruguay was working hard to protect economic, social and cultural rights through public policy in coordination with civil society.
4. Uruguay had ratified the key human rights treaties and their optional protocols, and the Government expected to send bills to the legislature for the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities in November 2010.
5. Many human rights experts had responded to the State party's standing invitation to visit the country, including, most recently, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on trafficking in persons, especially in women and children. The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation was expected to visit in 2011.
6. The economic crisis that had struck Uruguay in 2001–2002 had been the harshest in its history and had marginalized many Uruguayans, increased poverty and spurred emigration, especially among young people. Uruguay's traditional system of social protection had been overwhelmed and had therefore had to be completely revamped. Since 2005, the Government had adopted policies to prevent the least fortunate groups of society from sinking into extreme poverty and to meet their basic food, health, housing and education needs. Those measures had included the establishment of the National Social Emergency Plan, which had been replaced in 2008 by the Equity Plan.
7. Particular attention had been paid to strengthening legislation and institutions in the area of economic and social rights. The National Human Rights Institution, established in 2008, was due to begin operating in 2011, and the Ministry of Social Development, which had been established in 2005, would receive a 33 per cent increase in resources over the next five years. The Ministry, along with the Social Cabinet and its consultative body, the National Council on Social Policy, were the Government's social policy coordinating bodies. Other new bodies included the Honorary Commission against Racism, Xenophobia and All Forms of Discrimination, the National Consultative Council against Domestic Violence, the National Coordinating Council for Public Gender Equality Policies, a council on the rights of children and an inter-institutional initiative aimed at promoting formal-

sector employment. All those bodies contributed to more efficient, multisectoral policy development and to a heightened role for civil society in that regard.

8. Between 2005 and 2008, spending on State education had increased considerably, and new legislation had been passed in 2008. The fact that many students dropped out or repeated a year of secondary school remained the core problem in the area of education. There had also been achievements, however, such as the opening of new full-time schools and the successful introduction of one computer per pupil in primary schools. The extension of that project to secondary schools had begun in 2010.

9. Uruguay had launched an ambitious health-care programme designed to provide uniform care to the entire population and eliminate the inequalities of the old system.

10. Milestones in the advancement of equality and the prevention of discrimination included the passage of Act No. 18.104 on the promotion of equality of rights and opportunities between men and women, and a law on the prevention, early detection and eradication of domestic violence, together with the approval of national action plans in those two areas. Act No. 18.476, passed in April 2009, was designed to foster women's involvement in political life.

11. A combination of sound economic policy and specific employment programmes had reduced unemployment. The improved employment figures had gone hand in hand with measures aimed at strengthening workers' rights and raising their wages, improved legislation to protect vulnerable groups such as domestic servants and rural workers, and the establishment of wage councils and tripartite collective bargaining arrangements.

12. Combating poverty and extreme poverty was Uruguay's main socio-economic priority. The Equity Plan contained a broad array of programmes focusing on that objective, and the percentage of the population living in poverty and extreme poverty had fallen significantly since 2002. The Government fully intended to meet its commitment under the Millennium Development Goals of eradicating extreme poverty and reducing the poverty rate to a single-digit figure by the end of its term.

13. **Mr. Texier** said that he would like to know if the National Human Rights Institution would have a merely consultative role or if it would also deal with complaints and other matters in the manner of an ombudsman. He also urged the State party to update its core document, which dated from 1996.

14. **Mr. Sadi** said that he wished to know what constitutional status had been accorded to the Covenant and whether it had been applied directly by the courts. He asked if the application of the Plan for Equal Opportunities and Rights for Women and Men and the National Plan to Combat Domestic Violence had led to equal treatment of men and women. It appeared that discrimination against women and people of African and indigenous descent continued to be a problem. Women, for example, were not allowed to remarry within 300 days of divorce or the death of their spouse, and he wondered if the same provision applied to men. The provisions of the Criminal Code pertaining to crimes against decency and family order also appeared to discriminate against women. He also wondered why children born out of wedlock were the object of discrimination and wished to know what results had been produced by the National Plan against Racism and Discrimination.

15. **Mr. Riedel** said that he would like to know what the specific functions of the National Human Rights Institution would be, whether it would be able to hear individual or collective complaints and petitions, and what role it would have in monitoring implementation of the State party's commitments under international treaties. He also asked whether the institution itself or parliament would be responsible for selecting subjects for its scrutiny and whether it would deal with questions at the macro or micro level. How many members would the institution have and to what extent would the Paris Principles

govern the selection process? Did the establishment of the Parliamentary Commissioner for Prisons have any bearing on the right to health in prisons?

16. **Mr. Schrijver** wished to know to what extent members of indigenous groups and persons of African descent participated in public life and had access to public office and employment. He also wondered what progress had been made towards ratification of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

17. **Ms. Bras Gomes** said that she was encouraged that emphasis had been placed on the need to fulfil acquired obligations for the realization of human rights, which she understood to mean economic, social and cultural rights, and that the delegation had commented on the need to uphold such rights. It was not clear to her, however, what was meant by the reference in the informal document that had been provided as an addendum to the report (available on the Committee's website) to the "normative issue" and its negative impact on the implementation of economic, social and cultural rights. After all, Uruguay had a panoply of laws and regulations, and the National Council on Social Policy oversaw coordination between the different sectors of government.

18. In that addendum, the State party had stressed that the rapid pace of economic growth in Uruguay was expected to continue and, with that in mind, she wondered what resources would be allocated for the promotion of economic, social and cultural rights under the public budget proposal for 2011–2015, which was currently before parliament. She also asked about the State party's description of the National Human Rights Plan as an inclusive and participative tool. Had a draft plan been circulated among representative groups? Had civil society been involved in its elaboration? Further clarification would also be appreciated on the distinction drawn between socially and environmentally vulnerable populations and particular groups in need of minimum essential conditions for the enjoyment of their rights.

19. Lastly, on the issue of non-discrimination, the delegation had acknowledged that there was no constitutional guarantee for gender equality and that other groups were discriminated against despite legal advances. She wondered whether Uruguay might consider passing a framework anti-discrimination law in accordance with human rights principles and the Committee's general comment No. 20.

20. **Mr. Atangana** asked what action had been taken to give effect to the recommendation made in 2001 by the Committee on the Elimination of Racial Discrimination on the subject of access to justice for persons of African and indigenous descent. According to information available to the Committee, two commissions had been set up in 2005 to prepare the ground for a reform of the Code of Criminal Procedure and the Criminal Code. He would like to know what progress had been made in that regard.

21. **Mr. Tirado Mejia** said that, like other speakers, he would appreciate more up-to-date information on whether the law requiring divorced women and widows to wait 300 days before remarrying was still in force. In that connection, he would like to know whether the 2005 proposal to reform the Criminal Code had been approved and whether the Code still contained archaic and discriminatory provisions. The Committee had information that, in the country's prisons, persons under 18 years of age were held together with adults. He asked whether that was still the case and reminded the delegation that, in accordance with the relevant international instruments, children must be held separately from adults.

22. It would be useful to have more information on the overall situation of persons of African descent and indigenous peoples, who, according to the available statistics, were disadvantaged in the areas of education and health care. Clarification would also be appreciated on the statement made in paragraph 14 of the State party's combined third and fourth periodic reports that Uruguay was a "State with no indigenous presence in the form

of organized peoples". It might very well be that there were no indigenous tribes, but what was important was that there should be no discrimination, irrespective of whether indigenous peoples were organized in tribes or in any other manner.

23. **Ms. Barahona Riera** noted the major progress made in the area of legislation and social rights in Uruguay since 2008. In response to question 9 of the list of issues, the State party had provided the Committee with a wealth of information on a range of programmes and legislative changes aimed at promoting gender equality and reproductive health which had not been mentioned in the report. She would like to know what budgetary allocations had been earmarked for all those activities. Uruguay did not have a ministry of women's affairs, but merely an office for women's issues, which presumably did not have the same budget as a ministry would. She asked whether more funds would be budgeted to promote gender equality and whether there was any plan to confer ministerial status on that office. She would like to know more about Act No. 18.476 on the political participation of women, which interpreted earlier legislation on quotas. As she understood it, that law was not in conformity with international human rights parameters. While such legislation did reflect progress, the fact remained that women did not yet enjoy political and other forms of equality. Lastly, she asked what action had been taken to ensure that judges could invoke international norms, in particular those relating to articles 2 and 3 of the Covenant, on equality and non-discrimination.

24. **Ms. Bonoan-Dandan** asked how persons of African descent and migrants were included in the various policies and plans to which the delegation had referred. With regard to paragraph 14 of the report, she said that, like other members of the Committee, she was confused by the statement that Uruguay was a State with no indigenous presence in the form of organized peoples. In connection with the discussion of the ratification of ILO Convention No. 169, if those non-organized peoples were not indigenous peoples, she wondered whether they were perhaps tribal peoples. Moreover, despite the assertion made in paragraph 14 that indigenous people in Uruguay were not organized, they had in fact participated as indigenous representatives in global forums. She asked whether Uruguay was a signatory to the United Nations Declaration on the Rights of Indigenous Peoples; if so, it would be interesting to learn who represented Uruguay in the corresponding forum. Information had been provided about the situation of women of African descent but not about their families. She would like to have clarification on whether there were any special programmes targeting boys of African descent.

#### *Articles 1 to 5*

25. **Mr. Miranda** (Uruguay), referring specifically to the National Human Rights Institution established under Act No. 18.446, said that the process of setting up the institution had involved several years of protracted dialogue among representatives of the Government, civil society and all political parties with parliamentary representation. That institution dealt with all issues relating to human rights, both those protected under the national legal system and those recognized under international human rights law. It had an advisory function in line with the Paris Principles and made recommendations regarding human rights policy, but it was also competent to hear individual and collective complaints of human rights violations. That dual function was reflected in its structure. Unlike other human rights institutions in Latin America, where there was a sole ombudsman, Uruguay had opted for a governing council made up of five persons acting as independent experts. Two of those persons received complaints of alleged human rights violations, and the other three were responsible for working with State agencies and civil society to draw up policies on human rights. Thus, complaints were not the sole focus of the institution's activities; it was equally important to design structural mechanisms to promote human rights. Complaints fed into thinking on human rights policy, thereby helping to identify structural

weaknesses in Uruguay in that area. By the same token, the processing of complaints helped to promote an overall awareness of human rights issues in the country.

26. One of the core roles of the national human rights institution would be monitoring and follow-up, in line with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The institution would serve as a mechanism for preventing human rights violations and would determine its own agenda. By law, it must hold at least one session annually, which would be attended by independent experts, State agencies and accredited NGOs, with the goal being to encourage debate and ensure public participation in the design of human rights policy.

27. Given the importance of ensuring the institution's independence, as set out in the Paris Principles, the members of its governing council would be elected by a majority of the Legislative Assembly, which comprised both chambers of parliament. Restrictions were in place to ensure that the council did not become influenced by party politics: those who had been elected to political office in the previous two years were ineligible for election to the council, and those elected to the council could not stand for election to political office for three years afterwards. The paid activities in which council members could engage would be limited to occupations such as human rights teaching.

28. The timetable for establishing that institution had been determined in part by the State party's lengthy electoral and budget cycles. The necessary legislation had been promulgated in 2008, when preparations were already under way for the forthcoming elections. Its establishment had therefore been put back until after the election so as to ensure complete independence from the electoral process. As it was essential for the institution to have sufficient resources once it came into being, its funding would be determined when parliament approved the five-year State budget in February 2011. The institution was expected to begin its work later that year.

29. The 1967 Constitution was still in force, with some slight modifications, although it had not been applied during the 13 years of military rule, and the question of updating it to reflect developments in the field of human rights was under consideration. Unlike most other Latin American constitutions, it contained no specific provision according international treaties constitutional rank, but the fact that they took precedence over the Constitution had been confirmed by a recent Supreme Court ruling, based on article 72 of the Constitution, concerning a case of summary execution under military rule. In the wake of the ruling, a body of case law would accumulate, to be consolidated by the Supreme Court in its role as Court of Cassation. Since their establishment, the labour courts had followed the practice of applying international treaties directly.

30. Uruguay's Civil Code originally dated from 1866 and was based on Napoleonic law. Many of its concepts, particularly in areas such as family law and women's rights, were now outdated and should be reviewed; however, despite the tendency towards legislative inertia that stemmed from the country's long tradition of codification, some amendments to civil legislation had already been made, including one which granted equal rights to all children, irrespective of whether they were born in or out of wedlock.

31. **Mr. Scagliola** (Uruguay) said that, within the context of the universal periodic review, the Government had undertaken to prepare a national plan against all forms of discrimination. The development of the National Plan against Racism and Discrimination demonstrated the Government's commitment to acknowledge that problems existed and to take steps to solve them. The 2006 household survey conducted by the National Statistics Institute had, for the first time, included a question on ethnic and racial identity. The survey had allowed respondents to identify with more than one ethnic or racial group. Some 3 per cent of the population had self-identified as being of indigenous descent, while 9 per cent had self-identified as being of African descent. The 2011 census would be the first to

include questions on racial and ethnic origin. The new body of data which the household survey had produced revealed that previous impressions of the country's homogeneity had been erroneous and that discrimination in education and employment, particularly against the Afro-descendent population, did, in fact, exist.

32. Unemployment and poverty were around twice as high among Afro-descendent men and women than the rest of the population, and there was a gap of between 10 and 15 percentage points in the proportion of those who contributed to social security schemes in the two groups. About half of the country's poorest people were of African descent. The Government had begun to address the problem. Affirmative action policies were being introduced to increase the number of Afro-descendent students in higher education by encouraging secondary school attendance through conditional cash transfer and mentoring schemes that targeted those who were at risk of dropping out of the education system.

33. Although some people in Uruguay were descended from indigenous peoples, there were no longer any true indigenous communities. The various associations formed by indigenous descendants to defend their cultural heritage were represented on the Honorary Commission against Discrimination, Xenophobia and All Forms of Discrimination and had participated in a range of international forums. In recognition of the shameful action of past centuries that had resulted in the almost total extermination of the country's indigenous groups, 11 April was a national day of remembrance for the Charrúa people, the original inhabitants of the area. They were also honoured by means of symbolic acts such as the return to Uruguayan soil of the remains of indigenous *caciques* from Paris, where they had been taken as captives.

34. Under the auspices of the Ministry of Social Development, the National Institute for Women (INMUJERES) had been created as one of a range of bodies that protected the rights of specific population groups, such as young people, children and families. Significant efforts were being made to mainstream a gender perspective into all policies, while the Plan for Equal Opportunities and Rights for Women and Men sought to bridge the gender gap. Poverty reduction strategies included specific measures for women, as households headed by women were disproportionately affected by poverty and unemployment. A system of special payments was aimed at assisting and empowering such women, and policies were in place to give women the tools to overcome poverty.

35. In addition, many women shouldered the double burden of paid employment and unpaid household work, particularly caring for children or elderly relatives, and the Government had committed itself to addressing that challenge during its 2010–2015 term as a central element in ensuring equality between women and men. On average, women spent twice as many hours on unpaid household work as men, and the consequent limitations on their opportunities for education, training and professional advancement condemned many to continued poverty. Under the Plan for Equal Opportunities and Rights for Women and Men, steps would be taken to offset the costs of time spent on household tasks and caregiving. There were also plans to extend services for victims of gender-based violence to all 19 regions by establishing local offices and mobile units.

36. In 2009, a law had been passed establishing a quota system for electoral lists. Political parties would be required to ensure that women accounted for one third of their candidates. The law had come into force for internal party elections in 2009 and would apply to national elections from 2014 on. As it included no separate interpretative provisions, the Electoral Court had issued a ruling on how lists should be prepared, but that ruling had drawn criticism from some feminist groups.

37. **Mr. Roballo** (Uruguay) explained that electoral lists consisted of principal and alternate candidates. Under the quota law, and the Electoral Court's ruling, it was technically possible for parties to list women only as alternates and still meet the quota.

Additional interpretative legislation to ensure that women made up one third of each party's principal list was now being considered.

38. **Mr. González** (Uruguay) said that in 2005 a programme for women of African descent had been established which had since become a department of the National Institute for Women (INMUJERES). That department was unique in that it addressed ethnically motivated discrimination in the context of gender equality.

39. **Ms. Dupuy** (Uruguay) said that, owing to Uruguay's historical context, indigenous cultures and languages no longer existed as such. As a result, the Tripartite Committee understood that certain provisions of ILO Convention No. 169 did not correspond with the realities of the situation in Uruguay. While the State could implement portions of the Convention, such as those, for example, concerning the preservation of the archaeological remains of indigenous cultures, it could not ratify the Convention — to which reservations were prohibited — in totum.

40. **Mr. Miranda** (Uruguay) said that legislation on the situation of migrants had entered into force in Uruguay in January 2008, pursuant to which all persons were equal before the law and were therefore guaranteed equal economic, social and cultural rights, irrespective of their nationality. The Criminal Code dated back to 1934 and was currently being reviewed by the legislature. The Code of Criminal Procedure was also being reviewed, since restrictive measures, such as a reduction in the age of criminal responsibility and an increase in the penalties for certain offences, had proven ineffective. A broad political discussion was under way, and the executive hoped that an amended Criminal Code and Code of Criminal Procedure would soon be adopted and promulgated. Minors who were being held in custody were always housed in separate facilities from adults.

41. **Mr. Tirado Mejía** asked what procedure the National Human Rights Institution would follow when it received a complaint regarding a human rights violation. Although the Committee had been informed that the situation for children born out of wedlock had improved significantly, he wished to know whether the term "natural" children, which was archaic and not in line with international standards, was still in use. Criminal law and family law should be amended to overcome the legislative inertia in those spheres.

42. **Mr. Sadi** asked how the independence of the National Human Rights Institution could be guaranteed, given that its funding came entirely from the Government.

43. **Mr. Miranda** (Uruguay) said that the National Human Rights Institution made recommendations and proposals for human rights policies, but could not overlap with the work of the legislature or the judiciary, owing to the strict separation of powers. The Institution therefore had an obligation to refer any complaints of violations to the relevant authority. It did not have a jurisdictional function, but could monitor the operations of jurisdictional bodies. Since establishing an autonomous budget for the National Human Rights Institution would have required a constitutional reform, the Institution was currently administratively dependent on the legislature. When that reform was undertaken, the Institution would become entirely independent. Its funding, however, would always come from the State budget. There was indeed legislative inertia in respect of the Civil Code, and his delegation would welcome recommendations from the Committee on how to overcome that problem. Children born out of wedlock enjoyed the same rights as other children, but it was true that the term "natural" children was anachronistic.

44. **Mr. Scagliola** (Uruguay) said that the National Plan against Racism and Discrimination, which had been drafted in 2009 and was currently being implemented, included provisions on the prevention of discrimination against migrants. Despite formal equality between nationals and non-nationals in Uruguay, social practices could still be discriminatory. The Plan provided for the protection of migrants and Afro-descendants,

indigenous persons and other vulnerable groups, such as transsexuals and persons discriminated against on grounds of sexual orientation.

45. Uruguay was witnessing economic growth despite the global economic and financial crisis. An ambitious health-care reform had been implemented with a view to guaranteeing equal access to health care for all. Environmentally vulnerable groups who lived off the recycling of solid waste suffered one of the most brutal forms of social exclusion, since their lifestyle had an impact on their health, as well as having implications for child labour and territorial exclusion. Other particularly vulnerable communities were those who lived in extreme poverty and in zones that were prone to flooding. Efforts were being made to strengthen housing policies to protect those people and to relocate them to more stable locations.

46. Although a law had been adopted on sexual and reproductive health, the chapter of that legislation on the decriminalization of abortion had not been approved. A bill on that subject was currently under consideration in parliament. The Ministry of Health had an active policy for caring for women who wished to terminate their pregnancy. While the drug used to perform abortions could not be prescribed by the Uruguayan health service, guidance could be given to women who intended to take it. There had been no deaths as a result of abortions in the past two years.

*Articles 6 to 9*

47. **Mr. Texier** asked how such low unemployment rates had been achieved and whether informal labour had been taken into account in employment statistics. He requested unemployment statistics that were disaggregated by gender. Non-governmental sources had informed the Committee that only 13 per cent of persons deprived of their liberty were employed and that only 7 per cent of those who were employed were remunerated. He asked whether work for prisoners was optional and how it was paid. Turning to the issue of dismissal, he asked how the term “fair dismissal” was to be understood and how the labour courts were monitored. Who was responsible for setting increases in the minimum wage, and were those increases subject to tripartite discussion? He also wished to know whether the minimum wage was sufficient to guarantee a decent standard of living for workers and their families. He asked what role the Labour Inspectorate played in monitoring industrial accidents and how international occupational health and safety standards were applied.

48. **Ms. Bras Gomes**, turning to article 9 of the Covenant on the right to social security, asked what the advantages of contributing to the compulsory element of the private pension scheme were, since it seemed to have led to the underfunding of the public pension scheme. She expressed concern regarding the situation of the long-term unemployed who were over 50 years of age, since it was unclear what social support they received after they had exhausted their 12-month unemployment benefit allocation. She asked what protection they received until reaching the retirement age of 65 years. She also asked whether undocumented migrant workers had access to social assistance. Were minimum pension amounts sufficient for pensioners to live with dignity? The State party had informed the Committee of a specific benefit available to persons aged between 65 and 70 years, and she wondered what benefits were available to people aged over 70.

*The meeting rose at 1 p.m.*