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促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

访问乌拉圭

老年人享受所有人权问题独立专家的报告*，**

概要

老年人享有所有人权问题独立专家罗莎·科恩菲尔德-马特于2018年11月19日至29日访问了乌拉圭。访问的主要目的是查明在执行有关促进和保护老年人权利的现行法律方面的最佳做法和差距。独立专家在报告中评估了乌拉圭落实与老年人享有所有人权有关的现有国际文书、法律和政策的情况。根据访问之前、访问期间和访问之后收集的资料，独立专家分析了老年人在享有所有人权方面面临的挑战，特别注重被排斥的个人和群体。

* 本报告逾期提交，以反映最新动态。

** 报告正文附于概要之后，仅以提交语文和西班牙文分发。



Annex

Report of the Independent Expert on the enjoyment of all human rights by older persons on her visit to Uruguay

I. Introduction

1. Pursuant to Human Rights Council resolution 33/5, the Independent Expert on the enjoyment of all human rights by older persons conducted an official visit to Uruguay from 19 to 29 November 2018, at the invitation of the Government. The purpose of the visit was to identify best practices and gaps in the implementation of existing laws relating to the promotion and protection of the rights of older persons in the country.

2. During her visit, the Independent Expert had the opportunity to meet with representatives of the Government, local authorities, the Ombudsperson, non-governmental organizations, researchers, and representatives of academia and of civil society, as well as others working on the rights of older persons and older persons themselves.

3. The Independent Expert thanks the Government of Uruguay for extending an invitation to her and for its cooperation throughout the visit. She also expresses her appreciation to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights for its support in the preparation and execution of the visit.

II. Background and context

4. In 1985, after 11 years of civil-military dictatorship, the citizens of Uruguay recovered their civil and political freedoms under the 1967 Constitution. That was made possible in the first instance by their rejection, in a plebiscite, of a proposed new constitution curtailing individual rights and proposing the subjection of the civil authority to military tutelage (A/HRC/WG.6/5/URY/1, para. 5). The 1967 Constitution establishes a republican, democratic and semi-representative system, in which representative institutions elected by popular vote exist alongside mechanisms of direct democracy: the constitutional plebiscite (ratifying reforms approved by the parliament or by popular initiative), the referendum for the partial or total repeal of laws, and the popular initiative for new legislation. In its statement of principles, the existing Constitution provides for the equality of all persons before the law (*ibid.*, paras. 6–7).

5. Uruguay is a country in the south-eastern region of South America with an estimated population of 3.44 million and relatively low population growth. The median age is higher than the global average due to the low birth rate, high life expectancy, the relatively high rate of emigration among younger people, and the recent phenomenon of immigration. Uruguay was the first country in the region to begin the first demographic transition with a sustained decline in fertility and mortality rates, which is expected to continue.¹

6. Uruguay is the country with the largest share of older persons in Latin America and in the global South. This is the result of an early demographic transition process, which began in the late nineteenth century, almost at the same time as in many European countries. Additionally, interrelated changes in the different sociodemographic factors, such

¹ Rafael Rofman, Verónica Amarante and Ignacia Apella, eds., *Demographic Change in Uruguay, Economic Opportunities and Challenges* (Washington, D.C, International Bank for Reconstruction and Development/The World Bank, 2016).

as fertility, nuptial patterns and family formation, indicate that Uruguay is experiencing a second demographic transition.²

7. Currently, around 14 per cent of the population is over 64; this age group is expected to increase to about 22 per cent by 2050 and 31 per cent by 2100, as fertility continues to decline and life expectancy increases.³ According to projections, the age group with the most expansion in the 2021 census will be 80 years and older. Returning retired Uruguayans, who left the country in the 1960s when there was a significant amount of international migration from Uruguay, also increase the number of persons aged 65 and over.⁴

8. The population of Uruguay is highly urbanized. Metropolitan Montevideo accounts for almost half of the country's population, with about 1.6 million inhabitants.

9. The demographic transition also represents an opportunity for Uruguay, which is going through a period marked by the highest percentage of the population of working age with the capacity to generate savings. The demographic dividend makes it possible to increase the levels of investment in the economy and consequently, given the greater endowment of capital and labour, enter a path of sustained growth. It is necessary to ensure the institutional and financial conditions that promote this greater saving and channel it towards investment, in order to increase the productivity of the economy and sustain gross domestic product growth per capita.⁵

10. Uruguay ranks high on the Global AgeWatch Index 2015, at 27 overall.⁶ It ranks best in the income security domain (8), with the highest pension income coverage (92.7 per cent) and lowest old age poverty rate (8.3 per cent) in the region. It ranks moderately in the health domain (37), slightly below the regional average for life expectancy at 60. It also ranks moderately in the capability domain (38). The country ranks lowest in the enabling environment domain (57), with below regional average values for two out of four indicators: safety (40 per cent) and satisfaction with public transport (52 per cent).

III. Administrative, legal, institutional and policy framework

11. Uruguay has ratified or acceded to almost all the human rights instruments of relevance to older persons. It is a party to the main international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Since 2013, it has also been a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows individuals or groups of individuals to submit communications to the Committee on Economic, Social and Cultural Rights alleging violations of the rights

² Daniel Ciganda and Alain Gagnon, "You can't go home again. Independent living in Uruguay in the context of delayed transitions to adulthood", *Revista Latinoamericana de Población*, vol. 6, No. 4 (January–June 2010); Tomáš Sobotka, "The diverse faces of the second demographic transition in Europe", *Demographic Research*, vol. 19, No. 8 (July 2008); Ron Lesthaeghe, "The second demographic transition: a concise overview of its development", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 111, No. 51 (23 December 2014).

³ International Monetary Fund (IMF), *Uruguay: Selected Issues*, IMF Country Report No. 17/29 (Washington, D.C., 2017), p. 49.

⁴ Pablo Salazar and Lorna Jenkins, "Social protection in Latin America: a description of eight countries" (United Nations Population Fund, Latin America and the Caribbean Regional Office), p. 5.

⁵ Cecilia González and Marisa Bucheli, "Bono demográfico y envejecimiento en Uruguay", Departamento de Economía, Facultad de Ciencias Sociales, Documento de Trabajo No. 10/14 (Montevideo, Universidad de la República, 2014); Tim Miller, Paul Saad and Ciro Martínez, "Population ageing, demographic dividend and gender dividend: assessing the long term impact of gender equality on economic growth and development in Latin America", in *Demographic Dividends: Emerging Challenges and Policy Implications*, Roberta Pace and Roberto Ham-Chande, eds. (Springer International Publishing Switzerland, 2016); Rofman, Amarante and Apella, *Demographic Change in Uruguay*.

⁶ See www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Uruguay.

protected under the Covenant. In addition, it is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities and its Optional Protocol. It is also party to the Convention on the Rights of the Child and its Optional Protocol on a communications procedure. The State is a signatory to the Rome Statute of the International Criminal Court, and a party to the Convention relating to the Status of Refugees and the Convention on the Reduction of Statelessness.

12. Moreover, Uruguay is a party to fundamental International Labour Organization (ILO) conventions, including the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Paid Educational Leave Convention, 1974 (No. 140); and the Worst Forms of Child Labour Convention, 1999 (No. 182). It is also party to the Domestic Workers Convention, 2011 (No. 189), the Nursing Personnel Convention, 1977 (No. 149) and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128).

13. The country is not a party to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). It has also not ratified a number of other ILO conventions relevant to older persons, including the Maintenance of Social Security Rights Convention, 1982 (No. 157); the Labour Statistics Convention, 1985 (No. 160); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

14. As a Member of the Organization of American States (OAS), Uruguay is held to the American Declaration of the Rights and Duties of Man, and its human rights policies and practices are monitored by the Inter-American Commission on Human Rights. The Commission may decide on complaints against the State and may also hold hearings or issue reports on the human rights situation there. Uruguay has accepted the jurisdiction of the Inter-American Court of Human Rights, which may issue binding judgments concerning alleged abuses.

15. At the regional level, Uruguay has ratified the American Convention on Human Rights and its Additional Protocol in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the Inter-American Convention on Forced Disappearance of Persons, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.

16. Uruguay was the first member State of OAS to deposit the instrument of ratification of the Inter-American Convention on Protecting the Human Rights of Older Persons, on 18 November 2016. At the hearing of the Inter-American Commission on Human Rights held on 6 December 2018 on the human rights of older persons, regarding that convention and its follow-up mechanism, Uruguay stressed the need for follow-up mechanisms on the human rights of older persons and urged other member States to ratify the Convention.⁷

17. In 1991, the Treaty establishing a Common Market between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (Treaty of Asunción) was signed, establishing the Southern Common Market (MERCOSUR). The Parliament of MERCOSUR includes a Commission on Citizenship and Human Rights.

⁷ See www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=27.

18. The National Human Rights Education Plan was launched in August 2017. It seeks to build a human rights culture encompassing the dignity of all and respect for one's own and other people's human rights; to guarantee an environment of coexistence and learning in human rights-based educational communities; to raise awareness among, train and involve stakeholders who are strategic by virtue of their multiple capacities or the particular relevance of their specific characteristics; and to create and strengthen the institutional framework for human rights education.

19. Uruguay adopted a National Ageing and Old Age Plan 2016–2019, which contains public commitments to take specific actions to guarantee access by older persons to their rights. Uruguay consulted older persons when drafting the plan, and in 2018, work was done to develop indicators to monitor its implementation. This involved collecting information from the institutions involved and preparing a public progress report on issues including awareness, effective exercise of rights and institutional strengthening. It also brought to light differences in the approaches to ageing taken by State institutions and the gaps in protection, thus strengthening the leverage of the National Institute for Older Persons (Instituto Nacional del Adulto Mayor en el Uruguay (INMAYORES)) to advocate for a human rights-based approach.

20. While the responsibility for older persons cuts across a number of ministries and local authorities, the National Institute for Older Persons is the lead agency on older persons in Uruguay and operates under the umbrella of the Ministry of Social Development (MIDES). It is the State's policymaking and analytical institution on ageing and old age, and is responsible for the planning, design, execution and evaluation of national policies related to older persons, and for promoting their full development and social and economic integration. Its activities include training health workers and older human rights promoters in other fields. It also has programmes to address domestic violence and social vulnerability and to foster a positive image of old age. It addresses long-term and home care and care for older persons suffering from dementia.

21. As part of the National Institute, Uruguay also created a Consultative Council composed of representatives from organizations of older persons, such as the National Network of Organizations of the Elderly (REDAM) and the National Organization of Retirees' and Pensioners' Associations of Uruguay (ONAJPU), representatives of the authorities, notably the Ministry of Health and the Social Security Bank (Banco de Previsión Social) and representatives of academia, such as the Chair of Geriatrics and Gerontology of the Faculty of Medicine of the University of the Republic.

22. In 2006, the Human Rights Unit of the Ministry of Education and Culture was elevated to the status of Department. The Department is responsible for promoting enjoyment of and respect for human rights, considered in a comprehensive and interdependent manner, including civil and political rights and economic, social and cultural rights, as well as collective rights such as the right to peace, to development and to the environment. Moreover, an advisory service on fundamental rights was established under the Ministry of Labour and Social Security with responsibility, inter alia, for countering all forms of discrimination.

23. The Human Rights Secretariat of the Office of the President of the Republic is the lead agency for the human rights components of public policy within the executive. It is led by a governing board composed of the secretary of the Office of the President, who acts as chair, and the Minister for Foreign Affairs, the Minister of Education and Culture, the Minister of the Interior and the Minister of Labour and Social Development.

24. The National Human Rights Institution and Ombudsman's Office of Uruguay (INDDHH) was established within the legislative branch under Act No. 18446 of 18 December 2008 to defend, promote and protect to the fullest extent possible the human rights enshrined in the Constitution and in international law. According to that Act, it carries out its work in an independent manner, without receiving instructions or orders from any authority. It has the power to receive, hear and investigate allegations of human rights violations, either on request or at its own initiative, in accordance with the procedure set forth in the Act.

IV. Independent Expert's main findings

A. Discrimination

25. Article 8 of the Constitution of Uruguay establishes that everyone is equal before the law. The national legal framework prohibits any discrimination on the basis of age and guarantees older persons equal and effective legal protection against discrimination on any ground whatsoever.

26. Persons of African descent or Afro-Uruguayans are the country's largest ethnic and racial minority and account for around 8 per cent of the population. It is estimated that persons of indigenous descent account for 5 per cent of the country's population (HRI/CORE/URY/2016, para. 2).⁸ Persistent structural inequalities and discrimination against Afro-Uruguayans continue to exist, as reflected in the disproportionate levels of poverty and social exclusion among this sector of the population (CERD/C/URY/CO/21-23, para. 16). While there is a lack of specific information regarding older indigenous peoples, there are concerns that persons of indigenous origin continue to be subjected to acts of racial discrimination and that stereotypes and prejudice against them continue to persist (*ibid.*, para. 22).

27. Uruguay has taken a number of measures to counter age-based discrimination in employment by means of affirmative action and a specific ban on discriminating against any worker on the grounds of age. It has also made job training available. In addition, it is trying to address ageism and negative stereotyping against older persons and has, for instance, launched "age sensitivity" classes for children, reinforcing the message that older persons are to be revered and cared for.

B. Violence, maltreatment and abuse

28. Despite the Government's efforts, gender violence, including against older women, remains a persistent scourge in Uruguay. Domestic violence is the most frequent crime after theft. According to the Ministry of the Interior, in 2017, 29 women were victims of homicides perpetrated by intimate partners or family members and more than 40,000 complaints of domestic violence were made.⁹

29. While there are no representative data concerning elder abuse in Uruguay, according to the Ministry of Social Development, about 500 complaints are received every year from health centres and from alleged victims who live in their own homes. In 2018, the authorities intervened in 146 cases of abuse and maltreatment.¹⁰ The first national survey on the prevalence of gender-based and generational violence, conducted in 2013, indicated that 9.5 per cent of older women had experienced domestic violence.¹¹

30. The Independent Expert notes the general tendency of underreporting cases of violence and abuse involving older persons. Reasons for underreporting include the intimacy barrier in family relationships, the lack of awareness and the fear that older persons have of reprisals from caregivers. Moreover, collective prejudice against older persons and public awareness influence the way in which abuse and violence is perceived, recognized and reported.

31. The main type of abuse or maltreatment of older persons in Uruguay in intra-familial settings is psychosocial and psychological (in almost half of the cases), followed by negligence and abandonment (over 20 per cent of the cases). Physical abuse occurs in about

⁸ See also <https://minorityrights.org/minorities/afro-uruguayans/>.

⁹ United Nations country team submission for the third cycle of the universal periodic review of Uruguay (Informe UNCT URUGUAY–3er ciclo EPU), para. 16. Available from www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUYUNContributionsS32.aspx.

¹⁰ See www.mides.gub.uy/innovaportal/file/110121/1/ministerio_de_desarrollo_social_2018.pdf.

¹¹ See www.inmujeres.gub.uy/innovaportal/file/33876/1/resumen_de_encuesta_mides.pdf.

15 per cent of the cases. In more than half of the cases, it appears that close relatives are the main perpetrators of these acts.¹² At the community level, financial abuse is more frequent. In such cases, third parties embezzle property, documents and financial resources in illegal exchange for care, without the older person's consent.

32. In November 2015, under Executive Decree 306/015, the Government approved the Action Plan for a Life Free of Gender-based Violence, with a generational perspective. The purpose of the Plan is to implement a national policy for the prevention, reduction and redress of gender-based violence in its various tangible manifestations. It encompasses significant developments, including a comprehensive vision of gender-based violence and an interdisciplinary and intersectoral approach. However, difficulties have arisen in its implementation, including a lack of resources (A/HRC/WG.6/32/URY/1, para. 19, and A/HRC/WG.6/32/URY/3, para. 6).

33. In 2017, within the framework of the Action Plan, Uruguay amended articles 311 and 312 of the Criminal Code, classifying femicide as a particular aggravating circumstance of murder, considering it to be committed "against a woman for reasons of hatred, disdain or contempt for her condition" (A/HRC/WG.6/32/URY/1, para. 21). The legal advance, however, was not backed by sufficient financial or human resources or training, especially with regard to access to justice (A/HRC/WG.6/32/URY/3, para. 50).

34. In 2018, Act No. 19580 on gender-based violence against women was approved. The Act aims to guarantee to all women, including trans women, the right to a life free of gender-based violence, regardless of age, sexual orientation or gender identity, socioeconomic situation, territorial affiliation, beliefs, cultural and ethnic-racial origin, or disability. The Act recognizes different types of violence, including physical, psychological and emotional violence, and puts in place mechanisms, measures and integrated policies for prevention, care, protection, punishment and redress (A/HRC/WG.6/32/URY/1, para. 22).

35. The Act also provides for the establishment of a network of care services, protection, investigation and prosecution procedures, and administrative and judicial procedures. In addition, it provides for the establishment of the Observatory on Gender-based Violence against Women, with a mandate to monitor, collect, produce, register and permanently systematize data and information on violence against women.

36. Since July 2013, the National Institute for Older Persons has been operating a service for victims of domestic violence with a focus on older persons in Montevideo and the Metropolitan Area. It monitors situations of abuse and maltreatment of older persons and contributes to their protection through a comprehensive approach from specialized interdisciplinary technical teams, which provide direct care and psychological, social and legal advice. The establishment of the offices for women victims of gender-based domestic violence is a fundamental step in addressing elder abuse, including to raise awareness of society as a whole.

37. There are two centres in Montevideo focusing on elder abuse. The Care Centre for Older Persons focuses on the comprehensive development of older persons. It manages a care centre for older persons who have been victims of abuse or maltreatment. Economic and financial abuse, emotional abandonment, neglect, negligence, psychological and physical abuse are among the most common forms of elder abuse. The Inter-institutional Centre for Collaboration with Older Persons is a non-governmental organization that seeks to assist, advise and accompany older persons and to provide them with an appropriate place in which to enjoy their old age. Despite some progress, notably the establishment of the National Institute for Older Persons, there is shortage of adequate shelters and of psychological and medical treatment for victims of domestic and gender-based violence, and a need to establish targeted programmes on elder abuse at the national level in Uruguay.

¹² See www.rtmuruguay.org/2016/07/maltrato-violencia-al-adulto-mayor.html.

C. Adequate standard of living and autonomy

38. Uruguay has a long history of social welfare policies, and reforms have sought to raise people out of poverty and to lower inequalities. The country has been described as South America's first welfare State, including as a result of its pioneering efforts in health care and social security. During recent years, the Government has aimed to lower poverty and income inequalities further. Between 2008 and 2012, the poverty rate for the population as a whole fell from over 20 per cent to 12.4 per cent, while extreme poverty fell from 1.6 per cent to 0.5 per cent (A/HRC/WG.6/18/URY/1, paras. 80 and 83). In 2017, the poverty rate fell to 7.9 per cent, while extreme poverty fell to 0.1 per cent and inequality to 0.38 per cent (A/HRC/WG.6/32/URY/1, para. 111).

39. The incidence of poverty among older persons is significantly lower than among the population as a whole, and declined faster than in other age groups during the 1990s. In all age groups, poverty reduced during the first half of the 1990s and has risen again in recent years, but the rise has been less pronounced among older persons than among other age groups. Substantial numbers of older persons in Uruguay contribute financially to their families by supporting younger generations.

40. While noting that poverty among older persons in Uruguay is relatively low compared to other age groups, in the case of older persons, poverty and deprivation take on particular relevance when they intersect with physical and intellectual limitations.

41. Notwithstanding the many institutional and economic efforts made, poverty continues to cause concern, and the ethically unacceptable extremes of destitution and social exclusion continue to persist (A/HRC/WG.6/5/URY/1, para. 92). Older women in poverty, specifically widows with no children, are particularly vulnerable as they also do not have informal safety nets to provide them with assistance.

42. Transportation, the physical environment, information and communications facilities and services open to the public, particularly in rural areas, are not fully accessible for older persons, notably those with disabilities (CRPD/C/URY/CO/1, para. 21). The quantity and quality of basic services and their accessibility is more limited in rural than in urban areas, which particularly affects older rural women. In Montevideo, the Government introduced the Golden Card which provides older persons with discounts on services in sectors such as tourism, recreation and health.

43. Uruguay has made progress in terms of housing-related action for older persons. In 2001, it passed Act No. 18340 establishing the first housing benefits for retirees and pensioners. The benefits were extended in 2006, when a rent subsidy was created; the subsidy was enhanced in September 2009 under executive order No. 397/009.

44. Nonetheless, a considerable number of persons in Uruguay, including older persons, live in informal settlements. These older persons and those who are homeless face several challenges regarding access to or the quality or affordability of services, hindering their enjoyment of their fundamental rights. Forced evictions that are conducted without providing appropriate protection and the criminalization of homelessness in certain instances are also issues of concern (A/HRC/WG.6/32/URY/2, para. 33).

45. Various legal provisions, in particular articles 37 and 80 of the Constitution and some provisions of the Civil Code (as amended by Act No. 17535 on persons subject to general guardianship), are contrary to the Convention on the Rights of Persons with Disabilities and discriminate against and restrict the legal capacity of persons with disabilities (CRPD/C/URY/CO/1, para. 25).

D. Social protection and the rights to social security and work

46. Uruguay has a long history of providing social security and having formal pension systems. One characteristic of the social protection system in Uruguay is that both contributory and non-contributory transfers are integrated, financed and provided by a

single institution, the Social Security Bank, which was established under the 1967 Constitution.¹³ The system is administered by the Ministry of Labour and Social Security. It consists of the Social Insurance Bank, three parastatal funds,¹⁴ and two retirement and pension services.¹⁵

47. Uruguay has reformed its social security and social protection system in recent years. Act No. 16713, adopted in 1995, put into effect a new mixed retirement pension system, administered by the Social Insurance Bank, which combines two mandatory components: an intergenerational solidarity retirement scheme based on distribution, and a compulsory individual savings retirement scheme based on individual capitalization.

48. The Social Security Bank is the State's main social security institution. It provides technical assistance in the form of professional advice, and funding for specific projects, especially infrastructure projects for older persons' homes, associations of retirees and pensioners and senior citizens' clubs. The Social Security Bank grants retirees and pensioners with low incomes the usufruct of properties that it owns (A/HRC/WG.6/5/URY/1, para. 73).

49. Uruguay also has an Equality Plan which created an old-age allowance for persons between 65 and 70 years of age living in extreme poverty who lack other social security benefits. In addition, it reintroduced the old-age grant for persons above the age of 70. In 2009, the minimum pension was 150 per cent higher than its 2005 value (ibid.).

50. The demographic change is increasingly putting pressure on the pension system. The old-age dependency ratio, defined as the population aged 60 and above over the working-age population, is expected to grow from less than 33 per cent in 2015 to 50 per cent in 2050, and close to 77 per cent in 2100.¹⁶

51. The Uruguayan pension system is one of the oldest in Latin America. It has evolved from a "pure" pay-as-you-go system to a mixed system which includes a pay-as-you-go, defined-benefit component and an individually funded, defined-contribution component (Act No. 16713). The pay-as-you-go pillar is administered by the Social Security Bank for most contributors. In addition, there are five separate systems for banking sector employees, university professionals, public notaries, the military and the police. The second pillar is managed by private pension fund administrators under the supervision of the Central Bank. Above a certain income threshold, workers can voluntarily contribute additional savings. The system also includes a non-contributing older persons and disability pension programme.¹⁷

52. The common retirement pension is paid to workers aged 60 or above who have accumulated at least 30 years of contributions.¹⁸ The old-age pension can be paid to workers who do not qualify for the common retirement pension and are aged 65 and above and have 25 years of contributions. The amount under the pay-as-you-go pillar is equal to 50 per cent of the basic pensionable salary plus 1 per cent for each year of employment exceeding the required minimum number of years of service (25 years at age 65, 23 years at age 66, 21 years at age 67, 19 years at age 68, 17 years at age 69, and 15 years at age 70), with a maximum of 14 per cent. Complete disability and temporary disability pensions are equal to 65 per cent of the basic pensionable salary.¹⁹

53. Passive pension coverage in Uruguay is very high. The proportion of people aged 65 and above who receive a pension exceeds 90 per cent. However, only about 7 per cent of

¹³ Observatorio Iberoamericano de Protección a la Vejez: Capítulo Colombia, "Estudio comparado de los países seleccionados y Colombia: valoración de Uruguay – marco normativo sobre los mecanismos de protección del adulto mayor y buenas prácticas con nueva tecnología", 2017, p. 6.

¹⁴ The Retirement and Pensions Bank Fund, the Notary Social Security Fund, and the University Professionals Fund.

¹⁵ The Military Fund (Armed Forces Retirements and Pensions) and the Police Fund.

¹⁶ IMF, *Uruguay: Selected Issues*, p. 49.

¹⁷ Ibid., p. 50.

¹⁸ Ibid., p. 53.

¹⁹ Ibid.

the population aged above 65 is covered by the non-contributory system.²⁰ There is a gender gap in the social security system, as women receive smaller incomes when they work but, more importantly, they have very short histories of contribution reflecting the existing division of labour between men and women in Uruguay and the social organization of care.

E. Education, training and lifelong learning

54. Six out of ten older persons have six or fewer years of education. This represents a challenge for the effective promotion of the inclusion of older persons and for their right to education, particularly given that the educational level correlates to access to minimum income.²¹

55. A national debate on education was launched in 2006. In order to encourage people of all ages and backgrounds to participate, a draft of the general education law was made available. Officers from the Ministry of Education visited institutions and communities across the country to collect feedback.

56. In 2008, Uruguay issued the General Education Law (Act No. 18437) to ensure and promote lifelong quality education for all citizens by facilitating continuing education. The law emphasizes the right to lifelong learning, the four pillars of learning proposed in *Learning: the treasure within. Report to UNESCO of the International Commission on Education for the Twenty-first Century* (the Delors Report) and non-formal education for all ages. It also stresses the social, economic and cultural benefits of learning and contains a clear proposal on monitoring and evaluation.

57. Since the 1980s, there has been an increase in Uruguay in the number of Universities of the Third Age, which address the training needs of older persons in the middle socioeconomic strata.

58. In recent years, Uruguay has established around 150 grandparents' clubs, which are State-sponsored recreational centres for older persons. Besides providing financial assistance to these clubs and subsidizing vacations at two government-owned resorts, the Government provides psychological therapy to help older persons adjust to retirement. Uruguay also launched an innovative programme of digital inclusion called "Plan Ibirapitá", which provides older persons with a scholarship, a tablet with mobile Internet, and a course on using digital devices.

F. Care

59. In 2011, the Ministry of Health rolled out its National Health Promotion Strategy, which contains a chapter devoted to older persons. In November 2015, it created the National Care System, which includes both existing policies on health, education and social security, and new policies for priority populations, in particular older persons with specific care needs, persons with disabilities and young children. The System claims to be human rights-based, to integrate solidarity in its financing, and to be universal both in coverage and in terms of its minimum quality standards. It is based on the principles of the autonomy of care recipients and the joint responsibility of the State, the community, the market and the family, as well as between women and men in the provision of care. Changing the division of labour between women and men within households and supporting unpaid caregivers and care workers is one of its stated objectives. The new system is still at an early stage of implementation, and its implementation remains a challenge in rural areas.²²

²⁰ Ibid.

²¹ Ministerio de Desarrollo Social, Instituto Nacional del Adulto Mayor and others, *Las personas mayores en Uruguay: un desafío impostergable para la producción de conocimiento y las políticas públicas* (Montevideo, 2015), pp. 35–36.

²² United Nations country team submission for the third cycle of the universal periodic review of Uruguay, para. 13.

60. Under the new care system, which was launched in 2016, all older persons and persons with disabilities have the right to access care services. The Care Act recognizes the right of caregivers to perform their work in decent working conditions and aims to change the prevalent gendered division of labour.

61. Older persons' care and care for persons with disabilities are some of the key services provided by the National Care System. A needs-based system, it offers personal assistants, tele-assistance and long-term institutional care.

62. Currently, 3 per cent of persons aged 65 and over receive institutional care. Uruguay has different types of institutional settings dedicated to older persons: nursing homes for older persons, private residences, and day-care centres and night shelters.²³

63. Act No. 19149 and Decree No. 265/014 establish the obligations of providers of long-term care in institutions to guarantee respect for older persons' rights to participation, privacy, decision-making, freedom of movement, promotion of autonomy, respect for private property and confidentiality. However, the implementation of the regulatory framework remains weak and fails to fully guarantee the fundamental rights and freedoms of older persons, leading to recurrent complaints about violations of the guaranteed rights of residents.

64. Cooperativa Caminos is the largest auxiliary care and therapeutic assistance organization in the country. It provides personal assistance in the home, in clinics and in hospitals and employs a multidisciplinary team of health professionals, including licensed nurses, medical practitioners and psychologists. Older persons and their families work together with the caregivers to create an individual care plan, stressing autonomy and family collaboration wherever possible.²⁴

65. On 24 August 2017, Uruguay passed Act No. 19529 on Mental Health. Despite the efforts of and the dialogue facilitated by the National Commission for a Mental Health Law, a group of civil society organizations, the new law fails to incorporate a human rights-based approach. While it provides for the establishment of a national mental health-care oversight commission, the Commission for the Control of Mental Health Care, it does not provide for that commission to have a sufficiently independent status. This hinders the commission's ability to monitor the level of respect of patients' human rights at all levels and to impartially review involuntary admissions, and thus contradicts the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. The persistence of the isolation model through prolonged hospitalization is another matter of concern.

66. There are no reliable data about older persons suffering from dementia. It is estimated that more than 10 per cent of older persons aged over 65, more than 40,000 persons, suffer from some form of dementia. In addition, it is estimated that 10 per cent of older persons in the community have depressive disorders. Figures are higher among older persons who are institutionalized (15–35 per cent) and those who are hospitalized (10–20 per cent).

67. The health system in Uruguay provides a very limited response to older persons with dementia, including in terms of treatment, which is exclusively pharmacological, and does not comply with internationally defined standards of quality and good practice.²⁵ Under the current National Integrated Care System, older persons with dementia are neither informed about the diagnosis nor included in decisions on treatment in the early stages of the disease. As a result, older persons become gradually objectified.

68. The National Palliative Care Programme was created in 2013 and provides guidelines for the operation of palliative care units.

²³ Observatorio Iberoamericano de Protección a la Vejez: Capítulo Colombia, "Estudio comparado de los países seleccionados y Colombia: valoración de Uruguay", 2017, p. 17.

²⁴ See <https://cooperativacaminos.coop>.

²⁵ Robert Pérez Fernández, "El tratamiento de las demencias en el sistema de salud de Uruguay", *Psicología, Conocimiento y Sociedad*, vol. 8, No. 2 (November 2018–April 2019).

69. Older persons have different patterns of disease presentation than younger adults. The fact that they respond to treatment and therapies in different ways and frequently have complex social needs relating to their chronic medical conditions creates a geriatric imperative. While a number of universities in Uruguay offer geriatric training, for example, a graduate degree in Geriatrics at the Faculty of Medicine and a graduate degree in Geriatrics and Gerontology at the School of Nursing at the University of the Republic, attention to this crucial discipline remains insufficient and there continues to be a lack of geriatric and gerontological services.

V. Conclusions and recommendations

A. Overall remarks

70. Uruguay has established a strong legal framework aimed at promoting and protecting the rights of older persons and has thus consistently demonstrated its commitment nationally, but also at the regional and international levels. This commitment was reiterated in meetings at the highest level during the visit. In this regard, the Independent Expert commends the country's leadership in upholding the human rights of older persons and acknowledges that Uruguay was the first country to ratify the Inter-American Convention on Protecting the Human Rights of Older Persons.²⁶

71. The Independent Expert welcomes the adoption of the National Ageing and Old Age Plan 2016–2019. She notes the achievements of Uruguay in this regard such as the high level of social security coverage, making it the country in the region with the lowest incidence of poverty among older persons. It has also made significant progress with the National Integrated Health System, which aims at ensuring universal coverage and codifying older persons' right to care. This attests to the political will and determination to further improve the situation of older persons and enable them to fully enjoy all their human rights. In view of the progress at the normative and conceptual levels, it is regrettable that this commitment does not always translate into effective implementation of policies, owing to the insufficient resources allocated to meet the needs of older persons. Consequently, the Independent Expert encourages the Government to continue to deliver on its pledge to put older persons first and calls for the allocation of more resources, including financial resources, to consolidate the human rights protection response to their needs.

72. She commends the Government, and in particular the National Institute for Older Persons (INMAYORES), for the valuable data collection and analysis on the status of the enjoyment of human rights by older persons in Uruguay, which serves as a basis for further targeted interventions in the years ahead. She nonetheless emphasizes the need to step up these efforts, hoping that this will lead to fostered mainstreaming of the rights of older persons into national policies and all government planning in line with the Inter-American Convention on Protecting the Human Rights of Older Persons.

73. The Independent Expert notes the importance of the National Institute for Older Persons as the lead agency, together with its Consultative Council, in the coordination, design and evaluation of social policies aimed at older persons. While recognizing that INMAYORES is a relatively recent body, she urges the Government to further strengthen it and notes the need for an interdisciplinary and inter-institutional forum at the national level. She recommends that the existing institutional infrastructure be elevated to an interministerial coordination body, on a metalevel, with lead competence on ageing issues, to ensure a multidisciplinary and comprehensive approach to ageing. It is essential that the independence of such an interministerial coordination mechanism be ensured in mainstreaming a human

²⁶ See www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf.

rights-based approach into all activities, which would also greatly facilitate the implementation of the national action plan and ensure a holistic approach.

74. While noting and acknowledging the important role of the Ministry of Social Development, which has the primary responsibility for older persons in Uruguay, the Independent Expert notes that a comprehensive and multidisciplinary approach to ageing requires a functionally independent interministerial coordination mechanism with a legal status and its own assets. In this regard, the Independent Expert calls upon the Government to consider developing a comprehensive national policy on older persons that is fully in line with the Inter-American Convention on Protecting the Human Rights of Older Persons. Such a policy, developed through nationwide, inclusive consultations, would reinforce the achievements of Uruguay in protecting the rights of older persons.

75. The Independent Expert acknowledges the important work of the National Human Rights Institution and Ombudsman's Office, which was provided for in a law of December 2008 and formally established in 2012. It is designed to promote and protect human rights, as defined by Uruguayan law. She also acknowledges the existence of the Montevideo Community (Defensor Del Vecino de Montevideo) which promotes and defends the rights of all inhabitants of Montevideo, and of the Human Rights Secretariat of the Office of the Presidency in charge of monitoring and evaluating the human rights situation. The Independent Expert recommends that the National Human Rights Institution and Ombudsman's Office be further strengthened by equipping it with adequate human, technical and financial resources to carry out its mandate, and that it incorporate the rights of older persons as an issue of concern.

76. On the basis of the findings and observations in the present report, the Independent Expert makes the recommendations below.

B. Recommendations to the Government

1. Study and statistics

77. The Independent Expert notes that the compilation of specific information on ageing is a decisive tool for policymaking as it renders visible the significant factors needed to contribute to decision-making and strategic planning and the obstacles thereto and identifies possible measures to ensure the enjoyment by older persons of their rights. While acknowledging the efforts made, she encourages the Government to ensure the nationwide, systematic and regular collection of disaggregated data on the impediments to the enjoyment of all human rights by older persons, such as all forms of discrimination on the basis of age, individually and cumulatively, as well as exclusion, poverty and all forms of violence, abuse, neglect and maltreatment. Given the impending digital transformation, which will bring with it new and uncharted challenges surrounding the changing nature of care and privacy, the Independent Expert encourages the Government to develop a comprehensive data strategy to ensure data-driven decision-making as well as the required legal framework.²⁷

78. The new Integrated Social Information System, on its own and through its interoperability with several national institutions, generates important sets of data about people who are found to be ineligible for benefits, including the reasons for their ineligibility, and patterns in terms of income, social situation, geographical location and other sociodemographic characteristics of the applicants and beneficiaries. The Independent Expert recognizes the value of evidence-based data for the formulation of policies, for monitoring their implementation and for assessing their impact, including on older persons. Given that data have to be used sensitively in order to avoid stigmatization and potential misuse, particular care should be exercised

²⁷ See A/HRC/36/48 and Conference Declaration of the International Expert-Conference on Human Rights of Older Persons, 2018 (12–13 November 2018, Vienna), available at http://ageing.at/site/pub_html/sites/default/files/ICHRoP%20Conference%20Declaration%20Final_0.pdf.

when collecting, storing and analysing data to respect and enforce data protection and privacy.

2. Discrimination

79. The Independent Expert notes that stereotyping of and discrimination against older persons remain issues of concern. She recommends raising awareness among the general public about ageism and its detrimental effects, such as the reinforcing effect on violence against and maltreatment and abuse of older persons. She also stresses that patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men place women at a disadvantage. She recommends that national regulations be revised in order to bring them in line with the requirements of international human rights law in terms of age discrimination.

80. She calls upon the Government to continue the paradigm shift from a welfare approach, which associates old age with illness, isolation, loneliness, passivity and a loss of autonomy, to a rights-based approach that recognizes the accumulated capacities and resources of older persons. She stresses the need to take further measures to counter stereotypes and discriminatory practices affecting older persons.

81. The Independent Expert recommends that the Government conduct a targeted awareness-raising campaign to correct the prevailing public perception of older persons as passive consumers of services offered by society, politically and socially inert and unfit to take part in decision-making. There is also a need to encourage and support older persons to take part in decision-making processes related to ageing and older age at all levels.

82. She recommends that Uruguay design, promote and implement effective affirmative action with a view to combating discrimination against older Afro-Uruguayans and reducing the poverty, social exclusion and marginalization that disproportionately affects them. She also urges the Government to continue its efforts to enhance living conditions for older Afro-Uruguayans, especially women, to ensure that they are protected against discrimination by government bodies, civil servants or any person, group or organization. She encourages Uruguay to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

3. Violence, maltreatment and abuse

83. While recognizing the efforts of Uruguay to create a legal and policy framework to adequately address domestic violence, including violence against and maltreatment and abuse of older persons, the Independent Expert calls upon the Government to ensure its effective application in practice.

84. The Independent Expert also calls upon the Government to ensure that cases of domestic violence are thoroughly investigated, that perpetrators are brought to justice and that victims are adequately protected and compensated. The training of judges, lawyers and prosecutors is essential to ensure that cases of domestic violence are investigated swiftly to signal to older persons and the community that violence against and maltreatment and abuse of older persons are serious crimes and will be treated as such. She also stresses the need to address the lack of awareness and sensitivity among the relevant authorities and the lack of information about the existing protection mechanisms.

85. Normative action needs to be complemented by concrete measures and mechanisms to detect, report and prevent all forms of abuse of older persons in institutional care and in family settings. Protocols and processes are needed to assist individuals, families, carers in institutional settings and community groups to understand the issues surrounding elder abuse, to recognize individuals who are at risk and to respond when appropriate. Caregivers in both domestic and institutional settings need to be made further aware and trained on how to prevent and detect elder abuse.

86. The Independent Expert emphasizes the need to put in place procedures and a detection and action protocol for cases of financial abuse of older persons that occur in the family and in institutional settings.

87. The Independent Expert calls upon the Government to step up its efforts to establish a database with comprehensive statistics on violence against women, disaggregated by gender, age and relationship between the victim and the perpetrator, as this would generate essential data for targeted prevention.

88. She also stresses the need to ensure the availability of a sufficient number of adequate shelters and safe houses adapted to the specific needs of older persons, better and more accessible legal aid and the provision to victims of counselling, rehabilitation and support services. Assistance to older victims of violence needs to include legal responses as well as social measures. As they may be afraid to go to the police, alternative services, such as case workers, should be available to support older persons throughout the process, for example, by referring them to the police and helping them to find a shelter.

89. The Independent Expert recommends that awareness-raising specifically target the private sphere and informal carers, particularly as collective prejudice against older persons and public awareness influence the way in which abuse and violence are perceived, recognized and reported.

90. The Independent Expert recommends that a preventive information campaign on violence against and maltreatment and abuse of older persons be conducted. Targeted dissemination of information to older persons about their rights could help to improve disclosure of abusive experiences, including financial abuse occurring in the family.

4. Adequate standard of living and autonomy

91. The Independent Expert recommends that Uruguay adopt an adequately resourced, comprehensive accessibility strategy and promote universal design for all buildings, public services and public transport to ensure accessibility for older persons, including those with reduced mobility and disabilities.

92. It is essential for engineers and architects to be aware of the implications their professions have on the enjoyment of all human rights by older persons. The Independent Expert recommends that a human rights-based approach be applied in order to secure the involvement of architects and engineers in the design of public and private buildings, in conformity with human rights.

93. While recognizing the measures taken to provide housing to older persons, the Independent Expert calls for more systematic efforts to assist this vulnerable group and to expand the availability and quality of social housing, including for homeless older persons. She recommends that Uruguay adopt a comprehensive social housing and shelter strategy that is inclusive and systematic and that sets quality and habitability standards and is based on the right to adequate, affordable housing. She also urges Uruguay to adopt all necessary measures to avoid criminalizing homelessness and to ensure the proper implementation of appropriate policies and programmes to facilitate the social reintegration of homeless older persons.

94. The Independent Expert urges Uruguay to repeal the legal provisions restricting the legal capacity of persons with disabilities. She emphasizes the need to address without delay the issue of deprivation of legal capacity, in line with the Convention on the Rights of Persons with Disabilities, and to replace the current guardianship and substituted decision-making regime with a system of supported decision-making that fully respects the autonomy, integrity, dignity, will and preferences of the person.

5. Social protection and the right to social security

95. Recognizing the efforts of Uruguay to improve its legislative framework related to social protection, the Independent Expert stresses the need to continue the reform

to ensure integrated social and health-care services for older persons. This will require more effort and expenditure by the Government on health and care infrastructure to provide alternatives for older persons.

96. The Independent Expert recommends that the Government consider introducing a universal non-contributory old-age pension. In the meantime, she urges the Government to continue its efforts to ensure universal coverage of the existing means-tested non-contributory old-age pension as a means of contributing to poverty alleviation, particularly among older women and older Afro-Uruguayans, given that the ratio of older persons is expected to increase in the years to come.

97. The Independent Expert also urges Uruguay to intensify its efforts to guarantee universal social security coverage, particularly for women engaged in unpaid work or in the informal sector. Furthermore, she urges Uruguay to ensure that it will provide adequate benefits for all and that the minimum benefits furnished under non-contributory programmes are sufficient to provide members of the most disadvantaged and ostracized groups with decent living conditions.

6. Education, training and lifelong learning

98. While educational programmes should not target older persons exclusively, as that would be limiting and could lead to the creation of spaces of social exclusion, the Independent Expert stresses that there is a need to ensure access to education and training in old age, taking into account the specific interests and needs of older persons, especially as they learn differently from younger persons.

99. The Independent Expert recommends that a strategy of lifelong learning that adequately responds to the needs of older persons be elaborated to enable them to cope with constantly changing circumstances, requirements and challenges, for their active participation in society and for an independent life continuing into old age.

7. Care

100. The Independent Expert recommends that Uruguay develop a comprehensive long-term care policy, taking into account input from older persons themselves at all levels, and ensure a human rights-based approach in the design and delivery of long-term care.

101. In view of the population dynamics of Uruguay, the Independent Expert stresses the need to further develop community services for older persons as well as home help and day-care centres to enable older persons to stay in their primary environment for as long as possible and to allow the postponement of their accommodation in nursing homes. She recommends that sufficient alternative accommodation services be developed, such as family accommodation for older persons or community-supported housing. Such alternative models could utilize the existing resources of older persons themselves, if adequate legal protection is in place.

102. The Independent Expert emphasizes that older persons with dementia must have their dignity, beliefs, needs and privacy respected at all stages of the disease and urges the Government to ground action in these areas in human rights. She stresses the need to urgently create adequate accommodation capacities as well as standards for the accommodation of older persons suffering from dementia, with functional links made with medical services and the health-care system.

103. The Independent Expert calls upon the Government to ensure universal coverage of palliative care for older persons. She recommends that it further explore the development of community-based palliative care, for instance in the context of home help and day care for terminally ill older persons, and the provision of palliative care in new retirement homes for older persons, as well as the development of hospices to accommodate older persons suffering from incurable diseases.

104. Given the growing number of older patients, the basics of gerontology and geriatrics, and how to interact with older patients, should become part of all medical professional training and pursue a biopsychosocial instead of a merely biomedical

approach. The Independent Expert recommends that geriatric medicine be integrated into university curricula to ensure that sufficient qualified specialists in geriatrics are available to meet the needs of an ageing society. Training in gerontology and geriatrics should also be a requirement in the training of health professionals already in the workforce, and should also be given to the different categories of health personnel and community members. Moreover, geriatric wards should be established in all hospitals to ensure the delivery of comprehensive, compassionate care that recognizes the special needs of older persons with a view to optimizing their quality of life and functional ability.

105. The Independent Expert stresses the need to ensure quality control in all settings and recommends that minimum standards be developed for social protection services and health-care institutions, as well as hospices and other community services. Quality management and monitoring in older persons' homes, as well as abuse prevention and the managing of such cases, also need to be strengthened.

106. The Independent Expert calls upon Uruguay to amend the recently adopted mental health law, notably to ensure the independence and autonomy of the review body and to take the necessary steps to ensure the accessibility, availability and quality of mental health services throughout the country. She emphasizes the need to provide quality care in a community-based environment.

C. Recommendations to businesses

107. The Independent Expert is concerned about ageism and stereotyping of older persons, which go hand in hand with certain forms of discrimination, such as gender-based discrimination, discrimination on the grounds of disability, origin or membership of an ethnic, religious or linguistic minority, or on any other grounds. The Independent Expert takes the opportunity to remind businesses that they should comply with the Guiding Principles on Business and Human Rights. She also takes the opportunity to draw the attention of the Government to its obligation to ensure respect for, protection of and compliance with human rights in the sphere of business activities by public or private enterprises, and to the need to adopt appropriate legislation and regulations in conjunction with supervisory and investigative mechanisms and mechanisms to ensure accountability, in order to establish and ensure compliance with norms for business activities.