Committee on Economic, Social and Cultural Rights

Concluding observations on the fifth periodic report of Uruguay*

1. The Committee considered the fifth periodic report of Uruguay (E/C.12/URY/5) at its 15th and 16th meetings (see E/C.12/SR.15 and E/C.12/SR.16), held on 31 May and 1 June 2017, and adopted the following concluding observations at its 48th meeting, held on 23 June 2017.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of the State party and the State party’s written replies to the list of issues (E/C.12/URY/Q/5/Add.1), which were supplemented by the delegation’s oral responses to the Committee’s questions. The Committee also wishes to express its appreciation for the frank and constructive dialogue held with the delegation of the State party. The Committee is also pleased to have received the additional information that was offered during the dialogue.

B. Positive aspects


4. The Committee also welcomes the State party’s ratification of or accession to the following international instruments:

   (a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (23 February 2015);

   (b) The Optional Protocol to the Convention on the Rights of Persons with Disabilities (28 October 2011).

5. The Committee welcomes the adoption, inter alia, of the following legislative, institutional and policy measures for the promotion of the enjoyment of economic, social and cultural rights in the State party:

   (a) Act No. 19353 of November 2015 on the establishment of the National Integrated Care System;

   (b) Act No. 19161 of November 2013 on maternity and paternity allowances;

   (c) Act No. 19140 of October 2013 on the promotion of healthy eating habits among the child and adolescent population as a protective health measure and its implementing regulations of March 2014;

* Adopted by the Committee at its sixty-first session (29 May-23 June 2017).
(d) Act No. 19122 of August 2013 on the promotion of participation by persons of African descent in education and the workforce;

(e) The establishment of the Board of the National Human Rights Institution and Ombudsman’s Office, which began its work on 22 June 2012.

6. The Committee welcomes the adoption of the Recommendation Monitoring System and the establishment of an inter-agency network in November 2016 for the preparation of reports and follow-up on the implementation of human rights recommendations and observations.

C. Principal subjects of concern and recommendations

Enforceability of the Covenant

7. While the Committee recognizes the direct applicability of the rights set forth in the Covenant in the State party and thanks the State party for having provided examples of their direct application, it is concerned that such cases are still few in number and do not encompass a broader range of the rights enshrined in the Covenant. It is also concerned that the vagueness of certain legal provisions applying to matters of public interest may hinder the enforceability of economic, social and cultural rights in the judicial system.

8. The Committee recommends that the State party take all necessary steps to ensure the direct applicability of all the rights enshrined in the Covenant at all levels of the judicial system, including the review and amendment of any procedural regulations that hamper their application. It encourages the State party to provide training, especially to judges, lawyers, law enforcement officers, members of the legislature and other stakeholders, dealing with the rights protected under the Covenant and the possibility of invoking them in court. It also encourages the State party to conduct campaigns to raise awareness of these rights among rights holders. The Committee draws the State party’s attention, in particular, to its general comment No. 9 (1998) on the domestic application of the Covenant.

Anti-discrimination legislation

9. The Committee remains concerned about the lack of a comprehensive law covering all the forms of discrimination covered by article 2 of the Covenant and about the absence of an effective mechanism for overseeing the enforcement of such a law. It is also concerned about the fact that the denial of reasonable accommodation is not recognized as a form of discrimination against persons with disabilities (art. 2).

10. The Committee draws the State party’s attention to its earlier recommendation (E/C.12/URY/CO/3.4, para. 7) and urges it to introduce legislation that will establish an express prohibition of discrimination and provide sufficient protection against discrimination and that will, inter alia:

(a) Explicitly include all the forms of discrimination that are prohibited under article 2 of the Covenant as interpreted in the Committee’s general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;

(b) Define direct and indirect discrimination in a manner that is consistent with the State party’s obligations under the Covenant;

(c) Prohibit discrimination in both the public and private spheres;

(d) Incorporate provisions under which redress can be obtained in cases of discrimination by, inter alia, judicial and administrative means;

(e) Make provision for the adoption of the measures needed to make the Honorary Commission against Racism, Xenophobia and All Other Forms of Discrimination an effective anti-discrimination mechanism, for the allocation of appropriate human, technical and material resources to it and for the assignment to it of the necessary mandate and authority to ensure its effectiveness.
Discrimination against persons of African descent

11. Despite the efforts made by the State party, the Committee remains concerned about the persistence of structural discrimination against persons of African descent that hinders their exercise and enjoyment of their economic, social and cultural rights (art. 2).

12. The Committee recommends that the State party intensify its efforts to prevent and combat structural discrimination against persons of African descent and to improve their socioeconomic situation by, inter alia, effectively implementing Act No. 19122 of 2013 and developing specific programmes and policies for ensuring that they are able to fully exercise their economic, social and cultural rights. The Committee urges the State party to strengthen the oversight mechanisms provided for in that law, along with other policies and programmes, with a view to regularly monitoring and thoroughly assessing their results. It also urges the State party to conduct awareness campaigns as a means of combating discrimination against persons of African descent.

Discrimination against migrants

13. While the Committee welcomes the efforts made by the State party to ensure that migrants can avail themselves of their economic, social and cultural rights, it is concerned by the persistence of discriminatory attitudes towards the migrant population. It is also concerned that at times delays in the issuance of identity cards may prevent the effective exercise of those rights (art. 2).

14. The Committee recommends that the State party adopt specific measures for combating discrimination against migrants and for promoting the social integration of migrants while ensuring that they are able to avail themselves of their economic, social and cultural rights, particularly in respect of employment, education, housing and health. The Committee urges the State party to intensify its efforts to ensure that identity cards are issued to migrants within a reasonable amount of time and draws its attention to the Committee’s statement on the duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights of 2017 (E/C.12/2017/1).

Equality between men and women

15. The Committee is concerned that, despite the State party’s efforts to promote equality between men and women, gender stereotypes remain deeply rooted in Uruguayan society. These stereotypes manifest themselves in acts of discrimination and violence against women which have an adverse impact on their enjoyment of their economic, social and cultural rights. The Committee also regrets the fact that the State party has not yet repealed legal provisions that are discriminatory against women (art. 3).

16. The Committee recommends that the State party intensify its efforts to achieve substantive equality between men and women and, in particular, that it:
   (a) Take effective steps to combat the stereotypical perception of traditional gender roles in the family and society;
   (b) Act upon the Committee’s earlier recommendation (E/C.12/URY/CO/3.4, para. 16) to amend or repeal all provisions in the State party’s laws that have a discriminatory effect on women, including those that use derogatory language;
   (c) Complete the process involved in the adoption of the comprehensive bill designed to ensure that people can enjoy a life free of gender-based violence, make certain that the resulting law meets the best international standards in this respect, continue to implement the 2016-2019 Plan of Action for a Life Free of Gender-based Violence and allocate the necessary human, technical and material resources for the effective implementation of these instruments.

The right to work

17. While the Committee welcomes the progress made by the State party in the area of employment, it is concerned by the fact that unemployment rates are higher among young
people and women. It is also concerned about the limited impact that affirmative action measures have had in opening up access to employment for persons of African descent (art. 6).

18. The Committee recommends that the State party intensify its efforts to reduce the unemployment rates of groups in which those rates are the highest. The Committee urges the State party to reinforce its National Employment Promotion Strategy, the “Uruguay at Work” programme and its other employment policies in order to ensure their sustainability, to supplement them with a plan of action that has specific targets and to place priority on addressing the main causes of unemployment among groups in which jobless rates are disproportionately high. The Committee also recommends that the State party continue to accord priority to quality technical and vocational training programmes that are tailored to the needs of the labour market and to the needs of the most disadvantaged and marginalized persons and groups.

The right to work of persons with disabilities

19. While the Committee welcomes the 4 per cent minimum hiring quota for persons with disabilities in the public sector, it is concerned about the fact that this standard is not applied consistently in all areas of that sector. The Committee is also concerned about the laxness of standards and practices in terms of the promotion of decent work for persons with disabilities in the private sector (arts. 2 and 6).

20. Based on its earlier recommendation (E/C.12/URY/CO/3.4, para. 8), the Committee urges the State party to:

(a) Intensify its efforts to ensure the effective application in all areas of the public sector of the 4 per cent minimum quota for the employment of persons with disabilities;

(b) Expedite the consideration and adoption of the bill mentioned by the delegation that would introduce a meaningful quota for the employment of persons with disabilities in the private sector and expedite the approval of the National Plan for Equal Opportunities and Rights of Persons with Disabilities;

(c) Establish an effective oversight mechanism that is equipped with the necessary technical, human and material resources to monitor the implementation of these measures in both the public and private sectors.

The informal sector of the economy

21. The Committee welcomes the considerable reduction in the size of the informal economy in the State party but is concerned by the fact that a disproportionate number of women continue to be employed in that sector (art. 6).

22. The Committee recommends that the State party intensify its efforts to promote the creation of jobs that will facilitate the entry of women into the formal sector of the economy. It also recommends that the State party ensure access to labour law coverage and social protection for workers in the informal sector.

Working conditions for women

23. The Committee is concerned about the persistent wage gap between men and women and the obstacles that women face in gaining access to career opportunities on an equal footing with men (art. 7).

24. The Committee recommends that the State party:

(a) Take appropriate, effective steps to close the persistent gender wage gap and to combat vertical and horizontal occupational segregation;

(b) Ensure the effective application of the principle of equal pay for work of equal value by, inter alia, conducting comparative studies of the situation in organizations and professions with respect to equal pay for work of equal value as a basis for the development of a comprehensive strategy in that connection;
25. The Committee refers the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.

Working conditions for migrants

26. The Committee is concerned about the fact that many migrant workers are employed in low-paying jobs in which working conditions are poor (art. 7).

27. The Committee recommends that the State party redouble its efforts to ensure that, by law and in practice, migrant workers enjoy just and favourable working conditions. It urges the State party to continue its efforts to ensure that the Labour Inspectorate has the resources it needs to furnish proper protection to migrant workers. It also urges the State party to facilitate access to mechanisms for lodging complaints against any and all forms of exploitation and abuse.

Minimum wage

28. While the Committee welcomes the sizeable increases that have been made in the minimum wage, it is concerned by the fact that this wage is still not sufficient to afford decent living conditions for workers and their families (art. 7).

29. The Committee reiterates its earlier recommendation (E/C.12/URY/CO/3.4, para. 12) and urges the State party to intensify its efforts to ensure that the minimum wage is sufficient to provide decent living conditions for workers and their families.

Social security

30. While the Committee takes note with satisfaction of the fact that the social security system in the State party provides broad coverage and while it welcomes the introduction of contributory schemes such as the single social tax programme, it is concerned by the difficulties that informal-sector workers and self-employed persons have in gaining access to that programme. While the Committee takes note of the information provided by the delegation concerning the reinforcement of the social inclusion and assistance network, it is concerned by the fact that the present minimum level of benefits is not sufficient to provide beneficiaries and their families with decent living conditions (art. 9).

31. The Committee urges the State party to intensify its efforts to guarantee universal social security coverage that will provide adequate benefits for all and to ensure that the minimum benefits furnished under non-contributory programmes are sufficient to provide members of the most disadvantaged and marginalized groups with decent living conditions. The Committee draws the State party’s attention to its general comment No. 19 (2008) on the right to social security and to the statement it made in 2015 on social protection floors: an essential element of the right to social security and of the sustainable development goals.

Child labour

32. The Committee welcomes the State party’s efforts to put an end to the economic exploitation of children and adolescents but is concerned by the fact that a considerable number of children under 15 years of age are still engaging in labour activities. In addition, the Committee notes with concern that the measures being adopted to formalize the employment status of adolescents may in some cases have unforeseen side effects that may make it less likely that students from low-income households will complete their primary and secondary education, thereby limiting their social mobility (arts. 10, 13 and 14).

33. The Committee calls upon the State party to continue to adopt effective measures for combating child labour by, inter alia, ensuring that laws providing children with protection from economic exploitation are strictly enforced, strengthening child labour oversight and reinforcing support for poor families to help
them keep their children in school. The Committee recommends that the State party carry out a study on the effects that formalizing the employment status of adolescents has on the completion by children from low-income households of their education and, if necessary, take steps to remedy any negative impacts.

Poverty

34. While the Committee welcomes the major advances made in combating poverty and inequality in the State party, it is concerned about the fact that poverty levels are disproportionately high among children, persons of African descent and people living in rural areas (art. 11).

35. The Committee recommends that the State party increase its efforts to combat poverty and inequality. To that end, the Committee urges the State party to ensure that a rights-based approach is used in the implementation of anti-poverty programmes, that sufficient resources are provided for the execution of those programmes and that due attention is devoted to the poorest groups, especially children, and to addressing the gaps existing between urban and rural areas. In this regard, the Committee draws the State party’s attention to the statement it made in 2001 on poverty and the International Covenant on Economic, Social and Cultural Rights.

Returning Uruguayan migrants

36. The Committee notes the difficulties faced by returning Uruguayan migrants in integrating into society and in fully availing themselves of their economic, social and cultural rights (art. 11).

37. The Committee recommends that the State party increase its efforts to ensure that returning Uruguayan migrants are able to fully avail themselves of their economic, social and cultural rights.

Breastfeeding

38. While the Committee takes note with satisfaction of the progress made by the State party in promoting breastfeeding, it is concerned by the fact that up-to-date statistics on the percentage of infants under 6 months of age that are breastfed are still not available. In addition, it is concerned about the lack of effective mechanisms for ensuring compliance throughout the State party with the International Code of Marketing of Breast-milk Substitutes (art. 11).

39. The Committee recommends that the State party intensify its efforts to promote breastfeeding in accordance with the resolutions adopted at the World Health Assembly and to compile reliable statistics on breastfeeding. To that end, it encourages the State party to expedite the adoption of the bill on breastfeeding rooms and, once it becomes law, to ensure its implementation. It also recommends that a suitable oversight mechanism be established to monitor compliance with the International Code of Marketing of Breast-milk Substitutes.

Obesity

40. The Committee is concerned about the high rates of obesity in the State party and the lack of comprehensive, effective measures for addressing this problem (arts. 11 and 12).

41. The Committee recommends that the State party redouble its efforts to design a comprehensive national strategy for upholding the right to adequate food, along with programmes for promoting healthier diets. It also recommends that this strategy cover matters relating to marketing, land use planning, education and fiscal policy and that all stakeholders take part in its development. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food and to the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by the Council of the Food and Agriculture Organization of the United Nations (FAO).
The right to adequate housing

42. The steps taken by the State party notwithstanding, the Committee is concerned about the considerable number of persons who live in informal settlements. It is also concerned by reports of the authorities carrying out forced evictions without providing the persons subject to those evictions with appropriate protection. In addition, it is concerned by the fact that the offence of unlawful settlement and the recent introduction of the petty offence of unauthorized occupation of public sites may in some cases criminalize homelessness (art. 11).

43. The Committee recommends that the State party review the housing-related measures that it has introduced with a view to the adoption of a comprehensive social housing strategy that sets quality and habitability standards and is based on the right to adequate, affordable housing. The Committee urges the State party to design this strategy in such a way that priority is given to disadvantaged and marginalized persons and groups and that, when it is legally appropriate to carry out evictions, they are conducted in a manner that respects the rights of the persons concerned, taking into account the Committee’s general comment No. 4 (1991) on the right to adequate housing and its general comment No. 7 (1997) on forced evictions. The Committee urges the State party to adopt all necessary measures to avoid criminalizing homelessness and to ensure the proper implementation of appropriate policies and programmes for facilitating homeless persons’ social reintegration.

The right to water and sanitation

44. While the Committee takes note of the measures adopted for the purpose of maintaining water quality, it is concerned about the harmful effects of the insufficiently controlled use of agrochemicals on water quality and water resources. The Committee is concerned about the fact that a portion of the population still have no access to adequate sanitation services, particularly in rural areas (art. 11).

45. The Committee recommends that the State party take the necessary steps to control the use of agrochemicals and monitor their public health effects and that it ensure the proper implementation of the National Drinking Water and Sanitation Plan in order to protect the country’s water resources and water quality. The Committee also recommends that the State party intensify its efforts to ensure that the most disadvantaged and marginalized groups have access to sanitation services, especially in rural areas. The Committee refers the State party to its general comment No. 15 (2002) on the right to water and to the statement it made in 2011 on the right to sanitation (E/C.12/2010/1).

Access to medicines

46. The Committee is concerned by reports concerning the difficulty of gaining affordable access to costly medications (art. 12).

47. The Committee recommends that the State party expedite the consideration and adoption of the bill mentioned by the delegation during the dialogue that would guarantee affordable access to all medicines needed to uphold the right to health.

Vaccinations

48. The Committee is concerned by reports that a large number of children are not being vaccinated despite the recommendations made by public health authorities and the measures that they have put in place (art. 12).

49. The Committee recommends that the State party ensure that vaccinations are conducted in accordance with the standards established by the Ministry of Health and the World Health Organization (WHO). The Committee draws the State party’s attention to its general comment No. 14 (2000) on the right to the highest attainable standard of health.
Sexual and reproductive health

50. While the Committee welcomes the progress made by the State party in the area of sexual and reproductive health and, in particular, the adoption of Act No. 18987 on the Voluntary Interruption of Pregnancy, it is concerned about:

(a) The difficulty of gaining access to sexual and reproductive health information and services in rural areas;

(b) The difficulty, in some cases, of gaining access to procedures for the voluntary interruption of a pregnancy, particularly outside of Montevideo and in rural areas, due to conscientious objections on the part of doctors and medical personnel and the lack of an effective mechanism for ensuring access to such procedures;

(c) The high teenage pregnancy rates in the State party, which are due in part to the shortage of sexual and reproductive health services and the lack of adequate information on the prevention of unwanted pregnancies (art. 12).

51. The Committee recommends that the State party:

(a) Intensify its efforts to ensure that sexual and reproductive health services are accessible and available to all women and adolescents, especially in rural areas;

(b) Ensure that conscientious objections by medical personnel do not hamper women’s access to sexual and reproductive health services, including, in particular, procedures for the voluntary interruption of pregnancies, and ensure the effective application of the procedures set out in the manual on hygienic abortions that was mentioned by the delegation;

(c) Redouble its efforts to lower the currently high rates of teenage pregnancy, especially among members of low-income households, by, inter alia, ensuring that school programmes on sexual and reproductive health are age-appropriate and are duly carried out.

52. In this regard, the Committee refers the State party to its general comment No. 22 (2016) on the right to sexual and reproductive health.

Mental health

53. The Committee takes note of the mental health bill that is now under consideration in Congress but notes with concern that it fails to incorporate a human rights-based approach and, while providing for the establishment of a national mental health care oversight commission, does not provide for that commission to have a sufficiently independent status (art. 12).

54. The Committee recommends that the State party:

(a) Ensure that the mental health bill now awaiting congressional approval complies with international standards on the protection of the rights of persons with mental health disorders or psychosocial disabilities, that it provides for the allocation of sufficient resources for the implementation of the bill’s provisions once they become law and that it guarantees the independence and proper operation of the national mental health care oversight commission whose establishment is provided for in the bill;

(b) Take the necessary steps to ensure the accessibility, availability and quality of mental health services throughout the country and that it seek to have quality care delivered in a community-based environment while reserving institutionalization and the more extreme measures for cases in which they are strictly necessary.

The right to health and policies on drugs

55. While the Committee recognizes the progress made in ensuring that the use of illicit drugs is not criminalized and protecting the health of users of such drugs, it is concerned
that the vagueness of the legal term “reasonable quantity for personal use” could, in some cases, result in the penalization of users, thereby increasing their marginalization and adversely affecting their health (art. 12).

56. The Committee recommends that the State party intensify its efforts to ensure that the approach taken to the issue of drug use focuses on the right to health. It also recommends that the State party adopt the necessary measures to arrive at a more precise and uniform definition of the term “reasonable quantity for personal use” in order to avoid criminalizing drug use.

The right to education

57. While it is cognizant of the efforts being made by the State party to reduce inequalities in education, the Committee continues to be concerned about the sharp, persistent inequalities that exist in terms of access to education and educational attainment, which have the greatest impact on children of African descent and children belonging to the most socially and economically disadvantaged groups in Uruguay. The Committee is particularly concerned about the country’s very high dropout rates, especially at the secondary school level, and about the fact that inclusive forms of education for children with disabilities are still very limited, despite the efforts made to address this situation (arts. 13 and 14).

58. The Committee recalls its earlier recommendation (E/C.12/URY/CO/3.4, para. 28) and urges the State party to intensify its efforts to reduce the differences that exist in terms of access to education and educational attainment, especially with regard to children of African descent and children belonging to low-income households, with a view, inter alia, to promoting their social mobility. The Committee recommends that the State party take effective steps, as a matter of priority, to address the factors that make children more likely to drop out of school or to have to repeat grades at the secondary school level, with particular reference to marginalized and disadvantaged groups. It also recommends that the State party intensify its efforts to ensure that inclusive forms of education are available for children with disabilities. The Committee refers the State party to its general comment No. 13 (1999) on the right to education.

Cultural rights

59. While the Committee takes note of the State party’s efforts to protect the cultural heritage of the Afro-descendent population, it is concerned that not enough is being done to pass on knowledge about indigenous peoples’ historical and cultural legacy, especially within the realm of education. The committee is also concerned about the disparities that exist between rural and urban areas and between different socioeconomic groups in terms of access to and participation in cultural life (art. 15).

60. The Committee recommends that the State party take the necessary steps to provide greater protection for cultural rights and promote greater respect for cultural diversity. To that end, it urges the State party to create a conducive environment in which the Afro-descendent and indigenous populations can preserve, develop, give expression to and disseminate their identity, history, culture, traditions and customs. It also urges the State party to take the necessary steps to foster knowledge about indigenous peoples’ historical and cultural legacy, especially within the realm of education. The Committee also recommends that the State party adopt the necessary measures to eliminate disparities between rural and urban areas and between different socioeconomic groups in terms of access to and participation in cultural life and access to cultural infrastructure.

D. Other recommendations

61. The Committee recommends that the State party take full account of its obligations under the Covenant and that it safeguard the full enjoyment of those rights in the course of its implementation of the 2030 Agenda for Sustainable
Development at the national level, with international assistance and cooperation as necessary. The achievement of the Sustainable Development Goals would be greatly facilitated if the State party were to set up independent mechanisms for overseeing the progress made towards the Goals and by treating the beneficiaries of public programmes as rights holders capable of claiming their rights. The achievement of the Sustainable Development Goals based on the principles of participation, accountability and non-discrimination will help to ensure that no one is left behind.

62. The Committee recommends that the State party develop and progressively bring into use appropriate indicators on the exercise of economic, social and cultural rights in order to facilitate the assessment of the progress made by the State party in fulfilling its obligations under the Covenant to various segments of the population. In this connection, the Committee refers the State party, for example, to the conceptual and methodological framework for human rights indicators prepared by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3).

63. The Committee requests that the State party disseminate the present concluding observations broadly among all sectors of society and, in particular, among civil servants, judicial authorities, legislators, lawyers, the National Human Rights Institution and Ombudsman’s Office, and civil society organizations, and that it inform the Committee in its next periodic report about the measures that it has adopted to give effect to the recommendations made herein. The Committee also encourages the State party to seek the participation of civil society organizations in the discussions to be held at the national level concerning the action to be taken in follow up to these concluding observations and the preparations for the submission of its next periodic report.

64. In the light of the procedure for following up on the concluding observations of the Committee, the State party is requested to provide information on the action taken pursuant to the recommendations made by the Committee in paragraphs 16 (c), 20 (b) and 54 (a) within 18 months of the adoption of the present concluding observations.

65. The Committee requests the State party to submit its sixth periodic report, which is to be prepared in conformity with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), not later than 30 June 2022. It also invites the State party to update its common core document, as appropriate, in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).