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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant pursuant  
to the optional reporting procedure**

**Fifth periodic reports of States parties**

**Uruguay\***

[21 December 2012]

The optional reporting procedure consists in the adoption of lists of issues by the Committee, which are transmitted to States parties prior to the submission of their periodic reports. Under this procedure, the present document, which contains the responses to the list of issues (CCPR/C/URY/Q/5) adopted by the Committee at its 103rd session, 17 October – 11 November 2011, constitutes the fifth report of Uruguay.

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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\*\* The annexes may be consulted in the files of the Secretariat.

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- XVII. Act No. 18426
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## **I. General information on the human rights situation in the country, including new measures and developments relating to the implementation of the Covenant**

### **Reply to paragraphs 1 to 3 of the list of issues**

1. Uruguay has been stepping up its policy of promotion and protection of the rights and freedoms of its inhabitants since 2005, while at the same time upholding the cause of human rights as a cornerstone of its foreign policy.

2. Internally, human rights have become a key component of all our country's public policies. Action to achieve national development and growth is accompanied by social policies that embrace equity, equality of opportunity and the enjoyment by our population of economic, social and cultural rights as equally cherished objectives.

3. Our Government is deeply committed to the aims of eliminating financial hardship and drastically reducing poverty and is taking the requisite action to that end.

4. These major achievements are primarily motivated by respect for one of the most fundamental human rights. The same applies to improvement of the employment conditions of domestic and rural workers, access for every schoolchild at the primary and secondary level to a computer, progress in women's struggle to gain access to areas of activity from which they were long excluded, the establishment of a national health-care system, and the declaration that statutory limitation is not applicable to the crimes against humanity committed during the dictatorship, the annulment on legitimacy grounds of all administrative acts included in the Expiry Act (*Ley de Caducidad*) and the adoption of Act No. 18831 (annex I) which restores the State's punitive powers.

5. Further examples of action taken to promote respect for human rights include the fight against domestic violence and against racial discrimination or any other type of discriminatory treatment, and the measures taken in support of the Uruguayan community of African descent, which has historically been subjected to unfair treatment and was even omitted for decades from population censuses, which ignored its existence.

6. All of these achievements are reflected in improvements in the daily lives of many Uruguayans. Greater freedom of action and advances in the exercise of citizens' rights have been achieved on a step-by-step basis, sometimes in a manner that has been imperceptible to the general public, but they constitute an inestimable asset that has further expanded the impressive array of rights enjoyed by Uruguayan society.

7. Since 1998 (when the last periodic report was submitted to the Human Rights Committee), Uruguay has taken major steps to bring its human rights legislation and public policies into line with international standards based on international human rights law.

8. During the period in question, Uruguay ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (26 July 2001), the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (8 December 2005), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (9 September 2003), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (3 July 2003), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (15 February 2001), the Convention on the Rights of Persons with Disabilities (11 February 2009) and its Optional Protocol (28 October 2011), and the

International Convention for the Protection of All Persons from Enforced Disappearance (4 March 2009).

9. It also ratified the Rome Statute of the International Criminal Court on 28 June 2002.

10. On 24 December 2008, the executive branch promulgated Act No. 18446 (annex II), article 1 of which provides for the establishment of the National Human Rights Institution. Articles 1, 36, 75 and 76 of the Act were subsequently amended by Act No. 18806 of 14 September 2011, which stipulates that the National Human Rights Institution and Ombudsman's Office shall be chaired by a five-member collegiate body to be known as the Board of Directors which shall be responsible for managing and representing the Institution.

11. On 8 May 2012 its five members were elected and they took office on 22 June 2012. The procedure for accreditation of the National Human Rights Institution and Ombudsman's Office with the International Coordinating Committee was initiated by means of a note sent in August 2012.

12. Uruguay has also taken various measures to promote the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, in particular through three preventive mechanisms: the Parliamentary Commissioner for the Prison System, the Committee of Observers to monitor the situation of adolescents in conflict with criminal law, and an inspector for persons with psychiatric problems. These mechanisms are to be coordinated in due course with the National Human Rights Institution and Ombudsman's Office.

13. With regard to the recommendations of the Human Rights Committee in its concluding observations concerning the fourth periodic report of Uruguay (CCPR/C/79/Add.90), the measures taken to comply with some of the recommendations are described below.

14. Act concerning the Punitive Powers of the State. Attempts on the part of civil society to shed light on the facts were impeded by the adoption of Act No. 15848 (Act concerning the Expiry of the Punitive Powers of the State) of 22 December 1986. Article 1 of the Act provides that "as a logical consequence of the situation established by the agreement between the political parties and the Armed Forces in August 1984 and in order to complete the transition to full enforcement of the constitutional order, the exercise of the punitive powers of the State in respect of crimes committed prior to 1 March 1985 by military and police personnel, for political reasons or in the performance of their duties and on orders from commanding officers who served during the de facto period, shall be deemed to have expired".

15. Nevertheless, civil society continued to mobilize in different parts of the country and internationally, raising demands both within and outside the country for clarification of the facts. There have been a number of landmark events during this campaign, one of the most important being the "silent marches" organized by the Mothers and Families of Disappeared Uruguayan Prisoners ever since 1996, which have rallied tens of thousands of people of different religious beliefs and political convictions in support of the search for truth and justice.

16. Some of the legal obstacles imposed by Act No. 15848, which impeded the investigation of serious human rights violations, were mitigated by executive decisions taken by the last two Administrations (from 2005 to 2010 and since 2010) to the effect that the complaints involved were not covered by the Act.

17. During the presidency of José Mujica, all administrative decisions and communications of previous Governments that had deemed all complaints of serious

violations of human rights to be covered by the Expiry Act were revoked on grounds of legitimacy by Executive Resolution CM/323 (annex III) of 30 June 2011.

18. Act No. 15848 remained in force until 27 October 2011, when Parliament adopted Act No. 18831, which restored the State's punitive powers and suspended the statute of limitations in respect of crimes committed during that period. Article 1 of the Act stipulates that: "The State's full punitive powers are hereby restored in respect of crimes committed in the context of State terrorism prior to 1 March 1985 and falling under article 1 of Act No. 15848 of 22 December 1986."

19. Following the enactment of this legislation, numerous complaints of human rights violations were retrieved from the files and are currently being addressed by various criminal courts.

20. In 2000, while the Act concerning the Expiry of the Punitive Powers of the State was still in force, the Office of the President of the Republic established the Peace Commission (COMIPAZ) by Executive Decree to investigate the situation of disappeared detainees and of minors who had disappeared in similar circumstances.

21. In 2003 a Secretariat for Follow-up to the Peace Commission was established as a substitute for COMIPAZ by a Resolution of the President's Office dated 10 April 2003 to perform administrative functions and to take up and continue any pending proceedings initiated by COMIPAZ.

22. In the meantime, both the membership and the mandate of the Secretariat have been modified.

23. The present Government, following the same course as the two previous Governments and upholding their commitment to human rights and to the national, regional and international legal instruments in which such rights are enshrined and guaranteed, continued and stepped up the investigations into the fate of prisoners who disappeared between 1973 and 1985, declaring its competence to take legal action, to secure compensation for the damage suffered and to take steps to ensure the non-recurrence of such acts.

24. An important institutional development has been the establishment of an Inter-ministerial Commission (Executive Resolution CM/369 of 31 August 2011) and the broadening of the membership and functions of the Secretariat for Follow-up, which is now composed of an Executive Coordinator, a representative of the Public Prosecution Service (*Ministerio Público y Fiscal*), a representative of civil society organizations, two representatives of the University of the Republic in the fields of history and forensic anthropology, and an Administrative Secretariat.

25. As mentioned above, all past administrative decisions stating that criminal proceedings for human rights violations were covered by the Expiry Act have been revoked on grounds of legitimacy. It has therefore been possible to retrieve from the files complaints that had been duly filed with the relevant criminal courts. To facilitate this task, the Secretariat for Follow-up compiled a list of such complaints which it sent to the Supreme Court of Justice and which were published on the web page of the Office of the President of the Republic.

26. Furthermore, a new agreement was signed between the Office of the President and the University of the Republic, whereby the parties pledged to take joint and coordinated action to locate the remains of persons reported as disappeared or murdered for political reasons during the former dictatorship, and to establish the historical truth concerning those events by conducting searches in the State archives and repositories and disseminating the results, thereby ensuring the continuity of the work accomplished by the anthropological and historical teams.

27. In addition, updates concerning the research conducted by the historical and anthropological teams were published on the website of the Office of the President of the Republic, including the results of the work on the Inactive Records of the Central Hospital of the Armed Forces.

28. Since the referral to the criminal courts of cases concerning serious violations of human rights, the Secretariat for Follow-up has been working closely with legal officials, systematically passing on all information in its possession that may be required by the courts and the families of victims.

29. Minorities in Uruguay: The Uruguay Government fully recognizes the existence of minorities in Uruguay.

30. The commitment of the present Uruguayan Government to non-discrimination cannot mask the fact that during the period from the establishment of Uruguay as an independent State until the closing years of the twentieth century, discrimination against the population of African descent and against descendants of the indigenous peoples remained invisible. A national self-image based on the illusion of a white, integrated and homogeneous society prevailed, masking the serious inequality of opportunity suffered by the communities concerned when it came to the effective exercise of their rights. The historical and cultural legacy of persons of African descent and indigenous peoples was relegated to a subordinate position.

31. The State recognizes that discrimination persists in our country and takes the form of difficulties in taking advantage of educational opportunities, the unequal distribution of employment opportunities, differences in wages and salaries, and inadequate recognition of the cultural contribution of these communities to the building of Uruguay as a nation. Generally speaking, and more specifically in the case of the community of African descent, serious inequality of opportunity is discernible from the outset and this undermines their capacity for human development and their ability to achieve their ambitions.

32. The country is currently progressing towards greater recognition of the diversity of its component ethnic groups and is seeking to ensure their social as well as their cultural and symbolic integration. This process involves, *inter alia*, public-sector action against racial discrimination, the compilation of official statistical data regarding minorities, the creation of a new institutional framework tasked with promoting equality of opportunity for persons of African descent, recognition of their historical and cultural contribution, and the mainstreaming of the racial dimension in public policies.

33. Although significant progress has been made, the public policies pursued have not succeeded in reversing the situation. This is true, for example, of the problems of multiple discrimination suffered by some women on account of their membership of a specific race or ethnicity. While the Uruguayan State has made considerable headway in tackling discrimination against women – having developed an integrated national policy comprising plans, mechanisms and activities aimed at reforming unequal relations and eliminating inequality between men and women – very little effort is expended on conceptualizing and analysing the aforementioned issues.

34. With a view to elaborating an integrated approach to this situation, the Human Rights Directorate of the Ministry of Education and Culture, which is the responsible national authority, is promoting the development of a National Plan against Racism and Discrimination, to which this report and the Committee's recommendations will provide valuable inputs.

35. Creation of the office of Parliamentary Commissioner for the Prison System. The principal functions of the Parliamentary Commissioner for the Prison System, an office created in 2003 by Act No. 17684 (annex IV), are to advise the legislature on monitoring of

compliance with domestic legislation and international agreements ratified by Uruguay concerning the situation of persons deprived of their liberty by the courts and to supervise the work of the bodies responsible for prison administration and the reintegration of prisoners and former prisoners into society.

36. In order to perform his or her functions, the Commissioner may request information, pay unannounced visits to places of detention, receive complaints from persons deprived of their liberty and make recommendations to the prison authorities.

37. The Parliamentary Commissioner is not subject to a binding mandate, receives no instructions from any authority and performs his or her functions entirely independently, as he or she sees fit and on his or her own responsibility.

38. The Commissioner conducts around 500 visits each year and submits a report on each visit to Parliament. He or she also receives reports and complaints of ill-treatment and, where there is sufficient merit, files criminal complaints with the courts.

39. Since the establishment of the office of Parliamentary Commissioner for the Prison System, the Ministry of the Interior has received around 1,100 official letters with recommendations and requests for reports. In the period 2010–2011, the number fell significantly: 57 official letters were received. To date, 45 of these have been answered and the remainder are being processed.

## **II. Specific information on the implementation of articles 1 to 27 of the Covenant, including follow-up to the Committee's previous recommendations**

### **A. Constitutional and legislative framework within which the Covenant is implemented (art. 2)**

#### **Reply to paragraph 4 of the list of issues**

40. On 24 December 2008, the executive branch promulgated Act No. 18446, article 1 of which establishes the National Human Rights Institution.

41. Articles 1, 36, 75 and 76 of the Act were subsequently amended pursuant to Act No. 18806 of 14 September 2011 (annex V). The Act provides that the National Human Rights Institution and Ombudsman's Office shall be chaired by a five-member collegial body, the Board of Directors, which shall be responsible for managing and representing the Institution (art. 36).

42. With regard to the election of the members of the Board of Directors, the Act provides that the General Assembly shall appoint a Special Commission with members from all the political parties represented in Parliament, which shall receive candidates' applications and draw up a list of qualified candidates; this list shall be communicated to the Presidency of the General Assembly for the purposes of the election process (art. 40).

43. On 8 May 2012, Soc. Mariana González Guyer (Chair), Juan Faroppa, Ariela Peralta, Juan Raúl Ferreira and Mirtha Guianze were elected as members; they took office on 22 June 2012.

44. The process of accreditation of the National Human Rights Institution and Ombudsman's Office with the International Coordinating Committee has been initiated by means of a communication sent in August 2012.

45. With regard to the financial and human resources assigned to the Institution, its budget was prepared by the Board of Directors, in full compliance with article 75 of Act No. 18446, as amended by article 3 of Act No. 18806, which was adopted without amendment.

46. The budget is sufficient to ensure that the Institution can function independently and funds have been appropriated for the necessary infrastructure and staffing. The approved budget covers the period from 1 June to 31 December 2012, since in Uruguay budget appropriations are renewed and approved twice a year.

47. With regard to article 77 of the Act, which refers to other resources and permits the Institution to obtain funds under assistance and cooperation agreements with international or foreign organizations, in accordance with their fields of competence, the Institution has held meetings with the Spanish Agency for International Development Cooperation (AECID), the United Nations Development Programme (UNDP) and the Regional Office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) with a view to concluding cooperation agreements in the near future, which will be required to comply with the Act and to obtain the approval of the Court of Audit.

48. The National Human Rights Institution has participated in many activities organized both by public-sector institutions and civil-society organizations. The institutions have been involved as exponents and/or monitors of various aspects of the planned activities. The wide range of subjects addressed include, for example, population policies, compensation for serious human rights violations, the prison system, the involvement of civil society in promoting human rights, children and citizen security, discrimination and people living with HIV/AIDS, human rights education, an overview of public policies on gender-related rights, economic, social and cultural rights, and the national preventive mechanism required under the Optional Protocol to the Convention against Torture.

49. The National Human Rights Institution also pursues a proactive agenda in its relations and coordination with public-sector institutions and civil-society organizations. As a result of these exchanges, a number of public-sector institutions have designated focal points with a view to ensuring more effective coordination, collaboration and communication with the National Human Rights Institution.

50. It has also coordinated with the Human Rights and Humanitarian Law Directorate at the Ministry of Foreign Affairs. Various meetings have been held to promote coordination in areas of shared responsibility and the strengthening of regional mechanisms for the protection of human rights.

51. The National Human Rights Institution has developed joint guidelines for more effective protection of rights with the Parliamentary Commissioner for the Prison System, the Ombudsman of Montevideo, the Human Rights and Humanitarian Law Directorate of the Ministry of Foreign Affairs and the Ministry of Education and Culture.

52. By November, five months after its inauguration, the National Human Rights Institution and Ombudsman's Office had received 110 complaints, which were recorded, for the time being somewhat informally, in registration forms and a follow-up mechanism. Some of the complaints gave rise to specific recommendations and a computer-based register is currently being developed.

53. With regard to parliamentary activity, the National Human Rights Institution has submitted five written reports at the request of parliamentary committees on draft laws that are currently being discussed. They concern: regulation of habeas corpus, voluntary termination of pregnancy, the adoption system, amendment of provisions of the Children and Adolescents Code concerning offences, and migrant workers.

54. The National Human Rights Institution presented its first thematic report, entitled “Report on migrant workers, trafficking in persons and labour exploitation: Obligations of the Uruguayan State”.

55. The National Human Rights Institution attended the twenty-first session of the Human Rights Council, the 17th Congress and General Assembly of the Ibero-American Federation of Ombudsmen (FIO) (San José, October 2012), and the 11th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights on “The Human Rights of Women and Girls – Gender Equality: The Role of National Human Rights Institutions” (Amman, November 2012).

56. Although its budget was adopted in the manner prescribed by the Act, the process of installation, acquisition of human resources and assignment of headquarters accommodation has been slower in logistic terms than foreseen. A number of regulatory and operational difficulties have necessitated a review of the existing legal framework in order to improve its administrative functioning within the State apparatus, to make it more flexible and to enhance its independence in this regard.

57. The National Human Rights Institution has not yet been provided with human resources, as required by the Act. As of November 2012, three persons are employed on secondment and two more will shortly be joining them on the same basis.

58. Moreover, the building assigned to the National Human Rights Institution as its headquarters is not in a fit condition to be occupied for the time being, so that the Institution is seeking provisional accommodation and is currently operating from two offices located in the annex to the Legislative Palace.

59. The National Human Rights Institution is organizing a seminar, sponsored by the Office of the United Nations High Commissioner for Human Rights, to share experience with other national human rights institutions in the region. It will provide an opportunity to learn from others’ experience and to boost the installation process.

60. In addition, under article 83 of Act No. 18446, the National Human Rights Institution and Ombudsman’s Office performs the functions of a national mechanism for the prevention of torture.

61. The article states: “The National Human Rights Institution and Ombudsman’s Office shall, in coordination with the Ministry of Foreign Affairs, perform the functions of the national preventive mechanism referred to in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, an international treaty to which the Republic is a party. To that end, the National Human Rights Institution shall meet the requirements for the national mechanism set out in the aforementioned Protocol, in accordance with its competencies and responsibilities.”

62. The Uruguayan Ministry of Foreign Affairs and the National Human Rights Institution have already begun analysing possible ways of implementing the national preventive mechanism.

63. In addition, the Uruguayan Government has taken steps, with OHCHR support, to strengthen the institutional basis and promote the operational efficiency of the National Human Rights Institution.

64. The sharing of information and good practices, technical expertise and possibly financial support will be crucial to ensuring that the Institution can fully meet the responsibilities assigned to it, including coordination with other governmental and non-governmental institutions.

65. Lastly, the Uruguayan Government is keen to ensure that, with the inauguration of the Board of Directors of the National Human Rights Institution, accreditation of the Institution with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights proceeds swiftly.

## **B. Non-discrimination, rights of minorities and equal rights (arts. 3, 25, 26 and 27)**

### **Reply to paragraph 5 of the list of issues**

66. Pursuant to the Act on Equality of Opportunity and Equal Rights for men and women (Act No. 18104 of 15 March 2007; annex VI), the State was required to introduce a gender approach into all areas of activity; two instruments were proposed to that end: the Plan for Equality of Opportunity and Equal Rights and the National Coordinating Council for Public Policies on Gender Equality.

67. The National Council on Gender is chaired by the National Women's Institute (INMUJERES) and is composed of representatives of different ministries, the Congress of Governors, the judiciary, the University of the Republic, civil-society organizations and other invited institutions. Its mandate consists in preparing requests and recommendations for submission to the State and society. The Council is a forum in which participant institutions analyse situations that impede equality of opportunity between women and men, and propose conceptual and practical tools to remedy those situations.

68. The incorporation of a gender approach into areas of State activity, the family environment and the labour market paves the way for greater social equity and promotes democratic development. The Planning and Budget Office, the National Public Education Administration and the Bicameral Women's Caucus in the Parliament were issued with special invitations to participate.

69. The core objectives are: to advise the executive branch; to oversee compliance with the Act on Equality of Opportunity and Equal Rights; to promote departmental general equality plans; to adopt the annual plan of action and the annual management and performance report; to prepare the annual report to the General Assembly of the legislature on the implementation of the National Plan for Equality of Opportunity and Equal Rights.

70. With a view to ensuring the effective implementation of the aforementioned Act, the following legislation was subsequently enacted:

- Act No. 18395 (of 24 October 2008 concerning more flexible conditions of access to retirement benefits). Article 14 stipulates that, for the purpose of calculating years of service pursuant to Act No. 16713 of 3 September 1995, women shall be entitled to add one year of service for each live birth or each adopted child who is a minor or suffers from a disability, up to a maximum of five years.
- Act No. 18476 (of 3 April 2009, as amended by Act No. 18487 of 5 May 2009) provides for the inclusion of persons of both sexes in electoral lists and in the leadership of political parties. It stipulates that one in every three candidates must be of a different sex. This means that at least one third of persons holding electoral office must be women. As far as party leadership is concerned, this regulation began to be implemented as soon as it entered into force. With regard to national and departmental electoral office, on the other hand, it has just begun to be implemented in anticipation of the elections to be held in 2014 and 2015. There are no provisions guaranteeing ethnic diversity in Parliament or in other categories of political office.

- Act No. 18868 (of 23 December 2011) outlaws the requirement that women should take or present the results of a pregnancy test, or present a medicate certificate testifying that they are not pregnant in order to qualify for selection, admission, promotion and extension of contract for any office or job in either the public or private sector. It also prohibits the requirement of any kind of declaration of non-pregnancy. Non-compliance with the provisions of the aforementioned article shall entail, according to the Act, the imposition by the Ministry of Labour and Social Security of extremely harsh administrative, pecuniary or other appropriate sanctions, in accordance with the relevant legislation in force on the date of entry into force of the Act. The proceeds of the sanctions prescribed in the aforementioned article shall be used to implement activities under the National Plan for Equality of Opportunity and Treatment in Employment.

71. With regard to specific measures or programmes, mention should be made of the training that INMUJERES provides for domestic workers. Provision is made for the training course in the First National Plan for Equality of Opportunity and Equal Rights (annex VII), which provides, inter alia, for the eradication of gender discrimination in the social security system (Strategic Line of Action for Equality No. 25), envisaging, for instance, measures to guarantee access for domestic workers to social security (No. 25.6). It proposes as a further strategy the dissemination of Act No. 18065 (annex VIII) concerning the regulation of domestic work.

72. The National Women's Institute also promoted the "Quality with Gender Equity" programmes. The "Quality with Equity" model constitutes a certifiable standard that is recognized in the case of organizations that work for gender equity, incorporating it into the management of human resources and thereby achieving the gradual elimination of discrimination, inequality and breaches of agreement. There are four levels of incorporation of the approach into the management of an organization. Each level is certified by means of annual audits conducted by competent institutions (Uruguayan Technological Laboratory Systems and Quality Austria (LSQA), Uruguayan Technical Standards Institute (UNIT)).

73. Thus, the "Quality with Equity" seal granted by INMUJERES acknowledges action taken to develop a quality with gender equity management system in different working environments.

74. With regard to specific programmes or measures on behalf of women of African descent, the Department of Women of African Descent is a racial equity mechanism tasked with promoting plans, policies and programmes, including affirmative action measures, to guarantee full exercise of citizenship for the population of African descent in general and for women of African descent in particular.

75. While the Act on Equality of Opportunity for men and women contains no specific reference to women's ethnic or racial origin, the Plan for Equality of Opportunity covering the period 2007–2011, which was adopted by Executive Decree No. 291/2007 of 15 May 2007, includes Strategic Line of Action for Equality No. 5, which provides for the following activities:

- (a) Identification and amendment of discriminatory norms and practices in public institutions;
- (b) Creation of institutional gender mechanisms in public-sector bodies and strengthening of existing mechanisms for the promotion of equality at the national and departmental level;
- (c) Implementation of the Plan of Action of the Secretariat (now the Department) of Women of African Descent of the National Women's Institute;

(d) Promotion of the incorporation of a gender perspective into existing mechanisms for the promotion of racial equity, thereby enhancing their impact;

(e) Creation of a network consisting of existing institutional mechanisms for the promotion of equality of opportunity and non-discrimination at the national and departmental level;

(f) Establishment of an administrative procedure to provide counselling and support and to receive complaints concerning situations involving discrimination.

76. Measures are also envisaged on behalf of persons subjected to aggravated discrimination, and provision is made for awareness-raising campaigns, care centres and promotion of affirmative measures for women deprived of their liberty, women living with HIV/AIDS, migrants, persons with disabilities and sexual minorities (Strategic Line of Action for Equality No. 15).

77. At the municipal level, specifically in the city of Montevideo, a cross-cutting approach to gender and race/ethnicity is contemplated in the Second Plan for Equality of Opportunity and Equal Rights for women and men, covering the period from 2007 to 2010, under the following headings:

(a) Women's Secretariat, Objective 4: To promote the coordination of approaches based on gender and sexual, ethnic and racial diversity in the social policies of the Municipality of Montevideo;

(b) Health-care Division, Objective 1: To contribute to the sexual and reproductive health of women and men in Montevideo by promoting healthy and wholesome practices, irrespective of gender and of ethnic or racial origin, taking into account the diverse needs and interests of the persons concerned;

(c) Municipal Thematic Unit for the Rights of Persons of African Descent, Objectives: To promote attitudes and practices based on equality and respect for women of African descent; to support the inclusion of women of African descent in the Montevideo labour market; to conduct in-depth historical research on violence against women of African descent; to promote the compilation of data in the municipal health system concerning ethnic propensity to certain illnesses, disaggregated by sex.

78. An important development is the discussion of a bill in the Uruguayan Parliament that provides for temporary affirmative action on behalf of this community. The draft has already been given preliminary approval in the Chamber of Deputies.

79. Article 1 of the bill recognizes that the population of African descent residing in the national territory has been subjected to racial discrimination and stigmatization since the time of slave trafficking and smuggling, actions which could nowadays constitute crimes against humanity under international law. The bill constitutes an act of reparation for the historical discrimination acknowledged in the first subparagraph of the article.

80. Article 2 of the bill states that it is in the general interest to develop, promote and implement affirmation action measures, defined as a combination of legislative, administrative and public policy measures, in the public and private sectors on behalf of members of the community of African descent. The provisions are designed to reduce and contribute to the eradication of discriminatory acts that directly or indirectly violate the rules and principles set forth in Act No. 17817 of 6 September 2004 (annex IX) with a view to guaranteeing the full exercise of civil, political, economic, social and cultural rights and incorporating a gender perspective.

81. Article 3 notes that the affirmative action measures defined in article 2 of the bill are in conformity with articles 7, 8 and 72 of the Constitution of the Republic and with international human rights norms inasmuch as they guarantee full enjoyment of recognized

rights, the equality of all inhabitants of the Republic, and the rights and guarantees stemming from their status as a person before the law.

82. Article 4 of the bill is of key importance since it reserves 8 per cent of vacant public-sector posts (in the central administration, autonomous entities, decentralized services and departmental governments) for persons of African descent. The provision contained in paragraph 1 of article 4 will be applicable for a period of ten years from the date of promulgation of the act; an assessment of the impact of this measure in the light of the provisions of articles 1 and 2 will then be undertaken.

83. Article 5 urges the Employment and Vocational Training Institute (INEFOP) to include quotas for the population of African descent in its various training programmes.

84. In addition, article 6 requires all scholarship and student support systems at the national and departmental level to include quotas for persons of African descent in their decision-making and allocation procedures. Thirty per cent of Beca Carlos Quijano scholarship funds (art. 32 of Act No. 18046 of 24 October 2006) are allocated to persons of African descent.

85. Article 7 adds the following subparagraph to paragraph 3 of article 11 of Act No. 16906 of 7 January 1998: "(g) shall include personnel of African descent in the staffing table of the enterprise. In the case of declared forthcoming investment projects, the increase in such staff shall be calculated at a rate equivalent to one and a half times with a view to achieving the requisite employment promotion benefits."

86. Article 8 states that it is in the general interest to incorporate in educational curricula and teacher training programmes the historical legacy of communities of African descent and their involvement in and contribution to the shaping of the nation, including their history of slavery, trafficking and stigmatization; relevant national research should also be promoted.

87. Article 9 creates a three-member commission within the executive branch, composed of a representative of the Ministry of Social Development as Chairperson, a representative of the Ministry of Labour and Social Security and a representative of the Ministry of Education and Culture. The commission will be responsible for ensuring that the measures set forth in the preceding articles are implemented.

88. It should be added that, pursuant to article 10 of the bill, all public-sector bodies must prepare a periodic report describing the affirmative action measures they have taken in their fields of competence to give effect to the provisions of the preceding articles in the areas of employment, education, sport, culture, science and technology, and access to protective mechanisms, giving special attention to aspects related to gender, older persons, children and adolescents, and local circumstances.

#### **Reply to paragraph 6 of the list of issues**

89. Various steps have been taken to change this situation since 2009. However, legislative initiatives aimed at increasing the marriageable age to 16 years for both men and women have not yet been successful.

90. The State admits that the minimum age for marriage in Uruguay is still too low and that it discriminates between men and women; it also acknowledges the difficulties involved in bringing national regulations governing marriage into line with the Children and Adolescents Code and all other norms designed to protect the safety and well-being of children.

91. The State also admits that no bill aimed at the criminalization of marital rape has yet been tabled in Parliament.

**Reply to paragraph 7 of the list of issues**

92. With regard to the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Uruguay, as a State party to the Convention on the Rights of Persons with Disabilities, adopted Act No. 18651 (annex X) on the Comprehensive Protection of Persons with Disabilities in 2010. The regulations governing the implementation of the Act are currently being developed by the executive branch. Moreover, the National Disability Programme, established in 2005 under the authority of the Ministry of Public Health, was recently transferred to the Ministry of Social Development, where its status will be enhanced to that of an Institute.

93. Notwithstanding the delay in the implementation of the Act, it is currently in force and addresses issues covered both by the Standard Rules and by the Convention.

94. In this new legal and institutional context, Uruguay has begun to implement the aforementioned international norms and has just finished preparing its initial report to the Committee on the Rights of Persons with Disabilities.

95. With regard to the rights of children with disabilities, Uruguay also adopted Act No. 17823 (Children and Adolescents Code; annex XI), article 8 of which (General principle) stipulates that every child and adolescent shall enjoy the inalienable rights of the human person and that such rights shall be exercised in accordance with the development of his or her faculties, and in the manner enshrined in the Constitution of the Republic, international instruments, this Code and special laws. He or she is entitled in all cases to be heard and to obtain an explanation when decisions are taken that have an impact on his or her life.

96. Pursuant to the Code, all children and adolescents have access to the courts and can take legal action in defence of their rights; moreover, the provision of legal aid is mandatory. The competent court is required, where appropriate, to appoint a guardian to represent them and to assist them in presenting their claims.

97. The courts are required, as a matter of grave responsibility, to take the necessary measures to ensure compliance with the provisions set forth in the preceding paragraphs, and any action taken in breach thereof shall be declared null and void.

98. Article 10 (Rights of children or adolescents of different capabilities) stipulates that children and adolescents of different mental, physical or sensory capabilities are entitled to living conditions that ensure their social participation, in particular through effective access to education, culture and employment. This right is protected regardless of the age of the person concerned.

99. With regard to access to justice, children with disabilities are heard by the courts and the competent court appoints a legal representative to assist the child and ensure due process.

100. The Uruguayan Institute for Children and Adolescents (INAU) has created a participation council that also covers children with disabilities and is tasked with proposing improvements in management and in action to meet their needs.

101. In the area of health care, the SERENAR – ASSE Programme for the prevention, detection and early treatment of disabilities in newborn infants who face neuro-cognitive development risks is implemented in all the country's public health-care institutions. There are eight early treatment units in the country with multidisciplinary teams including specialists in psychomotor therapy, physiotherapists, psychologists and paediatricians: three are located in Montevideo (Pereira Rossell Hospital, Unión Health-care Centres and Cerro) and five in other parts of the country: in the hospitals of Durazno, Maldonado, Salto, Tacuarembó and Treinta y Tres. The beneficiaries are users of the State Health Services

Administration (ASSE) with any of the risk indicators, who are referred on medical grounds by one of the branches of ASSE.

102. With regard to mother and child health-care services, the Social Insurance Bank (BPS) covers pregnancies and deliveries for persons entitled to the system of family allowances for cases of high-risk pregnancy, pathologies associated with the perinatal period and/or foetal malformations. The benefits include specialized coverage, special treatment during pregnancy, analysis by persons with special expertise, preventive and therapeutic hospitalization and other appropriate interventions. Congenital disorders are also studied with a view to preventing or alleviating a disability: study of congenital hypothyroidism in the umbilical cord blood of newborn infants, phenylketonuria and congenital adrenal hyperplasia.

103. In addition, a national research plan that is currently being implemented will make it possible to detect approximately 20 congenital disorders throughout the country.

104. The Uruguayan Institute for Children and Adolescents runs care centres for children with intellectual or motor disabilities which develop their potential to function as independently as possible, paying special attention to the family of the persons with disabilities. More than two categories of benefit are provided, including food and housing in cases involving permanent collective living quarters. Persons in the 0 to 18 age group with an intellectual or motor disability gain access to the centres through the Uruguayan Institute for Children and Adolescents Study and Referral Centre or they may be referred by other services run by the Uruguayan Institute for Children and Adolescents system.

105. The Social Insurance Bank also provides various economic benefits to promote the comprehensive rehabilitation of persons with disabilities. The following are entitled to these benefits: persons who receive family allowances in respect of dependent children or minors with disabilities (beneficiaries of the system; they include members of a collective medical care institution where the institution is not required to cover the treatment or technical assistance required for rehabilitation) and beneficiaries of an invalidity pension; they attend special schools, rehabilitation institutes, schools and institutes accredited by the National Public Education Administration (ANEP) which support educational integration, secondary schools, universities, and recreational or sports institutions whose activities promote comprehensive reintegration.

106. The allowance comprises a sum to assist in meeting the cost of the attendance fee or to pay for the transport of the beneficiary, or the persons accompanying him or her, to and from the locations in question. Children with disabilities of officials of the Social Insurance Bank receive a similar allowance.

107. With regard to education, there are 75 special schools in the country, 26 of which are located in 26 different districts of Montevideo. The schools are classified by the type of disability for which they cater: 20 cater for intellectual disabilities, 3 for auditory disabilities, 2 for visual disabilities and 1 for motor disabilities. Outside the capital city, 49 special schools are distributed among the different departments. They consist of a maximum of six grades, following which pupils enrol in specialized pre-occupational and occupational activities; they may also enrol in regular schools with a view to integration into the classroom. Enrolment is based on age (between 5 and 15 years) and a psycho-diagnostic assessment, which can be conducted in various institutions. In April 2010, 7,778 pupils were enrolled in the country as a whole.

108. In addition, the School Transport Programme run by the Early Childhood and Primary Education Board of the National Public Education Administration provides transport facilities for children in the 4 to 17 age group from their homes to educational establishments, including for pupils with disabilities. It also provides transport to

educational establishments for pupils in remote rural areas. This service may be extended to intermediate education.

109. With regard to the effective participation of children and young people, Uruguay has been implementing a Youth Participation Project with a view to involving young people in Uruguayan democracy and laying the basis for their future role in the political system. The Project focuses on the strengthening of local youth social action networks that may have an impact on the public-sector agenda and the agenda of local and national legislators.

110. The specific objectives include: motivating young people to launch citizen participation initiatives at the local and national level; creating intervention and voluntary services at the local level; introducing youth-related topics into the public agenda; forging links between the national Parliament, the departmental councils and young people; and encouraging young participants in the Project to publicize the aim of citizen participation in various local media outlets.

111. Young people who participate in the programme propose public policy projects to the municipal and national legislatures. The Project is run at the local level with the involvement of three stakeholders: young people, the departmental council and national lawmakers.

112. This action will follow the on-site activities associated with the "Towards a Youth Parliament" Project of the Office of the President of the Chamber of Deputies.

113. With regard to employment, pursuant to Act No. 18651 concerning the rights of persons with disabilities, occupational and vocational guidance and rehabilitation services should be provided to all persons with disabilities in accordance with their aptitudes, possibilities and needs, and measures should be taken to enable them to engage in a remunerated activity. According to the Act, the implementing regulations should specify the requirements for gaining access to different levels of training.

114. Article 49 of the Act stipulates that the State, the departmental governments, autonomous entities, decentralized services and non-State public corporations shall fill a minimum of 4 per cent of their vacancies with persons with disabilities who meet the requirements for the posts in question. Persons with disabilities who are employed in this way shall be bound by the same obligations as are applicable under labour legislation to all public officials, without prejudice to the application of differentiated rules where strictly necessary.

115. The aforementioned obligation refers to the minimum quantity of jobs and positions for which staff are hired, but it may also be applicable to the amount of the budgetary appropriation corresponding thereto if it is more favourable for the persons protected by the Act.

116. In the former case, the 4 per cent of vacancies to be filled by persons with disabilities shall be calculated in relation to the total amount of vacancies occurring in the different servicing units and sections and at the different levels of each of the bodies referred to in the first paragraph of article 49. Where the application of this percentage produces a figure that is less than a unit, but equal to or greater than half thereof, it shall be rounded up to the larger quantity.

117. The Act further requires the creation of a mechanism in each public body to oversee the facilities provided for employees with disabilities, such as the necessary adjustments to enable them to perform their functions properly, and the elimination of physical barriers and a social environment that might be conducive to discriminatory attitudes.

118. Article 52 of the Act stipulates that where a person performs the functions of a public official on a permanent basis under an employment contract, and where certain basic

components of that person's initial relationship with the State, departmental governments, autonomous entities or centralized services have been impaired and he or she is certified as having a disability in accordance with the provisions of article 49 of the Act, the Administration is required to set aside the requisite budgetary allocation provided that the degree of disability so permits.

119. The Vocational Training Programme for Persons with Disabilities is designed to promote the social inclusion of persons with disabilities by helping to forge their identities as workers. The participants are persons with disabilities (all categories of disability) who are over 18 years of age, and are independent and capable of joining the open labour market.

120. With regard to the working conditions of persons with disabilities of any kind, the Inspectorate-General of Labour and Social Security is responsible for monitoring compliance with the regulations in force. The Inspectorate focuses on effective compliance with the principle of equality of working conditions. To that end, it monitors or investigates compliance with the regulations governing the working environment and labour conditions, which are designed to ensure decent, well-paid and risk-free employment.

121. The investigation takes the form of an inspection, during which the labour inspector prepares a record of any irregularities detected. The record is used to initiate an administrative procedure that may result, where the existence of discrimination is proved, in the imposition of a fine on the enterprise.

122. Where a person with a disability is subjected to some form of discrimination, he or she should file a complaint concerning discrimination with the Inspectorate-General of Labour. The complainant should submit the complaint in writing, stating the grounds that warrant an inspection.

123. The general guarantees applicable to all complaints are applied. The Legal Division studies the points made and may request the enterprise to present an account of the circumstances and to describe the measures taken in that regard. It may also order an inspection to corroborate the circumstances and the claims of the parties. The procedure conducted by the Inspectorate-General complies with the guarantees of due process. It holds hearings to take evidence and takes any other measures deemed necessary to clarify the situation. Where the facts complained of are substantiated, the procedure may entail the imposition of a pecuniary sanction on the offender.

124. Act No. 17930 assigns the National Employment Directorate (DINAE) and other bodies the task of "Administering a national public employment service that is locally based and provides the necessary support to unemployed members of the population with a view to promoting their integration into the labour market on a dependent or independent basis."

125. Since 2005 the National Employment Directorate has been providing employment guidance and placement services and referring jobseekers to productive enterprises for occupational training and support through public employment centres. There are currently 26 centres providing universal services in different parts of the country. The staff of the public employment centres are trained to serve or contact different population groups, giving special attention to persons with disabilities. For instance, training sessions have been organized to raise awareness and/or offer advice on contacts with persons with disabilities, on the approach to adopt in employment guidance interviews, etc.

126. Lastly, mention should be made of the *Ágora* regional project designed to provide training and employment opportunities for blind and visually impaired people. It is financed by the ONCE Foundation for Latin America and implemented by the National Union of Blind Persons of Uruguay (UNCU) and the Ministry of Labour and Social Security.

**Reply to paragraph 8 of the list of issues**

127. Reference should first be made to Act No. 18620 (annex XII) entitled “Rights to gender identity and to a change of name and sex in identity documents.”

128. Article 1 of the Act (Right to gender identity) stipulates that everyone has the right to free development of his or her personality in line with gender identity, regardless of his or her biological, genetic, anatomical, morphological, hormonal, attributed or other sexual characterization.

129. This includes the right to be identified in a manner that fully recognizes one’s gender identity and that ensures the consistency of this identity with the name and sex indicated in identity documents, such as Registry of Civil Status records or identity, electoral, travel or other documents.

130. In other words, the Act entitles all persons to request that the records of their name or sex or of both should be aligned with their gender identity where they do not coincide.

131. The registered name and, if applicable, the registered sex will be adjusted where the applicant establishes:

(a) That the name, sex – or both – entered in the birth certificate filed with the Registry of Civil Status are inconsistent with his or her actual gender identity;

(b) The stability and persistence of this inconsistency for at least two years, in accordance with the procedures laid down in the Act.

132. Under no circumstances is gender reassignment surgery required for approval of the adjustment of a registered name or sex that is inconsistent with the gender identity of the person to whom reference is made in the document.

133. Where the person concerned has undergone gender reassignment surgery, he or she need not provide the evidence required under paragraph (2) of the article.

134. Article 4 of the Act (Procedure and competence) stipulates that the adjustment of the registered name and sex shall be undertaken in response to a personal initiative on the part of the registered person. Once the adjustment has been made, it cannot be readjusted until five years have elapsed, in which case the original name is restored. The proceedings take place before first-instance family courts in accordance with the voluntary procedure provided for in article 189 of the General Procedural Code.

135. Act No. 18246 (annex XIII) of 27 December 2007 (Union of Cohabiting Partners) is a further important legislative measure which recognizes the diversity of family arrangements and sexual orientation, guaranteeing rights to members of such unions, including the right to social security, regardless of the type of family relationship to which they belong.

136. An additional measure is the “Social Uruguay” card that has been issued by the Ministry of Social Development since 2006. Purchases may be made with this card under a system run by the Ministry of Social Development, the Ministry of Public Health, the State Health Services Administration and the National Food Institute. Its principal aim is to give the most vulnerable people access to a basket of basic goods and to enable them to select such goods in light of their needs and the characteristics of their household.

137. The Ministry of Social Development has recently begun to promote measures to address, as a matter of priority, the situation of social exclusion faced by transsexuals, transvestites and transgender persons, paving the way for affirmative action to guarantee them access to various types of social programmes (welfare, employment and socio-educational programmes). They can be issued with the Social Uruguay card provided that they belong to this group and they are not subject to a controller.

138. These persons can join the social welfare system and, for the first time in the country's history, receive an economic allowance that enables them to make purchases amounting to 700 Uruguayan pesos in businesses covered by the plan. To obtain a card, they must fill out a form at the headquarters of the Ministry of Social Development or in one of its local offices, which are located throughout the country. According to the Ministry's data, some 2,000 persons have access to this benefit.

139. The Uruguayan State, through the Ministry of Social Development, promotes the enjoyment of human rights by all persons, regardless of their sexual orientation or gender identity, seeking by this means to outlaw discriminatory practices and procedures that violate the rights of persons on account of their sexual orientation or gender identity, and to combat all other types of unacceptable discrimination.

### **C. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 3, 6 and 7)**

#### **Reply to paragraph 9 of the list of issues**

140. Act No. 18026 (annex XIV) entitled "Cooperation with the International Criminal Court in combating genocide, war crimes and crimes against humanity" defined the crime of torture in Uruguayan criminal legislation.

141. Article 22, paragraph 1, of the Act stipulates that: "A State official or any other person acting with the authorization, support or acquiescence of one or more State officials who, in any manner and for any motive, inflicts any form of torture on a person deprived of his or her liberty or within his or her custody or control, or on a person who appears as a witness or expert or in a similar capacity before the authorities, shall be punished with imprisonment for a term of between 20 months and 8 years."

142. Article 22, paragraph 2, provides that: "'Torture' means: (a) any act by which severe pain or suffering, whether physical, mental or emotional, is inflicted; (b) subjection to cruel, inhuman or degrading punishment or treatment; or (c) any act aimed at dehumanizing or diminishing the physical or mental capacity of the victim, even if it does not cause pain or physical distress, or any act referred to in article 291 of the Criminal Code, where it is carried out for the purpose of investigation, punishment or intimidation."

143. Article 22, paragraph 3, states: "Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

144. In addition, Act No. 18026 states that an order from a superior officer (due obedience) or exceptional circumstances, such as a threat of war or a state of war, political instability or any other public emergency, may not be invoked as a justification for genocide, crimes against humanity or war crimes.

145. It should be noted that Uruguayan law, by ruling out due obedience as a defence, is stricter than the Rome Statute of the International Criminal Court (which permits its invocation under certain circumstances).

146. Domestic legislation in this regard is no less robust than the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons.

147. Articles 10 and 11 of Act No. 18026 supplement these concepts with that of command responsibility, which prevents "commission by omission" on the part of civilian or military superiors, and rules out the possibility of prosecuting such crimes and offences before a military court.

148. Although the Uruguayan Criminal Code does not include a definition of torture as a separate offence, in line with articles 1 and 4 of the Convention against Torture, this has not prevented criminal proceedings from being instituted for the crime of torture.

149. In 2012, the Parliamentary Commissioner for the Prison System filed a complaint with the Uruguayan judiciary against two law enforcement officers serving at Canelones prison for allegedly committing the crime of torture. In June 2012, the Canelones First Rota Criminal Court sentenced the two officers to imprisonment for the crime of torture as defined in article 22 of Act No. 18026.

150. In addition, a number of former political prisoners, sponsored by Uruguayan human rights organizations and NGOs, have instituted proceedings in the Uruguayan courts aimed at investigating acts carried out by oppressors and law enforcement officers during the period of dictatorship in Uruguay (1973–1985), arguing that, since the adoption of Act No. 18026, the crime of torture also constitutes a crime against humanity and, as such, is not subject to the statute of limitations or to amnesty.

#### **Reply to paragraph 10 of the list of issues**

151. The measures taken by the Government to date include the incorporation of the theme of violence against women in General Education Act No. 18437 (annex XV) of December 2008, relating it to the dimensions of the Act focusing on promotion and prevention, and to specific actions aimed at prevention, protection of victims and tackling of situations of domestic violence as part of the citizen safety policy.

152. In 2006 the executive branch promulgated Ministry of Public Health Decree No. 494/2006 (annex XVI) concerning domestic violence, pursuant to which both public and private health-care institutions or services are required to provide care and assistance to women in situations of domestic violence.

153. The National Advisory Council against Domestic Violence (composed of representatives of the State and civil society and chaired by INMUJERES) develops strategic guidelines for action against domestic violence and coordinates its activities with other institutions in order to promote a highly effective and integrated response to the problem.

154. Nineteen departmental advisory committees against domestic violence have been established pursuant to article 28 of Act No. 17514 on domestic violence of 2002.

155. With regard to plans for continuous training in the context of action to prevent the phenomenon of violence against women and to raise awareness of women's rights, the following measures should be highlighted:

- INMUJERES, in coordination with the legislature, organized a series of seminars and other activities on reporting and analysis of violence against women, especially domestic violence. A gender and generation training plan was also prepared under the agreement with UNDP.
- The subject has been incorporated in specialized human rights training courses provided as part of in-service training, teacher training and courses for secondary-school teachers organized in the capital cities of the departments.
- INMUJERES provides continuous training for the interdisciplinary technical teams attached to specialized support centres dealing with violence.
- With regard to the dissemination of information on women's rights, awareness-raising and training campaigns have been conducted in recent years for journalists and broadcasters so as to ensure that gender issues are included in the media's agenda. Similarly, steps are being taken by the National Advisory Council against

Domestic Violence to ensure that cases of domestic violence, ill-treatment and sexual abuse of children and adolescents are dealt with appropriately in the news media.

- The subject has been incorporated into in-service training courses at the National Police Academy, departmental academies and the Promotion Academy. Moreover, specific modules on the subject have been designed, and have been or are about to be implemented, and preparatory work is under way on a technical course on domestic violence which will lay the basis for specialized police training.

156. The number of entities authorized to receive complaints of violence against women has increased in recent years. Specialized courts for organized crime, which also receive complaints of trafficking in persons, have been established, and specialized domestic violence units have been set up in all departments outside the capital to receive complaints, provide psycho-social support, etc. These units, women and family police stations, were extended throughout the country in 2011, and there are currently 30 specialized domestic violence units, which seek to provide specialized support in such circumstances.

157. The following protocols of support for women, girls and adolescents victims of violence have been adopted:

- The national police force: a Guide to Police Procedure in situations relating to domestic violence against women (which is discussed in detail below);
- The health sector: a Guide to Procedures in Primary Health Care – Dealing with Situations of Domestic Violence against Women;
- The education sector: a Road Map for schools dealing with cases of ill-treatment and sexual abuse of children and adolescents, a Secondary School Protocol concerning domestic violence against adolescents and a Protocol for the specialized units of INMUJERES that provide support to women victims of domestic violence.

158. The Uruguayan State has encouraged civil society to participate in the development of plans, activities and strategies concerning the prevention and eradication of violence against women. While organizations have numerous forums at the national level, they are also involved in the departmental committees for the prevention of domestic violence, which have thus acquired exceptional status as forums for cooperation and coordination between society and State.

159. Within the police force, the Gender Policy Division established in April 2009 is currently responsible for helping to formulate, monitor and assess policies, programmes and activities aimed at ensuring the implementation of the police force's strategic priorities under the National Plan to Combat Domestic Violence 2004–2010 and the National Plan on Equality of Opportunity and Equal Rights 2007–2011.

160. This is the framework within which a comprehensive policy is being developed, based on five key programme areas:

- Ensuring more effective and professional police action in cases of domestic and gender-based violence;
- Incorporation of the subjects of gender, domestic violence, and sexual and reproductive health at all levels of police training;
- Improved procedures for the receipt and registration of complaints and more in-depth statistical analysis of situations of domestic violence;
- Adoption of a comprehensive approach to domestic violence suffered or perpetrated by police officers;

- Promotion and creation of mechanisms to enhance cooperation and coordination between institutions and with civil society.

161. With regard to police action, two of the most important tools for dealing with victims of domestic violence are:

(a) The Protocol for Dealing with Situations of Domestic Violence against Women at Police Stations, known as the “Guide to Police Procedure: Proceedings relating to Domestic Violence against Women” (2008);

(b) Executive Decree No. 317/010 of 26 October 2010 regulating the police procedure to be followed in cases of domestic violence.

### **Protocol for Dealing with Situations of Domestic Violence against Women at Police Stations**

162. Although this document is a manual or guide for law enforcement officers, it establishes a protocol for assisting and dealing with victims of domestic violence and was originally intended to be used in cases of attacks on female victims in the context of emotional relationships.

163. The Guide aims to assist law enforcement personnel in dealing with domestic violence from the point of view of ethical integrity and professional competence (p. 13). The principles governing police action against domestic violence are prevention, protection of individuals, prevention of the commission of offences and assistance to victims; the police thus act as a bridge between society and the law (p. 25).

164. The main characteristics of the phenomenon of domestic violence against women and of its victims are summarized (pp. 11-18); this is very important because it enables police officers to identify or recognize profiles of victims and perpetrators, the facts underlying the situation, and the different phases or stages reached in the cycle of violence.

165. The Guide focuses on the victim and her rights, describing her vulnerabilities and fears when filing a complaint (fear of reprisals, her particular situation, the complexity of the problem of domestic violence, the victim’s need for understanding and protection, and situations in which she may have been expelled from her home or coerced to withdraw her complaint; pp. 18-24).

166. At the stage of receiving complaints, particular emphasis is placed on the need for the police to support and listen to the victim and ensure that she is fully equipped to weigh up her problems and to take decisions. The victim must feel that the police will listen to her and she must know that she will be protected (p. 44).

167. The police must, inter alia, abide by all decisions of the courts (p. 31). They must be familiar with the law in force, conduct appropriate telephone and verbal communications with the competent judicial officer (pp. 35 and 36), provide a written report where appropriate (p. 36) and keep themselves informed of court orders (p. 37).

168. In addition, the police must monitor and supervise any precautionary measures imposed by the courts, establishing a database (p. 39) and sending regular monitoring reports to the judge (p. 40); it is therefore essential to maintain contact (pp. 40 and 41).

169. In November 2010, the second edition of the “Guide to Police Procedure: Proceedings relating to Domestic Violence against Women” was issued. It was prepared on the basis of an assessment and input from a working group set up for the purpose and from the heads of the specialized domestic violence units in different parts of the country. To date, 1,800 copies of the Guide have been distributed throughout the country.

**Executive Decree No. 317/010 regulating the police procedure to be followed in cases of domestic violence**

170. The Decree is intended to regulate the main aspects of police (administrative) procedure relating to domestic violence under Act No. 18315 (Code of Police Procedure), in terms of the protection of victims, witnesses and people in general.

171. Decree No. 317 reflects the standards laid down in the 2008 Guide to Police Procedure in the form of regulations applicable to all categories of victims of domestic violence.

172. Articles 3, 4 and 13 of Decree No. 317/010 remind law enforcement personnel that, when dealing with persons involved in a domestic violence incident, they must be “diligent, polite and respectful, and refrain from any form of discrimination”. Police action should not focus solely on repressive measures; it also fulfils an important role in terms of assistance, protection and social support. The aims of such action are not confined to prevention and containment but also include protection. Those involved are not passive subjects and objects but subjects of law.

173. The aforementioned articles take into account the special situation of indirect victims (children) and witnesses (especially relatives by marriage or persons living as a de facto family unit), who are nervous about revealing the truth or making a complaint due to fear of reprisals.

174. The victim should be advised to seek assistance at a health-care centre (art. 9), especially for physical and psychological injuries, without prejudice to the court’s decision. Physical and visual contact between the victim and the suspected perpetrator should be avoided (art. 10); a similar provision is contained in article 18 of the Domestic Violence Act.

175. Article 13 of the aforementioned Decree refers to the possibility of a withdrawal of the complaint by the victim. The police should interview the parties separately (in order to determine objectively whether this decision was taken freely or was instigated by the suspected perpetrator), inform the victim of the community resources available, her rights, and the fact that she can return to the police at any time. The complainant must feel that the authorities will be attentive and available to provide appropriate assistance whenever necessary. The victim may also be given a telephone number to contact the police authorities for this purpose (art. 16 of Decree No. 317/010).

176. It is recommended that the police carry out a risk assessment (art. 11 of the aforementioned Decree), bearing in mind not only the particular incident that gave rise to the complaint but also the background (for example, separation attempts, previous complaints, recurrence, suicide attempts, use of alcohol, drugs or psychoactive substances by the victim or the perpetrator, firearms, and past or current precautionary measures, if any). This is very important because it will alert both the police and the officiating judge to the characteristics and the potential or actual gravity of the situation and will enable the judge to adopt measures under articles 8 to 15 of the Domestic Violence Act.

177. Articles 17 to 20 of Decree No. 317/010 recommend oversight of any precautionary measures imposed by the courts. It is not sufficient for the courts to impose such measures; their effectiveness and efficiency depend on subsequent regular monitoring arrangements. The courts need not expressly order such monitoring, nor do the police require a court order or legal provision to take action. Such measures form part of their preventive and supervisory functions, and actually reinforce the court order. They may also (where warranted) serve to modify or restructure certain precautionary measures (Domestic Violence Act, arts. 13 and 14, and General Procedural Code, arts. 313 and 314).

178. As already mentioned, Decree No. 317/010 provides for specialized domestic violence units within police headquarters in all departments (not only in Montevideo) and requires their staff to have a particular profile and special training (arts. 21 to 28). However, articles 28 to 31 of the Decree refer to proper up-to-date training on domestic violence for all law enforcement personnel (not only those in the specialized domestic violence units). These units, which replaced women and family police stations, are responsible for handling and responding to any complaints filed; this is their specific task and they are expected to provide an effective and high-quality response.

179. The consensus document adopted by the Inter-party Commission on Public Security (signed in 2010 by all the political parties) was a very important step towards meeting the commitments entered into by Uruguay, since its aim is to improve institutional responses to domestic and gender-based violence and child abuse. Paragraph 3.21.1 of the document refers to the need to enhance the status of the specialized units dealing with domestic and gender-based violence, ill-treatment and child abuse in each police headquarters by providing them with appropriate technical equipment and with staff who are specially trained and have acquired the necessary skills for this type of work.

180. The technical capacity-building of the specialized domestic violence units is part of the ongoing process of specialization. One of the current objectives is to ensure that the units achieve an effective level of specialization; to that end, they need to be assigned a separate status in the organizational structure of the departmental police headquarters, and their salaries or working hours should reflect the value attached to their work and their differentiated status.

181. With regard to budgetary provisions, owing to the variety of existing organizational arrangements, the scarce logistical and material resources allocated to the specialized domestic violence units and the lack of training of the staff concerned, Act No. 17819 (2010), the National Budget Act, included programme standards (art. 235) which will be in force throughout the current Administration's term.

182. An important step has been taken with regard to budget information systems: pursuant to Resolution No. 10280/10 of 31 August 2010, the funds allocated to the specialized domestic violence units, both for human resources and for operating and infrastructural costs, must be identified by departmental police headquarters in the information systems. However, precise and comprehensive information has not been available to date.

183. In 2010 steps were taken to identify expenditure on domestic violence, and departmental police headquarters were required to set up operational expenditure units to differentiate such expenditure from the police budget allocated to other police units; that task has not yet been completed. According to a nationwide survey carried out in early 2011, expenditure under section 0 (staff costs) was 68,600,852 Uruguayan pesos (approximately US\$ 3,266,707). This figure does not include infrastructural or operating costs or an estimate of the work carried out in these areas by police precinct staff.

184. It is necessary to add to this figure the budget allocated to the domestic violence victim support service attached to the National Police Health Directorate, which currently has six professional staff members (psychologists and social workers).

185. It has not been possible to estimate other costs associated, for example, with the organization of national events: International Women's Day on 8 March, International Day for the Elimination of Violence against Women on 25 November, and meetings of the heads of the specialized domestic violence units, which entail expenditure on transport, food and other costs for the officials involved.

186. Articles 14 and 15 of the aforementioned Executive Decree refer to communication with the judicial authorities, which the articles recommend should be exhaustive and detailed.

187. With regard to administrative or other measures that facilitate women's access to justice and guarantee them due process, free legal services are provided through a court-appointed counsel, who offers legal representation and general advice to victims.

188. In addition, regulations establishing protection measures for women have been adopted under the Domestic Violence Act and legislation concerning trafficking in persons. The measures adopted under the Domestic Violence Act are intended to protect the life, the physical or emotional integrity, and the personal freedom and safety of the victim, to provide financial assistance and to ensure the integrity of the family's property. Although the measures adopted are designed to support the victims rather than their relatives or witnesses, in practice the courts extend them to relatives who may be at risk.

189. The Uruguayan judiciary rightly considers that "the judiciary is responsible for protecting the rights of victims in accordance with due process of law, while also respecting the rights of persons against whom complaints are filed (arts. 2, 3, 9, 18 and 19 of Act No. 17514)" (for example, judgement No. 114/2007 of the Second Rota Family Court of Appeal; "*The Uruguayan Judiciary*", c. 15754).

190. The judiciary has no protocol for dealing with victims of domestic violence, but the courts are required to treat persons involved in legal proceedings, including victims, with humanity and dignity, taking into account articles 18 and 19 of Act No. 17514, the Domestic Violence Act (prevention of secondary victimization and comprehensive protection of human dignity).

191. The Brasilia Regulations Regarding Access to Justice for Vulnerable People (disseminated in Uruguay under Order No. 7647 of the Supreme Court of Justice) seek to guarantee effective access to justice for vulnerable people without discrimination; vulnerable people are defined as those who, for reasons of age, gender or physical or mental state, or owing to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system (sect. 2.3). In the case of violence within a couple, and particularly against women, steps should be taken to promote the necessary measures to eradicate discrimination against women in terms of access to justice for the protection of their legitimate rights, and it is recommended that special attention should be paid to allegations of violence against women through the establishment of effective mechanisms aimed at protecting their property and ensuring access to speedy and timely legal proceedings (sect. 2.8.20).

192. With regard to cooperation, exchanges of information are important, whether between courts (chiefly criminal and civil courts dealing with the same issue from different angles), with authorities that have previously addressed the issue (where this is applicable), or with lawyers, prosecutors and magistrates' courts that have dealt with the case from the outset (arts. 4, 11, para. 3, and 21 of the Domestic Violence Act; see below). At the national level, the National Advisory Council against Domestic Violence (arts. 22 to 29 of the same Act) is responsible for providing relevant assistance and support for the work of the courts.

193. As the public prosecution service has a major role to play (art. 7) in addressing domestic violence issues, initiatives on its part and interaction with the judiciary are essential.

194. The Act encourages the training of experts and specialists in domestic violence in a spirit of interdisciplinary cooperation (arts. 15, para. 1, 16, 17 and 18, para. 3, of the Domestic Violence Act; art. 66, paras. 3-5, of the Children and Adolescents Code, Act

No. 17823); their contribution to legal proceedings against domestic violence cases will be extremely valuable.

195. Although the Act does not refer explicitly to the need for cooperation between judges and technical assistants, it is also very important for judges and prosecutors to involve such assistants in their work and to permit them to attend hearings, and for judges to be in a position to act speedily when reports or assessments are required.

196. The relations that judges and prosecutors maintain with other public sectors and officials dealing with domestic violence (the Uruguayan Institute for Children and Adolescents, the teaching staff of the National Public Education Administration, social workers dealing with public health issues or working in the national health system) and with the private sector (non-governmental or religious organizations, private clinics) facilitate the coordination of efforts and maximize their efficiency in preventing domestic violence.

197. Although Executive Decree No. 317/010 is addressed to the police authorities, it may in practice be adapted and consulted, *mutatis mutandis*, by the judicial authorities as a protocol and guide for dealing with victims and perpetrators of domestic violence.

198. In 2005, with the establishment of the National Observatory on Violence and Crime at the Ministry of the Interior, Uruguay began to record the number of complaints of domestic violence filed each month at the national, departmental and sectoral levels.

199. The first national statistical data thus compiled enhanced the visibility of the problem and contributed to the formulation of public policies to be pursued by the various competent public-sector bodies.

200. Action is currently being taken to identify mechanisms conducive to a better understanding of the problem and an improvement in the quality of information. In addition, the police management system is to be provided with new, more comprehensive indicators of the characteristics of the problem and the profiles of the persons involved.

201. On 25 November 2011 the Statistics and Strategic Analysis Division provided annual data on domestic violence, as has been the practice since 2006, incorporating national data on complaints of domestic violence, sexual offences and homicides.

202. The Information Systems Division is currently working on phase 2 of the police management system, which will provide a national platform for the management, systematization and interoperability of public security information services. As part of this process, a module on the characteristics of domestic violence has been designed and criteria conducive to a better understanding of the problem have been established. This will ensure that more accurate and detailed information is available on the characteristics of the problem (type, frequency, background), the social and family situation of victims, and risk assessment aspects.

203. The police force itself is not immune: some officers are also victims or perpetrators of domestic violence. Although there are no comprehensive statistics, the data obtained to date indicate that there is a major institutional problem with its own particular characteristics.

204. In 2007 the National Police Health Directorate launched a Domestic Violence and Gender Subprogramme as part of the Primary Health Care Programme. A task force was set up in this context to provide guidance and to assess the situation of police officers who are perpetrators or victims of domestic violence. In 2010 the task force was strengthened and now consists of three psychologists and three social workers.

205. Work is currently under way on a road map that will establish formal institutional procedures to be followed in cases of domestic violence involving police officers.

206. The first National Plan to Combat Domestic Violence covered the period from 2004 to 2010. In 2011 a public appeal for an assessment of the Plan was issued to civil society organizations. The assessment process was completed in June 2012.

207. In April 2012, civil society organizations were invited to tender for a contract to provide technical assistance, support and advice to the National Advisory Council against Domestic Violence in connection with the preparation and drafting of the Second Plan; the proposals submitted are currently undergoing a selection process.

208. In addition, in July 2011 a comprehensive programme to combat gender-based violence in Uruguay was elaborated. The programme is currently being implemented by the judiciary in conjunction with the Ministry of the Interior, the Ministry of Public Health and the Ministry of Social Development. It is funded by the Spanish Agency for International Development Cooperation (AECID) and monitored by the Uruguayan International Cooperation Agency.

209. With regard to shelters, since 2007 the Uruguayan State, in conjunction with civil society organizations, has launched five permanent 24-hour centres for children and adolescents and the adults responsible for them, usually mothers, who are victims of domestic violence.

210. Moreover, the Punto de Partida (Starting Point) shelter has been in operation for 10 years. It has a specialized technical team and helps the beneficiaries of its services to escape domestic violence and to reintegrate into society and the workforce (capacity: 10 women and their children).

211. There are also night shelters and day centres for single women and mothers with children living in the streets, as well as centres for older women living in the streets; some of these women are victims of violence.

212. Under the National Plan to Combat Domestic Violence, INMUJERES recently opened the first short-stay home for women victims of domestic violence from all over the country; as part of the core component relating to crisis support and the provision of care, treatment and rehabilitation, it proposes to establish alternative approaches to the provision of care for victims of domestic violence. The home, which is located in the capital city, is run by a civil society organization with relevant experience and supervised by the technical team of the INMUJERES Gender-Based Violence Department.

213. The main purpose of the short-stay home is to provide accommodation, protection and guidance, on request, to women victims of domestic violence and their dependants for 30-day periods. The home offers a safe and welcoming refuge where they can discover their potential, obtain information and advice, and receive psycho-social and legal assistance that enables them to play a proactive role in freeing themselves from situations of domestic violence. It operates 365 days a year and can accommodate 30 people (up to 12 women with or without dependent children).

214. The home's specific objectives are: to provide the women and their dependent children with accommodation; to ensure an adequate level of safety so that the women can exercise their rights as citizens; to provide them with support, protection and guidance so that they can deal with the crisis in which they find themselves; to provide information and guidance on emergency procedures for obtaining more effective protection and defence (medical and legal assistance, escorts to police stations, etc.); to make arrangements with different public, private and civil society institutions for referrals and for flexible and effective coordination with other social resources so as to ensure continuous and comprehensive support.

215. The short-stay home is supplemented by other resources offered by INMUJERES, such as support services for victims of domestic violence and the temporary alternative housing project for women in transition from situations of domestic violence.

216. This project is being implemented under an agreement signed by the Ministry of Housing, Land Management and the Environment and the Ministry of Social Development–INMUJERES.

217. Women in transition from situations of domestic violence are provided, by means of this initiative, with rental guarantees and subsidies for two years. It is a nationwide project. The programme was launched in 2009 as a pilot project in the capital city and two other departments and was then extended throughout the country. When it was launched, the programme catered for 100 women; it has now been expanded to cater for 200.

218. With regard to the rehabilitation of male perpetrators of violence, in 2008 INMUJERES issued an open appeal for the establishment of a specialized assistance service for male perpetrators in Montevideo, which met with no response. Two courses were therefore held with the assistance of two international technical experts in 2009 and 2010 in support of the establishment of a rehabilitation programme for male perpetrators of violence.

219. Notwithstanding the measures taken, the Government recognizes the importance of the issue and the challenges to be met, such as the persistence of female homicides and the re-victimization of women when they file a complaint, and reiterates its commitment to combating the scourge of domestic violence.

220. Despite all the efforts described above, there is a continuing need for more comprehensive data on discrimination and different types of violence, and for analysis of the impact of the Domestic Violence Act.

221. In addition, it is essential to generate data that can be used to improve measures and policies and to guarantee the effective exercise of the human rights of women and children. Similarly, the specialized courts must be provided with additional human and financial resources, and further action must be taken to raise awareness of gender-based violence, especially among members of the police force and the judiciary.

#### **D. Elimination of slavery, servitude and forced labour, and freedom of movement (art. 8)**

##### **Reply to paragraph 11 of the list of issues**

222. In response to this problem, INMUJERES has been coordinating an Inter-institutional Committee on Trafficking in Women for Commercial Sexual Exploitation since 2008. The Committee is composed of representatives of public bodies, civil society organizations and the International Organization for Migration (IOM), and its main task is to devise an intervention and response strategy to deal with the problem of trafficking in women.

223. The bodies represented on the Committee are the Ministry of Foreign Affairs, the Ministry of Education and Culture (Human Rights Directorate), the Public Prosecution Service (*Ministerio Público y Fiscal*), the Ministry of the Interior, the Ministry of Public Health, the judiciary and NGOs specializing in the issue.

224. INMUJERES has carried out activities at the local, national and regional level (MERCOSUR) with a view to contributing to the development of an intervention and response strategy targeting the issue of trafficking in women for commercial sexual exploitation.

225. A survey of the institutional resources available to address the issue within the competent State bodies represented on the Committee was conducted in 2009. A number of awareness-raising and training workshops on trafficking in women for commercial sexual exploitation, adopting a gender- and rights-based approach, were held in the departments of Río Negro, Colonia, Soriano and Paysandú. Representatives of various government ministries, such as the Ministry of Education and Culture, the Ministry of Public Health, the Ministry of Labour and Social Security and the Ministry of Housing, Land Management and the Environment, took part in these events.

226. Members of civil society with expertise in detecting situations of trafficking in women for commercial sexual exploitation were also invited to attend the workshops.

227. In 2012, awareness-raising courses were held for diplomatic staff entering the Artigas Foreign Service Institute of the Ministry of Foreign Affairs. These officials will serve in our country's consulates and embassies and are frequently approached by victims of trafficking. Work was also carried out with officials of the Office for Assistance to Compatriots of the same Ministry, with a view to approving a road map for the work of consulates and embassies in these cases, and a protocol for addressing the phenomenon in embassies and consular offices was established.

228. Two binational seminars on the institutional approach to assistance for victims of trafficking in persons were also held for the purpose of sharing experience with State social and institutional officials in Argentina and Uruguay, one in the city of Colonia and the other in the city of Montevideo.

229. A workshop was held with judges who deal with cases of organized crime and with professional public prosecutors and defence lawyers. These specialized courts and public prosecution and defence services were established under Acts Nos. 18362 and 18390, both adopted in 2008.

230. In 2010 the Special Rapporteur on trafficking in persons, especially in women and children, was invited to visit Uruguay and did so in September of that year, when she met with a broad spectrum of national stakeholders involved in the issue.

231. Also in 2010, priority was given at the local level to work with the gender focal points of INMUJERES (the representatives of INMUJERES in different departments) and with government officials and members of civil society in departments adjacent to land borders or frequented by tourists, since it is in these areas that women are at the greatest risk of being recruited. Awareness-raising activities were undertaken and a work process was launched with a view to considering and agreeing on a series of measures at the local level. Work was carried out in the departments of Montevideo, Rivera, Rocha and Maldonado. Since 2009 a total of 150 public officials have been trained each year.

232. INMUJERES is also running a national project entitled "Application of measures for developing public policy on the trafficking and smuggling of women, children and adolescents for commercial sexual exploitation". The partner institutions in the project are the Ministry of Foreign Affairs and the NGO Foro Juvenil (Youth Forum), while the NGOs Casa Abierta (Open House) and Enjambra are collaborating institutions. Funding is provided by the European Union.

233. The project's specific objectives are: to draw attention to the situation of women, children and adolescents who are victims of trafficking for commercial sexual exploitation in Uruguay and the rest of the region; to enhance institutional capacity for dealing with the problem of trafficking in the country; and to ensure that victims have access to comprehensive and expert assistance.

234. Various activities are being carried out as part of this project. They involve, in general terms: training of stakeholders in Montevideo and throughout the country in the

prevention, early detection and tackling of situations of trafficking in persons for commercial sexual exploitation; the drafting of a Protocol on Inter-institutional Coordination of action aimed at prevention, support and the restoration of rights; and the launching of two pilot support services for victims of international and domestic trafficking for commercial sexual exploitation, both with interdisciplinary teams, one acting on behalf of adult women and the other on behalf of children and adolescents.

235. The characteristics of the situations addressed by the pilot support service for women victims of trafficking for commercial sexual exploitation between August 2010 and April 2012 may be described as follows.

236. The average age of the women involved was between 18 and 30, which means that trafficking in Uruguay shares the general characteristics of the phenomenon at the international and regional levels. The total number of women receiving support during the aforementioned period was 23; of these, 13 were aged between 18 and 30.

237. Four of the above cases were referred to the support service for children and adolescents because of their particular characteristics; in three cases, the referral was due to the age of the persons involved.

238. Each situation was evaluated by means of an analysis of indicators, and meetings were held to assess the relevance of the support provided by the service; where appropriate, relevant guidance was given or a referral was made. This happened in a total of five cases.

239. Of the total number of cases, 14 persons are currently receiving assistance, 10 of whom are victims of international trafficking and four of domestic trafficking. In general, the traditional destinations of victims of international trafficking are Spain, Italy and Argentina. The majority of women who are victims of domestic trafficking are taken to departments adjacent to the border.

240. Only two of these women are foreign, one a Colombian national and the other Brazilian. Of the Uruguayan women, nine are originally from outside the capital, namely the departments of Paysandú, Canelones, Treinta y Tres, Artigas and Maldonado, and four are from Montevideo.

241. With regard to the women's level of education, in general they have completed primary education but not secondary education.

242. Most of the women have dependent children, who are left in the care of a relative during the period of exploitation.

243. In 2010 a book entitled "Trafficking in women for commercial sexual exploitation in Uruguay: Towards the development of public policy", a product of joint work by INMUJERES and IOM with the support of by the Spanish Agency for International Development Cooperation (AECID), was published and distributed. A print run of 2,000 copies was made and distributed throughout the country. A leaflet entitled "If you have travel plans, make sure you can return" was also produced and distributed, with a print run of 5,000 copies. As part of the International Day against Human Trafficking on 23 September, a press release was issued with a view to raising public awareness of the issue.

244. Each year, coordination meetings have been held with the high-level authorities of the Ministry of the Interior and with judges and prosecutors from the Specialized Court against Organized Crime.

245. In 2011 the Inter-institutional Committee on Trafficking in Women for purposes of sexual exploitation held workshops for the purpose of drafting a protocol on inter-institutional action.

246. Presentations, training and master classes were carried out with the pilot support services, involving in some cases international experts on the provision of support to women, children and adolescents who are victims of trafficking for commercial sexual exploitation.

247. A number of awareness-raising and training events were held outside the capital for social workers and the focal points of the inter-institutional departmental committees of Paysandú, Artigas, Rivera and Rocha.

248. As part of the International Day against Human Trafficking on 23 September, the documentary *Nina* was shown and discussed at a round table. Posters were specially produced for the Day and distributed as part of the campaign entitled “You can be tricked into slavery”.

249. An awareness-raising and training session was held for officials from the Ministry of Transport and Public Works on 8 March, International Women’s Day, in accordance with the commitments entered into by the Ministry.

250. With regard to children, meetings of the National Committee for the Eradication of Commercial and Non-Commercial Sexual Exploitation of Children and Adolescents (CONAPESE), chaired by the Uruguayan Institute for Children and Adolescents (INAU), are held on a regular basis.

251. The support service for children and adolescents dealt with a total of 14 cases during the same period involving victims aged between 12 and 19, of whom 12 were female and 2 were male. These cases occurred in the departments of Colonia, Soriano, Paysandú, San José, Canelones and Montevideo; there were two cases of international trafficking to Brazil and Ecuador.

252. At the regional level, INMUJERES co-manages component 4, entitled “Prevention, awareness-raising and eradication of trafficking and smuggling of women for commercial sexual exploitation in the countries of MERCOSUR”, of the “MERCOSUR institutional strengthening and gender mainstreaming” project run by the Specialized Meeting of Women (REM) and funded by AECID. A seminar entitled “Trafficking in women within MERCOSUR: Towards a regional agreement on support for women victims of trafficking” was held from 14 to 17 November 2011.

253. At the first MERCOSUR Meeting of Women Ministers and High-level Authorities on Women (formerly the Specialized Meeting of Women) held in Buenos Aires from 28 May to 1 June 2012, it was decided to expand the protocol on trafficking in women for sexual exploitation, which is currently being discussed, to cover the phenomenon of trafficking in women for labour exploitation. It was also decided to continue working towards the swift adoption of a guide on support for women victims of trafficking.

254. In May 2012 the Centre for Judicial Studies organized a course on trafficking in persons for all the country’s judges. The Supreme Court of Justice also has two representatives on the National Committee for the Eradication of Commercial and Non-Commercial Sexual Exploitation of Children and Adolescents (CONAPESE).

## **E. Right to liberty and personal security and the rights of persons deprived of their liberty (arts. 9 and 10)**

### **Reply to paragraph 12 of the list of issues**

255. With regard to the situation of women deprived of their liberty, the problem of overcrowding in the metropolitan area (where most of the prison population is located) has

been resolved through the closure of Cabildo prison and the opening of the National Rehabilitation Centre, which currently has spare capacity.

256. In fact, one of the first measures taken was the closure of a wing of the Correctional and Detention Facility for Women, which was run by the Congregación del Buen Pastor (Cabildo) until 1989.

257. Following the closure of the section, the women held in the facility were rehoused. In accordance with classification criteria, 100 women were moved to the National Rehabilitation Centre, which in future will house all women deprived of their liberty from the capital city and the surrounding departments, with a view to ensuring decent conditions and organizing effective social reintegration programmes.

258. Cabildo also had a special wing for women deprived of their liberty who had children living with them; work on the El Molino facility was therefore speeded up and all the children were transferred there with their mothers as soon as it was opened.

259. The facility was designed with the situation of children in mind. It currently houses 30 women and 30 children, who receive paediatric, psychological and psychomotor care and are housed in spacious, well-lit rooms with private bathrooms, recreation facilities, infrastructure that minimizes the negative impact of enclosure and a diet prescribed by a nutrition specialist. The facility is situated in a district of the capital city with good public transport and access to nearby health centres. The children attend the Pájaros Pintados day care centre, by agreement with the Uruguayan Institute for Children and Adolescents.

260. With a view to finding a permanent solution to the situation of women deprived of their liberty in the capital city, the first group was moved permanently from the Correctional and Detention Facility for Women (Cabildo) to the National Rehabilitation Centre on 25 July 2011. On 12 September 2011, the last 170 women deprived of their liberty at Cabildo, those from the high-security wings, were moved and the facility was closed down permanently as a detention centre for women. The National Rehabilitation Centre currently houses a total of 378 women.

261. As part of ongoing prison reform, the closure of the Cabildo facility reaffirms the current administration's focus on eliminating overcrowding and establishing decent conditions of detention, in line with current national and international human rights standards.

262. The classification phase that is currently under way in the new women's facility is also helping to improve rehabilitation programmes, a development that promises better results in tertiary crime prevention or prevention of recidivism, which is a fundamental responsibility of the prison system.

263. The situation of women deprived of their liberty who were living with their children in the Department of Canelones was also of serious concern, and they were therefore immediately rehoused, subject to their consent, at the El Molino facility and the rural facility in Campanero in the Department of Lavalleja. In addition, overcrowding was reduced by transferring 70 women to the National Rehabilitation Centre, which has alleviated the situation in the departmental prison, although the problem of overcrowding has not been fully resolved.

264. In the Department of Maldonado, the places vacated by detainees who were rehoused in the recently opened new wing are being converted to accommodate women deprived of their liberty in better conditions than those in which they are currently held.

265. In the Department of Rocha, women deprived of their liberty were transferred to facilities adapted for living with children (site in Callejuela Ascención, between 25 August

and Rincón streets). They are housed in separate quarters, as in the old prison, and benefit from more decent conditions of detention.

266. With regard to the situation of men deprived of their liberty, there have been significant developments during the past 22 months in terms of overcrowding and conditions of detention, but such problems persist in four wings at the COMCAR facility and at the Departmental Prison of Canelones.

267. In June 2011, a new wing (wing 8) with a capacity for 250 inmates was opened at COMCAR and one of the wings with the worst problems of overcrowding and dilapidation was closed down. The relocation of 250 inmates (the maximum capacity with no spare places) to a wing that meets the minimum accommodation standards has not only entailed a major improvement in their situation, compared with the deteriorating conditions in which they had previously been held, but has also facilitated the process of classifying all persons deprived of their liberty at the facility.

268. The plan to improve the conditions of detention at COMCAR, one of the facilities most seriously affected by dilapidation, has begun with the closure and subsequent refurbishment of one of its wings (wing 3) so that, once it is completed, inmates who have already been classified can be transferred there and all the other wings in the complex can gradually be closed for refurbishment and reopening.

269. Wing 9, which is located in an adapted building that was previously used by the police force, was opened on 28 December 2011. Persons deprived of their liberty were employed in the reconstruction work. The additional 220 places facilitated the rehousing and selection of persons classified as requiring a minimum security regime, while at the same time alleviating overcrowding in other wings, which constitutes a further step in the right direction.

270. In addition, the opening of the Punta Rieles facility, which will eventually have a maximum capacity of 750 inmates and currently houses 336 inmates (transferred from COMCAR and Libertad prison), is helping to reform the system and ensure compliance with minimum human rights standards. As it is a medium-security prison intended solely for persons who have been sentenced and are thus convicted prisoners, requests for classification of inmates are gradually being fulfilled.

271. At Libertad prison in the Department of San José, a new wing has been built with a capacity for 310 inmates and is now occupied, so that classification and rehousing of inmates can begin, as at COMCAR. These 310 places have helped to alleviate the problem of overcrowding and to improve conditions of detention, which now comply with minimum standards. The facility is not only currently free from overcrowding; it actually has spare capacity.

272. The total number of places at Centre No. 2 (Granja) had also increased to 110 by the end of July 2011. The Centre, classified as a minimum-security facility, currently houses 98 persons deprived of their liberty.

273. Similar progress has been made in the Department of Maldonado, where a wing with a capacity for 256 inmates has been opened, thus reducing overcrowding and improving living conditions, and a process of classification and relocation of persons deprived of their liberty has been launched. By order of the Minister of the Interior, work has resumed on the construction of another wing with the same number of places, which, once completed, will provide a permanent solution to the problem of overcrowding in the Department and alleviate the situation at the Departmental Prison of Canelones.

274. In the Department of Rivera, a new prison facility with a capacity for 422 inmates has been opened, so that all male detainees who had previously been held in deplorable conditions in facilities located at the Police Headquarters could be evacuated. The Ministry

of the Interior is thus making headway with the plan for the gradual withdrawal of prison facilities from police administration, as already mentioned, and is removing prisons from premises belonging to departmental police headquarters. Although only half of the available places are currently occupied, the ongoing recruitment of new civilian prison staff will make it possible gradually to fill the spare capacity.

275. As this new detention facility is located in the north of the country, near the border with Brazil, and has spare capacity, it will soon be possible to close down the other two facilities in the departments of Artigas and Tacuarembó as part of the project for the regionalization of the prison system.

276. In the Department of Lavalleja, the gradual clearing of the prison located within the Police Headquarters is recognized as an example of good practice, which reflects, as in the case of the Department of Rivera, the Government's firm intention to take speedy practical steps to ensure the permanent withdrawal of the prison system from the purview of the police administration.

277. The Campanero facility, which is still under construction by a workforce of relocated inmates, is serving as a model for the future design of the system of farm prisons in other departments. The existence of an intramural and an extramural wing contributes to the development of a progressive system.

278. In the Department of Rocha, the Minister of the Interior has ordered permanent closure of the facility (planned for this year) and is speeding up expansion work on the farm prison located in the Department.

279. One of the first projects under the Public-Private Association Act adopted by Parliament in 2011 is to be the construction of a prison complex with a capacity of 1,800 (Punta Rieles II). The State will maintain control over security and overall treatment standards, and the private sector will be responsible for construction, general maintenance, food, and workplaces within the complex to provide training and employment for persons deprived of their liberty.

280. To sum up, although it cannot be concluded from the inmate-capacity ratio at the national level that the efforts undertaken in recent years to eliminate prison overcrowding have been completely successful, more than 10 of the 31 facilities in Uruguay (not including farm prisons, which exist in every department and have roughly 10 to 20 inmates, with appropriate facilities to accommodate them) have an occupancy rate of 80 per cent, including the Libertad facility, which is one of the largest in the system. Eight facilities have an acceptable occupancy level of around 100 to 115 per cent, and critical overcrowding (an occupancy level of 120 per cent or more) persists in only 11 facilities, which present the greatest challenge for the current administration. Action is being taken to address the situation.

281. With regard to the health care provided to persons deprived of their liberty, professionals and nurses employed by the State Health Services Administration of the Ministry of Public Health have improved the health-care system in detention facilities.

282. The State Health Services Administration, which had previously been responsible for health-care provision at COMCAR, is now also responsible for El Molino, the National Rehabilitation Centre and the Punta Rieles facility, and has begun to provide services at the Libertad facility under the gradual plan for full nationwide coverage.

283. Since 2008, when an agreement was signed under which the Ministry of Public Health would assume responsibility for the health care of persons deprived of their liberty, the gradual transfer process has been stepped up with the support and cooperation of both the State Health Services Administration and the Prison Medical Service.

284. The remaining facilities in the metropolitan area come under the responsibility of the Prison Medical Service, while those outside the capital are served by doctors attached to departmental police headquarters in coordination with public hospitals.

285. Nurses have been provided with the basic facilities required for primary health care, and the number of technical staff allocated for the treatment of persons deprived of their liberty has been increased.

286. Under a cooperation project with the European Union launched in November 2011, Uruguay plans to adapt existing infrastructure with a view to establishing a prison referral hospital that can provide surgery and other treatment in areas reserved exclusively for detainees. The facility will have areas set aside for the care of persons with severe psychiatric illnesses.

287. In addition, under a project financed by the Global Fund to Fight AIDS, Tuberculosis and Malaria entitled "Towards social inclusion and universal access to HIV/AIDS prevention and comprehensive care for the most vulnerable population groups in Uruguay", an agreement was signed between the Ministry of the Interior and the Ministry of Public Health with a view to achieving the general aims of the project.

288. These aims are: (a) to ensure that men who have sex with men (MSM) and homosexuals have universal access to prevention, diagnosis and treatment not only of HIV/AIDS but also of other sexually transmitted infections; (b) to strengthen these groups and their associations; (c) to ensure full social inclusion of these groups and full exercise of their citizenship; and (d) to assist in consolidating a national registration system in this regard.

289. Furthermore, pursuant to Act No. 18426 on protection of the right to sexual and reproductive health (annex XVII), the Ministry of Public Health began supplying condoms to persons deprived of their liberty throughout the country in late 2011.

290. In November 2011 an agreement was signed with the National Drugs Council on the transfer of 4,472,600 Uruguayan pesos (approximately US\$ 212,980) to fund refurbishment works in hospital detention facilities and emergency rooms, as well as the premises in which the information, consultancy and advisory service is housed.

291. Thanks to an emphasis on better management, the food supply situation at Libertad prison, the National Rehabilitation Centre (for women) and Maldonado has greatly improved. COMCAR and Canelones Departmental Prison continue to present a challenge.

292. In facilities where health services are provided by the State Health Services Administration, examinations of inmates are guaranteed at the time of arrest and transfer and prior to release. Special attention has been paid to the prevention of ill-treatment of inmates when they are transferred between detention facilities.

293. The provision of additional prison space and the commitment to manage the system in accordance with the principle of dignity and respect for the rights of persons deprived of their liberty facilitated the permanent closure of the section known as Las Latas and the relocation of almost 600 inmates whose physical and mental health were at serious risk.

294. The steps taken in the second half of 2011 represented an important qualitative change for a facility that was traditionally managed exclusively on the basis of security criteria.

295. It should be noted that levels of conflict have fallen significantly since the start of an uninterrupted phase of improvements in conditions of detention. This can be ascribed to the opportunities provided for dialogue with the prison population, the agreement reached on the implementation of the so-called Beehive Plan, or the plan for general cleaning of the central cell block, the replacement of all mattresses and blankets, the provision of toys for

children in the visiting room, cleaning by the inmates, the election of representatives, the fitting-out of a new consulting room, the launch of a psychological and social study of the entire prison population and a survey of persons who do not receive visits.

296. With regard to modules 2-4 at COMCAR, the plan for improved conditions of detention at the facility began with the closure and subsequent refurbishment of one of its modules (module 3). Once that is completed, inmates who have already been classified will be transferred there and all the other modules in the complex will gradually be closed for refurbishment and reopened, including those that were recommended for closure by the Special Rapporteur on the question of torture.

297. Resolution No. 1866/008 has been reviewed, as it predates the exponential increase in the population concerned.

298. The Uruguayan State recognizes that it was tardy in incorporating the concept of equity, in terms of the rights of women and men, into its approach to current social issues.

299. This social reality is reflected in the prison system, since the number of women in detention facilities is small compared to the number of men.

300. Female detainees have been incorporated into the prison system without due account being taken of their particular needs. There are shortcomings in their conditions of detention, building design, educational, employment and recreational rehabilitation programmes, health care, etc.

301. Despite this situation, the Uruguayan State has made significant efforts to address the particular needs of the female prison population, as explained in this report in the reply to question 26.

302. The problem of overcrowding at Montevideo Women's Prison was resolved through the closure of the Cabildo facility and the rehousing of the female inmates at the National Women's Rehabilitation Centre, which currently has spare capacity.

303. In April 2010 the El Molino facility in Montevideo, which has a capacity of 30 places, was opened. It accommodates mothers with children up to 4 years of age.

304. Also in 2010, a women's detention facility was opened in the Department of Lavalleja, in the Campanero area, 145 kilometres from the capital city. It is a modern block located in a suburban area, where the women can engage in various activities.

305. In July 2012, the women's facility in the city of Canelones, 45 kilometres from the capital, was closed. It had an endemic problem of overcrowding; the last inmates were moved to the Montevideo facility.

306. A women's block is currently under construction in Salto and is to be prepared for occupation by the end of 2012.

307. Information on the legal regime, in particular on the possibility of home detention during the last three months of pregnancy and the first three months of breastfeeding, is provided by defence counsel.

308. With regard to the dissemination of information on Act No. 17817, training courses for prison service staff cover the content of the Act, and meetings have been organized with the Public Defence Service for Criminal Enforcement and the Public Defence Service for Criminal Cases. No statistical survey of the number of cases in which the Act has been applied is currently available.

**Reply to paragraph 13 of the list of issues**

309. The State has invested in the refurbishment and the building of additional spaces in the SER Centre and is continuing to fit them out for occupation. Substantial investments have been made, particularly in level 2 of the Centre, and 26 new spaces have been created.

310. While the Uruguayan State recognizes the difficulties faced at Colonia Berro, the possibility of its closure has not been assessed for the time being.

311. First, this is because it has not been possible to find an appropriate site for the construction of a new facility with sufficient safeguards for juvenile inmates.

312. Secondly, the Uruguayan State has no plans to build facilities with a high concentration of juveniles that might breach international standards of detention and care applicable to juveniles deprived of their liberty.

313. Thirdly, it should be borne in mind that Colonia Berro houses in its 13 centres more than 320 juvenile detainees out of a total of 440. Its closure would mean that, within a short time, it would be necessary to address the needs of a large number of juveniles that are currently met by the existing centres.

314. Fourthly, it should be noted that the number of juveniles deprived of their liberty is increasing, that the problem of escapes by juveniles has been largely contained, and that other detention facilities are being refurbished, which means that juvenile detainees are being transferred to Colonia Berro.

315. Significant progress has been made in the provision of certain services to juveniles in detention facilities.

316. With regard to food, the Nutrition Department of the Uruguayan Institute for Children and Adolescents determines the quantity of provisions to be delivered to facilities on the basis of the number of people to be fed (juvenile inmates and staff). Given the increase in the number of staff and of juveniles deprived of their liberty, it is estimated that the quantity of provisions will increase by 20 per cent a year, amounting to 8 million Uruguayan pesos (approximately US\$ 380,952).

317. With regard to drinking water supplies, access to water both for consumption and for other purposes has been uninterrupted, except for one-off incidents that have been resolved on the day on which they occurred.

318. Sanitation services in the capital are provided by the Departmental Council of Montevideo and in the rest of the country by the State Sanitary Works Administration. In Montevideo the services have always been connected with the city's sanitation networks. In Colonia Berro there are septic tanks which comply with the regulations in force and are in good condition. In this area, sanitation services have been provided 24 hours a day for years by the Ministry of Transport and Public Works.

319. Medical services have been increased substantially, particularly in the areas of mental health and addiction treatment.

320. In addition to the health-care staff to be hired through the competitive recruitment process currently under way, the care provided has been increased through psychiatric and addiction clinics. The number of juveniles receiving care is set to increase by 50 per cent, with an annual cost increase of some 15 million Uruguayan pesos (approximately US\$ 714,285).

321. Act No. 18771 of 23 June 2012 (annex XVIII) establishes the Adolescent Criminal Responsibility System (SIRPA) as a decentralized body of the Uruguayan Institute for Children and Adolescents; it will act as a transitional body until the Adolescent Criminal Responsibility Institute (IRPA) is established as a decentralized service.

322. The Act establishes the administrative structure of the new System and allocates resources to meet its infrastructural requirements, including construction, upgrading and refurbishment of property, communications, external and internal electronic monitoring and vehicles.

323. Another important piece of legislation is Act No. 18777 of 6 July 2011, pursuant to which attempted theft and complicity in theft are included among the criminal offences for which adolescents may be prosecuted. The Act extends the duration of detention as a precautionary measure for the most serious criminal offences (robbery, homicide or rape) from 60 to 90 days. Under the Act, the absence of a report from the technical team at the place of detention does not prevent the court from handing down a final judgement.

324. Act No. 18778 of 6 July 2011 establishes a National Register of Criminal Records of Adolescents in Conflict with the Law. Under the Act, where an adolescent in conflict with the criminal law has been convicted of rape, robbery, illegal occupation, abduction or homicide, the court may, when handing down a judgement, order the retention of the records as an accessory penalty so that, if the adolescent commits another premeditated offence or an offence with unintended consequences after reaching the age of majority, that offence may not be regarded as his or her first offence for two years after the age of majority is reached or the sentence is served.

325. The State has also taken various steps to deal with the alarming situation of juveniles deprived of their liberty.

326. The implementation in 2011 of a work plan aimed at reducing the number of escapes from detention led to a dramatic increase in the prison population (of around 60 per cent), which in turn exacerbated all the problems associated with overcrowding (space problems and an increase in the level of conflict).

327. Since then, intensive efforts have been made to provide additional space. Existing facilities have been altered and refurbished and new ones have been equipped. The Centre for Precautionary Measures (CMC) has been equipped with capacity for 34 inmates and level 2 of the SER facility has been adapted to provide space for 26 additional inmates.

328. Investments are also being made in the La Casona and Cepirli facilities with a view to expanding their capacity and improving conditions of detention. The desired removal of the metal modules that were being used as a temporary solution to relieve the overcrowding at its peak has now been completed.

329. With regard to measures taken to abandon the punitive approach, it should be made clear that this approach was never adopted in respect of juvenile offenders either in theory or in practice.

330. The Government recognizes that some of the practices used appeared to be based on a punitive approach because of the existence of gaps and loopholes pending the development of a comprehensive protection model, but the punitive approach was never expressly chosen.

331. The legally established social and educational approach to the care of juveniles in conflict with the criminal law is based on the United Nations comprehensive protection model, which focuses on responsibility and implementation of rights.

332. This model is the most appropriate for establishing criminal law based on the act rather than on the perpetrator (i.e. the juvenile's act is the source of the problem rather than the juvenile himself or herself). The newly established institution is therefore known as the Adolescent Criminal Responsibility System.

333. With regard to the deprivation of liberty as a last resort, it should be noted that the Children and Adolescents Code establishes the principle of subsidiarity of deprivation of liberty as a measure of last resort and for the shortest appropriate period of time.

334. Article 74, paragraph C, of the Code states the principle governing detention, stipulating that a person may be detained only in the event of flagrant offences or where there is sufficient evidence of the commission of an offence. In the latter case, detention is subject to a written order from a competent court communicated by reliable means. Detention is an exceptional measure.

335. Article 76, paragraph 12, of the Code provides that deprivation of liberty shall be used only as a measure of last resort and for the shortest appropriate period. The grounds for concluding that deprivation of liberty is the only possible penalty must be stated.

336. Lastly, article 87 of the Code stipulates that: "The court is not required to impose custodial measures. Such measures shall be imposed where, in view of the legal requirements, there are no other appropriate measures that are non-custodial. The court shall state the grounds for not imposing other measures."

337. Judges in such cases have participated in many training events, exchanges and joint work on developing the comprehensive protection model for juvenile justice. Staff of the Public Prosecution Service have also participated in these events, including exchange visits to other countries in order to learn about best practices.

338. It should be noted that, despite these efforts, the number of juveniles deprived of their liberty has increased, even though the number receiving non-custodial sentences has also increased significantly.

339. Of the 1,745 juveniles who passed through the Adolescent Criminal Responsibility System in 2010, 1,213 were deprived of their liberty and 532 received non-custodial sentences.

340. In 2011, the number of juveniles who passed through the System rose to 2,345, with 1,360 being deprived of their liberty and 985 receiving non-custodial sentences.

341. The Act establishing the System provides for five programmes: (a) entry, study and referral; (b) non-custodial socio-educational measures and mediation; (c) custodial and semi-custodial socio-educational measures; (d) curative measures; and (e) integration into society and the community on release.

342. In addition, adolescents who reach the age of 18 during the implementation of the measure ordered by the competent court remain in the same facility until they have completed their term, irrespective of their age. They are not transferred either to adult facilities or to special programmes.

343. In other words, an adolescent who reaches the age of majority and has not yet completed the term of custody ordered by the court remains in custody until the term is completed or until the competent court substitutes a socio-educational measure for the custodial measure. Article 91 of the Children and Adolescents Code expressly provides that an adolescent who is in custody on reaching the age of 18 shall under no circumstances serve the remainder of his or her term in facilities intended for adults.

344. In addition, agreements have recently been concluded with various private and public enterprises, pursuant to which a number of juveniles have been offered employment opportunities. Although the number of people covered by these agreements is small, employment opportunities have been increasing. With regard to academic and vocational training, the number of agreements with State bodies providing vocational training has increased.

345. Agreements on the provision of sports facilities in detention centres have also been signed, and inmates participate in various cultural programmes in the context of non-formal education. Therapeutic intervention workshops are also conducted with juveniles who have committed offences involving sexual abuse or extreme violence, under agreements with civil society organizations.

346. Juvenile detainees participate in formal educational activities, courses at the Vocational University of Uruguay (construction and sanitation), football workshops, and non-formal education (Theatre in the Classroom, sexuality and gender workshops, workshops on psychoactive substance abuse, Theatre of the Oppressed, educational visits to Flores island in conjunction with the National Navy of Uruguay, participation in radio programmes, yoga, library visits and cultural activities run by the Uruguayan Institute for Children and Adolescents, such as music, bands, theatre, plastic arts and photography).

#### **Reply to paragraph 14 of the list of issues**

347. In facilities where health services are provided by the State Health Services Administration, examinations of inmates are guaranteed at the time of arrest and transfer and prior to release. Special attention has been paid to the prevention of ill-treatment of inmates when they are transferred between detention centres.

348. The principal functions of the Parliamentary Commissioner for the Prison System, an office established in 2003 pursuant to Act No. 17684 are to advise the legislature on monitoring compliance with domestic legislation and international treaties ratified by Uruguay concerning the situation of persons deprived of their liberty as a result of legal proceedings, and to supervise the work of the bodies responsible for prison administration and the reintegration of prisoners or former prisoners into society.

349. With a view to performing his or her functions, the Commissioner may request information, pay unannounced visits to places of detention, receive complaints from persons deprived of their liberty and make recommendations to the prison authorities.

350. The Parliamentary Commissioner is not subject to a binding mandate, receives no instructions from any authority and performs his or her tasks completely independently, as he or she sees fit and on his or her own responsibility.

351. The Commissioner conducts around 500 visits each year and submits a report on each one to Parliament. He or she also receives reports and complaints of ill-treatment and, where there is sufficient merit, files criminal complaints with the courts.

352. Since the establishment of the office of Parliamentary Commissioner for the Prison System, the Ministry of the Interior has received around 1,100 official letters with recommendations and requests for reports. In the period 2010–2011, the number fell significantly: 57 official letters were received. To date, 45 of these have been answered and the remainder are being processed.

353. The number of complaints or cases filed against law enforcement officers in the performance of their duties in 2010 was 437.

354. In addition, since his appointment in 2005, the Parliamentary Commissioner has filed dozens of criminal complaints of ill-treatment or failure to care for persons deprived of their liberty.

355. In the past year, the following complaints have been filed:

(a) On 27 November 2011 a violent intervention by law enforcement officers occurred at Canelones Departmental Prison, during which at least nine inmates were injured. Following the incident, the Commissioner immediately filed a complaint of torture against two officers (art. 21 of Act No. 18026). One of them was charged with that offence

and the other was prosecuted for abuse of authority. The case is still being heard by the Canelones Court of First Instance. The officers are still in detention. This is the only case to date in which a serving official has been prosecuted for torture because the judges in other cases have laid charges of bodily harm or other offences under the Criminal Code;

(b) On 20 April 2011, eight inmates of the Libertad facility were injured by guards. On 8 May 2011 the Commissioner filed a complaint with the relevant criminal court (the City of Libertad Court of First Instance) and broadened the complaint on 29 May 2012 after obtaining evidence that another four inmates had been injured. Both complaints are currently being investigated;

(c) In February 2012 a violent incident took place at Las Rosas Departmental Prison, 150 kilometres from Montevideo, in which five inmates were injured by five officers. The Commissioner's Office filed a complaint with the facility's management, which in turn filed a criminal complaint leading to the prosecution of the five officers involved in the incident;

(d) On 30 May 2011, 17 inmates were injured in an incident at Rivera Departmental Prison, 500 kilometers from Montevideo. The Parliamentary Commissioner filed a criminal complaint and the proceedings are currently at the investigation stage;

(e) Between September and November 2011, the Office of the Parliamentary Commissioner filed three criminal complaints concerning failure to provide medical care at three facilities (Libertad, Cabildo and Canelones). One of the complaints concerned events prior to the death of the inmate Julio César Isabella Linares, a 24-year-old Argentine national who died at the Libertad facility on 5 May 2012.

356. The Observer Committee for Adolescents Deprived of their Liberty was established by Resolution No. 2923 of the Uruguayan Institute for Children and Adolescents on 23 November 2007 for the purpose of monitoring respect for the rights of adolescents in the system, keeping the Institute's Board of Directors informed and delivering opinions where necessary.

357. The Committee is composed of a representative of the Ministry of Education and Culture, a representative of the judiciary, a representative of the Luis Morquio Paediatrics Institute of the Faculty of Medicine, a delegate of the United Nations Children's Fund (UNICEF) and representatives of four NGOs.

358. In practice, the Committee makes regular visits to juvenile detention facilities and issues recommendations.

359. One of the major shortcomings of this mechanism is that it lacks the necessary budget for the performance of its functions.

360. In its 2012 report to the Uruguayan Institute for Children and Adolescents, the Observer Committee provided input that was recorded and is being analysed by the Institute, particularly with regard to the situation at the SER and Piedras facilities.

361. The longest-standing preventive mechanism in the Uruguayan legal system is the office of Inspector-General for Psychopaths established by Act No. 9581 of 1936.

362. Pursuant to article 38 of the Act, the Inspector-General's functions consist, inter alia, in inspecting and monitoring public-sector and private assistance to psychopaths throughout the country and all mental health care; compiling a general register of psychopaths for the whole country; visiting and conducting thorough inspections of public-sector and private facilities for psychopaths once every three months; and, where such action is deemed advisable, checking the situation of patients who live in private accommodation, either in their own or in someone else's home.

363. The Inspector-General for Psychopaths may also issue warnings and propose penalties against doctors or directors of facilities who breach the provisions of the Act; take action on requests concerning the opening of new facilities; receive and process all reports of substandard treatment and refer cases of dispossession and arbitrary or improper detention of psychopaths to the ordinary courts; and submit a detailed annual report to the Ministry of Public Health on progress in facilities and assistance to psychopaths throughout the country, with observations resulting from his or her inspections.

364. The Inspector-General is also authorized to intervene in cases where the attending doctor refuses a request by a patient's guardians or legal representatives to discharge the patient, and to promote the establishment of welfare agencies for the protection of patients discharged from psychiatric institutions.

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365. As at 31 July 2012, 65 per cent of the total prison population (6,065 persons) were in pretrial detention. Of this total, 5,588 were men and 477 were women.

366. First-instance judgements have been rendered to date in the case of 535 persons. Judgements on appeal have been handed down in the case of 2,924 persons.

367. The total number of persons deprived of their liberty who have currently spent 24 months or more in pretrial detention is 1,120 for the country as a whole.

368. It should be noted that the existing legislation does not set a legal time limit for pretrial detention. The concept of a reasonable period of detention in terms of doctrine and jurisprudence is applied.

**F. Due process and the right to recognition as a person before the law (arts. 14 and 16)**

**Reply to paragraph 16 of the list of issues**

369. During the pre-dictatorial period and the last period of military dictatorship in Uruguay (27 June 1973 to 15 February 1985), adults and children were subjected to the deviant practice of enforced disappearance. Serious violations of human rights and fundamental freedoms began to be committed by the Uruguayan State for political and ideological reasons during those decades; the outcome was thousands of political prisoners, the systematic practice of torture in detention centres, summary executions and enforced disappearances.

370. The investigations of cases reported as enforced disappearance conducted to date have confirmed the disappearance of 28 Uruguayan citizens since 1971 and 8 Argentine citizens. With regard to disappeared children in Uruguay, the complaints included one case of a child who was located in 2000 and whose identity was restored. All cases were duly reported to the United Nations Working Group on Enforced or Involuntary Disappearances.

371. Attempts on the part of civil society to shed light on the facts were impeded by the adoption of Act No. 15848 (Act concerning the Expiry of the Punitive Powers of the State) of 22 December 1986.

372. Article 1 of the Act provides that "as a logical consequence of the situation established by the agreement between the political parties and the Armed Forces in August 1984 and in order to complete the transition to full enforcement of the constitutional order, the exercise of the punitive powers of the State in respect of crimes committed prior to 1 March 1985 by military and police personnel, for political reasons or in the performance

of their duties and on orders from commanding officers who served during the de facto period, shall be deemed to have expired”.

373. Some of the legal obstacles imposed by Act No. 15848, which impeded the investigation of serious human rights violations, were mitigated by executive decisions taken by the last two Administrations (from 2005 to 2010 and since 2010) to the effect that the complaints involved were not covered by the Act.

374. During the presidency of José Mujica, all administrative decisions and communications of previous Governments that had deemed all complaints of serious violations of human rights to be covered by the Expiry Act were revoked on grounds of legitimacy by Executive Resolution CM/323 of 30 June 2011.

375. Act No. 15848 remained in force until 27 October 2011, when Parliament adopted Act No. 18831, which restored the State’s punitive powers and suspended the statute of limitations in respect of crimes committed during that period. Article 1 of the Act stipulates that: “The State’s full punitive powers are hereby restored in respect of crimes committed in the context of State terrorism prior to 1 March 1985 and falling under article 1 of Act No. 15848 of 22 December 1986.”

376. Following the enactment of this legislation, numerous complaints of human rights violations were retrieved from the files and are currently being addressed by various criminal courts.

377. In 2000, while the Act concerning the Expiry of the Punitive Powers of the State was still in force, the Office of the President of the Republic established the Peace Commission (COMIPAZ) by Executive Decree to investigate the situation of disappeared detainees and of minors who had disappeared in similar circumstances.

378. In 2003 a Secretariat for Follow-up to the Peace Commission was established as a substitute for COMIPAZ by a Resolution of the President’s Office dated 10 April 2003 to perform administrative functions and to take up and continue any pending proceedings initiated by COMIPAZ.

379. In the meantime, both the membership and the mandate of the Secretariat have been modified.

380. The present Government, following the same course as the two previous Governments and upholding their commitment to human rights and to the national, regional and international legal instruments in which such rights are enshrined and guaranteed, continued and stepped up the investigations into the fate of prisoners who disappeared between 1973 and 1985, declaring its competence to take legal action, to secure compensation for the damage suffered and to take steps to ensure the non-recurrence of such acts.

381. An important institutional development has been the establishment of an Inter-ministerial Commission (Executive Resolution CM/369 of 31 August 2011) and the broadening of the membership and functions of the Secretariat for Follow-up, which is now composed of an Executive Coordinator, a representative of the Public Prosecution Service, a representative of civil society organizations, two representatives of the University of the Republic in the fields of history and forensic anthropology, and an Administrative Secretariat.

382. As mentioned above, all past administrative decisions stating that criminal proceedings for human rights violations were covered by the Expiry Act have been revoked on grounds of legitimacy. It has therefore been possible to retrieve from the files complaints that had been duly filed with the relevant criminal courts. To facilitate this task, the Secretariat for Follow-up compiled a list of such complaints which it sent to the Supreme

Court of Justice and which were published on the web page of the Office of the President of the Republic.

383. Furthermore, a new agreement was signed between the Office of the President and the University of the Republic, whereby the parties pledged to take joint and coordinated action to locate the remains of persons reported as disappeared or murdered for political reasons during the former dictatorship, and to establish the historical truth concerning those events by conducting searches in the State archives and repositories and disseminating the results, thereby ensuring the continuity of the work accomplished by the anthropological and historical teams.

384. In addition, updates concerning the research conducted by the historical and anthropological teams were published on the website of the Office of the President of the Republic, including the results of the work on the Inactive Records of the Central Hospital of the Armed Forces.

385. Since the referral to the criminal courts of cases concerning serious violations of human rights, the Secretariat for Follow-up has been working closely with legal officials, systematically passing on all information in its possession that may be required by the courts and the families of victims.

386. Aside from all the aforementioned actions taken by the Uruguayan State with a view to uncovering the truth concerning the fate of detainees and disappeared persons under the de facto regime and investigating the serious human rights violations committed during that period, mention should also be made of the judgement against the State of Uruguay handed down by the Inter-American Court of Human Rights in the case of *Gelman v. Uruguay* on 24 February 2011.

387. It should be noted in this regard that the Secretariat, in coordination with the Inter-ministerial Commission established by an Executive Resolution, is diligently applying the Inter-American Court's ruling and to that end has taken the following action:

(a) It intervened directly in the administrative procedures for payment of compensation to Macarena Gelman García and her defence lawyers;

(b) The lines of inquiry into the whereabouts of the remains of María Claudia García Irureta Goyena and the other disappeared persons were broadened;

(c) In coordination with the Inter-Ministerial Commission and Macarena Gelman, a ceremony led by the President of the Republic recognizing the responsibility of the Uruguayan State was held in the General Assembly of the country's Parliament on 21 March 2012;

(d) The building belonging to the Defence Intelligence Service and used as a secret detention centre was closed down and handed over to the newly established National Human Rights Institution and Ombudsman's Office. A commemorative plaque dedicated to María Claudia García Irureta Goyena de Gelman and Macarena Gelman García was placed on the site. The mother and daughter had been there together until they were separated;

(e) With a view to completing the genetic databank of families of the disappeared, which is maintained by the National Institute for the Donation and Transplant of Cells, Tissues and Organs based at the Ministry of Public Health, an agreement was signed between the President of the Republic, the Secretariat for Follow-up and the Institute for the acquisition of the inputs and reagents necessary for the collection and analysis of genetic samples;

(f) Three archivists joined the Secretariat to organize the storage of the documents produced during the proceedings of the Peace Commission and the Secretariat for Follow-up;

(g) Work was begun on the establishment of a central database for the Secretariat's documents and investigations;

(h) Arrangements were made with the Ministry of Defence and the Supreme Court of Justice for access by the Secretariat's team of historians to the medical records held at the Military Hospital and the case files of the Military Supreme Court; this work is still in progress.

388. Thanks to these measures, the Government of Uruguay is in a position to present tangible results (as at 31 July 2012) of its policy of consistently promoting and protecting human rights, also with respect to its efforts to eradicate the deviant and inhumane practice of enforced disappearances.

389. Before the launching of the coordinated campaign of repression known as "Operation Condor" in the Southern Cone of Latin America in 1975 and during its implementation in the following years, enforced disappearances of Uruguayan men and women occurred in Chile, Argentina, Paraguay, Bolivia, Brazil and Uruguay. According to the investigations carried out to date, 178 cases have been confirmed, three of which involved children disappeared together with their parents.

390. With regard to disappeared children born in captivity in secret detention centres in Argentina, 13 were ultimately located and had their identities restored, thanks in part to the commendable work of Argentine human rights organizations.

391. In Uruguay, the investigations conducted to date into reported cases have confirmed the disappearance of 28 Uruguayan citizens since 1971 and 8 Argentine citizens. With regard to disappeared children in Uruguay, the complaints referred to the case of a child who was located in 2000 and whose identity was restored.

392. The Secretariat is also investigating recent reports of cases of enforced disappearance of Uruguayans within Uruguay during the years in question, so that the figures may change in the light of these investigations.

393. The investigations carried out by the Secretariat, and in coordination and cooperation with official human rights bodies in the countries where the disappearances occurred, have succeeded in clarifying a total of 25 cases in Uruguay, Argentina, Chile and Bolivia.

394. In the most recent stage of the investigations, two cases of disappeared persons were clarified through the discovery of their remains: on 21 December 2011 the remains of Uruguayan citizen Julio Castro Pérez, a teacher who disappeared on 1 August 1977, were discovered at the headquarters of Infantry Battalion 14, and on 15 March 2012 the remains of Uruguayan citizen Ricardo Blanco Valiente, who disappeared on 15 January 1978, were found, also at the headquarters of Infantry Battalion 14.

395. Concurrently with this action, the Uruguayan State has gradually been bringing its legislation into line with international human rights law, incorporating international norms and standards on enforced disappearance while repealing incompatible provisions of domestic legislation.

396. It should be noted that article 7 of the Uruguayan Constitution stipulates that "the inhabitants of the Republic have the right to be protected in their enjoyment of life, honour, freedom, security, labour and property". No one may be deprived of any of these rights save in accordance with laws that may be enacted in the general interest.

397. In addition, the right not to be subjected to enforced disappearance is implicitly enshrined in article 72 of the Constitution, which states that "the list of rights, duties and guarantees set out in the Constitution does not exclude others that are inherent in the human person or that are derived from the republican form of government".

398. The criminalization of enforced disappearance in Uruguayan law is a recent development and was achieved through the adoption of Act No. 18026 of 4 October 2006. This Act establishes a framework for cooperation with the International Criminal Court in combating genocide, crimes against humanity (including enforced disappearance) and war crimes.

399. Before the criminalization of enforced disappearance, the legislature had established rules for resolving civil issues arising from the enforced disappearance of persons.

400. Thus, Act No. 17894 of 19 September 2005 declared “persons whose disappearance within the national territory was confirmed by the (...) final report of the Peace Commission absent by reason of enforced disappearance”. This declaration of absence made it possible, after decades had passed, to take legal action regarding the estate of persons deemed to be “absent” under this provision.

401. Some months after the adoption of the Act, enforced disappearance of persons was incorporated into the Uruguayan legal order as a criminal offence under article 21 of Act No. 18026 (the scope of which will be described in a separate section, as it is a key aspect of this national report).

402. In addition, Act No. 18596 of 19 October 2009 acknowledged the State’s unlawful actions between 13 June 1968 and 28 February 1985 and its resulting liability as follows: “The breakdown in the rule of law that prevented people from exercising their fundamental rights, in violation of human rights and international humanitarian law, is hereby acknowledged” (art. 1 of the Act). The period covered by the Act, which is longer than that of the de facto regime, includes the years preceding the institutional breakdown, during which, as already mentioned in this report, cases of enforced disappearance occurred.

403. Act No. 18831 of 27 October 2011 repealed Act No. 15848 concerning the Expiry of the Punitive Powers of the State, thereby making it possible to proceed with judicial investigations into cases of enforced disappearance. According to article 1 of the Act, “The State’s full punitive powers are hereby restored in respect of crimes committed in the context of State terrorism prior to 1 March 1985”. Moreover, no statute of limitations or period of expiry was applicable to such crimes between 22 December 1986 (the date of the so-called “clean slate”) and the entry into force of the new Act, since they were characterized as crimes against humanity in accordance with international treaties.

#### **Reply to paragraph 17 of the list of issues**

404. Provision was made in the budget for the judiciary covering the period 2010–2014 for the recruitment of new judges, technical administrative officers and court officers with a view to the creation of two new family courts of first instance specializing in domestic violence in the city of Montevideo.

405. New technical posts were also created for the purpose of constituting new multidisciplinary teams in other parts of the country to deal with family affairs (including staff specializing in domestic violence and children).

406. Outside the capital city, the Sixth Rota Family Court of Ciudad de la Costa and the Seventh Rota Family Court of Paysandú have already been established.

407. The leasing problems involved in obtaining premises for the Seventh Rota Family Court of Las Piedras are expected to be resolved in 2012.

408. In addition, the Pando Sixth Rota Family Court of Pando has been converted into a court that deals exclusively with cases involving domestic violence and the Children and Adolescents Code. Competitions for recruitment and/or promotion to offices (in the Public

Defender Service roster) of public defender outside the capital city were held and the vacancies were filled.

**Reply to paragraph 18 of the list of issues**

409. The Uruguayan State has taken steps to ensure effective access to justice for vulnerable people. To that end, the Supreme Court of Justice decided on 2 April 2009 to grant procedural rule status (*acordada* is the term used for such decisions by the country's supreme judicial body) to the Brasilia Regulations Regarding Access to Justice for Vulnerable People adopted by the Plenary Assembly of the 14th Ibero-American Judicial Summit. The *acordada* was distributed to all members of the judiciary with a view to its implementation as and when appropriate.

410. It should also be noted that, with a view to improving access to justice, five pilot mediation centres currently operate in different districts of the city of Montevideo to settle disputes between parties who are offered advice by specially trained staff.

411. There are also a number of district legal advice offices. Under its university extension programme, the Law Faculty conducts legal advice activities primarily through the Notarial Clinic, Consultancy and Advice Office and the Faculty Legal Advice Office.

412. Furthermore, in recent years a decentralization process has led to the creation of a Law Faculty district legal advice office in the southern district (Nuevo París), in Unión ("40 Semanas" district) and, pursuant to an agreement with the Departmental Council of Montevideo, three additional offices.

413. The decentralization has also been extended beyond the Department of Montevideo. The Legal Advice Office that has operated in the city of Salto as part of the curriculum taught at the northern regional branch of the University of the Republic has been supplemented with legal advice offices in the cities of Paysandú, Bella Unión and Maldonado.

414. As members of the community of African descent reside for the most part in the outskirts of the city, this type of support for access to justice has a direct impact on that component of the population.

**Reply to paragraph 19 of the list of issues**

415. In September 2004 the Parliament adopted Act No. 17823, entitled the Children and Adolescents Code. This Act is applicable to all persons under 18 years of age; it both asserts their rights and sets forth the obligations of parents, the State and others towards children and adolescents.

416. The Code is based on the following general principles:

- All children and adolescents have the rights, duties and guarantees inherent in the human person;
- All children and adolescents are entitled to the special measures of protection that their status as developing human beings demands from their family, society and the State;
- In interpreting the Code, the provisions of and the general principles enshrined in the Constitution of the Republic, the Convention on the Rights of the Child, domestic legislation and other international instruments that are binding on Uruguay should be taken into account. In case of doubt, general interpretative criteria should be applied and, in particular, the norms governing the specific subject matter;

- In the event of a legal void or inadequacy, general criteria of integration should be applied and, in particular, the norms governing the specific subject matter;
- Account must be taken of the best interest of the child and adolescent in all cases of interpretation and integration of the Code; this involves recognition and respect for the rights inherent in their status as human beings. It follows that this principle cannot be invoked to the detriment of such rights;
- Responsibility for ensuring the effectiveness and for protecting the rights of children and adolescents lies first and foremost with parents or, if applicable, with guardians, while joint responsibility is borne by the family, the community and the State;
- The State must take steps to define the goals and to formulate general policies applicable in different areas that have an impact on children and adolescents and on the family, coordinating activities undertaken by the public and private sectors in those areas;
- In cases where the role of parents and other responsible parties proves to be inadequate, defective or impossible, the State must take action, as a matter of principle, taking all necessary integrational, complementary or supplementary measures to guarantee the proper enjoyment and exercise of the rights of children and adolescents.

417. Article 157 of the Code stipulates that “the Uruguayan Institute for Children and Adolescents, acting through its specialized services, is the body responsible for proposing, implementing and supervising the policy to be pursued with respect to adoptions”.

418. The relevant specialized service referred to in the Act is the Adoption Department, which is technically and administratively organized with the specific aim of dealing with this matter, at both the national and international level.

419. By Resolution No. 791/2006 of November 2006, the executive branch designated the Uruguayan Institute for Children and Adolescents as the central authority responsible for international adoptions, in accordance with the provisions of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, adopted by Uruguay through Act No. 17670 of July 2003.

420. Subsequently, in October 2009, Act No. 18590 introduced a number of amendments to the Children and Adolescents Code relating to adoption.

421. The national legal framework is thus based on the following instruments:

- Convention on the Rights of the Child and its optional protocols (Acts Nos. 16137, 17483 and 17559)
- Children and Adolescents Code of Uruguay (Act No. 17823, amended by Act No. 18590)
- The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (Act No. 17670)
- Inter-American Convention on Conflict of Laws concerning the Adoption of Minors (Act No. 18336)

**G. Protection of minors (arts. 23 and 24)****Reply to paragraph 20 of the list of issues**

422. The minimum age for marriage in Uruguay is admittedly still too low and discriminates between men and women. Moreover, the issue has given rise to observations by the Committee on the Elimination of Discrimination against Women (2002 and 2008), the Committee on the Rights of the Child (2007) and the Human Rights Council (2009).

423. Nevertheless, Uruguay wishes to report that steps have been taken to change the situation.

424. Yet the legislative proposals to increase the age for marriage to 16 years for both men and women introduced in 2009 have so far failed to be enacted by the Parliament of the Republic.

**Reply to paragraph 21 of the list of issues**

425. Prior to the entry into force of the Children and Adolescents Code (24 September 2004), there was evidence of stigmatization of children born out of wedlock in terms of their rights. The new Children and Adolescents Code incorporated the international obligations assumed by Uruguay through its adoption of conventions and treaties, especially the Convention on the Rights of the Child.

426. The Code introduced substantial changes in the registration and affiliation of children born out of wedlock. Before its entry into effect, minors and married persons were prevented from recognizing their children born out of wedlock.

427. Recognition of children born out of wedlock as a voluntary act, regardless of whether the birth has been registered, enables the parents to exercise the rights and carry out the obligations inherent in parental authority.

428. The Code converts recognition into an obligation and a procedure without formalities on the assumption that the very act of registration of a child born out of wedlock by the father, the mother or both presupposes recognition of the child.

429. No limitation either of age or of civil status is currently applicable to the recognition of a children born out of wedlock.

430. This provision enshrines not only the right to identity as a fundamental human right, but also the right to affiliation. Thus, article 23 stipulates: "Every child and adolescent has the right to know who are its parents." The Uruguayan Code broadens and renders more flexible the terms of the Convention on the Rights of the Child in this regard, since article 7.1 provides that "the child ... shall be entitled, to the extent possible, to know his or her parents and to be looked after by them". The status conferred on this right is thus absolute and unrestricted.

431. The Code brought about a major change by means of these provisions in the registration of children born out of wedlock. When the mother dies or is unable or unwilling to register the birth, maternity may be authenticated by an act of registration based on a medical certificate from a person who assisted in the delivery of the child and, as a last resort, on the evidence of witnesses in cases where the birth occurred without medical assistance. Cases falling into the latter category are virtually non-existent at the present time.

432. The explicitly stated right to affiliation is indissolubly linked to the principle of biological truth, a principle that is implemented in practice through action to investigate paternity and maternity (arts. 197 and ff. of the Code).

433. Notwithstanding the entry into force of this new instrument, the regulations applicable to the Civil Status Register (Decree-Act No. 1430 of 12 November 1879 and its Regulatory Decree) have remained in force for 128 years in spite of the social and cultural changes that have occurred in the country; to some extent, this may be taken to indicate that they are still appropriate, although they have also been the subject of a certain amount of criticism.

434. Article 26 of the Code stipulates that: "Every child has the right from birth to be registered with a first name and family name." The article thus explicitly recognizes for the first time the right to a first name and family name, a fundamental right which, in addition to identifying persons, distinguishes them as individuals, a status that is essential for interpersonal relations.

435. It should be noted that, prior to 1 January 1984, persons without family names (children born out of wedlock) born of married parents, who were unable to enter them in the Register as their own children, were nonetheless registered in Uruguay. They were characterized as "children of unknown parents". On that date, Decree-Act No. 15462 entered into force and required the assignation of two identifying family names to children born out of wedlock of parents with married civil status; they continued to be characterized as "children of unknown parents" until the entry into force of the Code.

436. The identifying family names assigned while Decree-Act No. 15462 was in force were drawn by the civil status official undertaking the registration from a list of about one hundred common names, a procedure that disregarded the basic right of every individual to an authentic identity.

437. The Code deleted the term "children of unknown parents" from the birth certificates of children born out of wedlock and established the mother's right and duty to transmit her two family names in cases where she alone registers the child; if the mother has no second family name, the child's first family name will be that of his or her biological mother and the second will be a commonly used name chosen by her (art. 27, para. 4, of the Code). Although the relevant provision of Decree-Act No. 15462 has been repealed by the Code, this new procedure for the assignation of family names is unfair and discriminatory because the child is assigned a "commonly used" second family name, so that the right to transmit authentic family names is disregarded.

438. The Code permits adolescents (as well as persons over 18 years of age) who were belatedly recognized or registered to express their desire to continue using the family names whereby they have thus far been identified. As a result of these provisions, which establish the right and duty of parents to recognize their children born out of wedlock (art. 28 of the Code), the extension of the scope of the Code to persons over 18 years of age and the elimination of existing restrictions and formalities relating to the recognition of the children concerned, the effective exercise of the right to an identity has been achieved.

439. The scope of the Children and Adolescents Code is defined in article 1, which states that it is applicable to all human beings under 18 years of age, that the term child designates all human beings under 13 years of age, and that the term adolescent designates all those over 13 and under 18 years of age.

440. A further important change introduced by the Code enables persons legitimated by adoption to know their original identity and have access to the biological truth. It is contained in article 146, paragraph 3, of the Code which states that: "Access to the record of the adoption proceedings shall be confined to third parties, except for the child or adolescent concerned, who shall enjoy the right of access to the file and his or her background on reaching the age of 18 years."

441. This possibility, whereby persons legitimated by adoption can obtain information about their identity from the judicial file or the original birth certificates, is simply one small step towards compensating the legitimated person for the loss of his or her original identity.

442. Nationality, as the second component of identity according to the Committee on the Rights of the Child, is based under Uruguayan law on article 73 and ff. of the Constitution of the Republic: "All persons born in any part of the territory of the Republic are citizens by birth." "Children of a Uruguayan father or mother are citizens by birth, regardless of where they were born ..."

443. Progress has also been made against the stigmatization of children born out of wedlock in terms of inheritance rights.

444. All children enjoy the same inheritance rights regardless of their origin (natural or legitimate).

445. With regard to the right to health, the establishment in Uruguay of the Integrated National Health-care System in 2007 reflects the State's decision to change the previous health-care structure in order to give priority to areas such as pregnancy and early childhood (based on health-care targets and income differences) and to ensure that all users enjoy equitable basic benefits (Integrated Health-care Plan); these measures will certainly have an impact on the right of access to the best possible health care.

446. In addition, legislative action has been taken to enact instruments that promote the rights of users of the health-care services, some of which are related to the rights of children and adolescents based on the new paradigm supported by the Committee on the Rights of the Child and the Children and Adolescents Code (Act No. 18335 on patients and users of health-care services and its Regulatory Decree No. 274/010; Act No. 18426 on protection of the right to sexual and reproductive health and its Regulatory Decree No. 293/010).

447. The National Health Board is in the process of disseminating information on rights and benefits under the Integrated National Health-care System through the Booklet on Health-care Rights of Users, which is distributed by all health-care providers and calls for changes in some health-care practices, especially in the care provided to children and adolescents.

448. Alongside these developments, professionals and institutions have just begun to apply the guaranteed health-care approach, so that measures to stimulate this process must be promoted.

#### **Reply to paragraph 22 of the list of issues**

449. On this point, the State party wishes to report that, thanks to the action taken in support of children and adolescents, the number of children and adolescents living or working in the street has steadily declined. The data show that, while approximately 3,100 children were living or working in the street in Montevideo and its metropolitan area in 2003, that figure had dropped to less than 1,900 by 2007. Nevertheless, there is clearly a need for continued vigorous action to reduce the number of children living or working in the street until the phenomenon is eradicated.

450. To achieve those aims, a strategic approach has been adopted to programme implementation in order to avoid institutional overlapping in the provision of services for children living or working in the street. Moreover, the services provided have begun to reverse a trend discernible in recent decades towards a weakening of the capacity, particularly in terms of human resources, of the Uruguayan Institute for Children and Adolescents (INAU). This stemmed from an intrinsic weakness in its ability to spearhead sustainable initiatives on behalf of children living or working in the street.

451. Currently, however, action is being taken to reverse the situation by means of more effective coordination among agencies involved in dealing with issues related to children living or working in the street, an increase in the services provided and an expansion of the Institute's human resources.

452. It is hoped to improve the services by organizing diversified responses to different contexts and introducing new methods of intervention. Mention should also be made of the measures taken to promote coordination with the education and health-care sectors in order to ensure that the rights of the children and adolescents concerned are fulfilled.

453. For example, INAU implements the programmes known as "Calle" and "Calle Extrema" jointly with INFAMILIA/MIDES (Ministry of Social Development) with a view to alleviating the harm to which children and adolescents living and working in the street under extreme circumstances are exposed, seeking to enable them and/or to restore their ability to exercise their rights. In 2009, the Calle Programme benefited a total of 516 children and adolescents, while the Calle Extrema Programme benefited 60 children and adolescents living in extremely vulnerable conditions. The Service Network also implements 20 direct support projects and the Mobile Unit undertakes immediate interventions. Support for children and adolescents in extreme circumstances (under the INAU-INFAMILIA project) has been expanded by means of two projects implemented jointly with NGOs and other bodies forming part of the "Network of support for children and adolescents living in extreme circumstances", which began to operate in November 2008. By October 2009 the programme was providing support for 820 children and adolescents.

454. Furthermore, during 2010 a number of agreements on comprehensive support for children and adolescents living or working in the street were concluded. Under these agreements, assistance was provided in the areas of health care, housing, literacy education and food for the young people concerned. In addition, agreements concluded with civil society organizations and the Ministry of Tourism and Sport led to the organization of various recreational and sports activities designed to promote the integration of children living or working in the street into society.

455. Attention should be drawn in this context to activities aimed at coordinating the various support projects for children living or working in the street (community street project, business street project, extreme circumstances project, mobile external request response units) with other social policy programmes on behalf of children and adolescents, particularly arrangements for various monetary transfer procedures.

456. Mention should also be made of a number of new programme initiatives involving personalized support for enrolment in the education system ("school/secondary school attendance"); programmes to strengthen the family's socializing role; specific programmes to address the most critical street situations; care programmes and centres for consumers of psychoactive substances (especially cocaine paste).

457. These activities are supplemented by others such as enrolment system reform, extension of the coverage of households and shared living areas, and the creation of transitional shelters. To that end, an INAU and INFAMILIA/MIDES project network to address extreme street circumstances is already being implemented. There is also a discussion forum, known as "Espacio Calle", between INAU and the 21 civil society organizations with agreements on the implementation of support projects on behalf of children and adolescents living or working in the street. Lastly, it should be noted that INAU and INFAMILIA/MIDES plan to launch initiatives aimed at supporting children living or working in the street outside the capital city.

458. Preventive action will be taken to promote the early detection and tackling of potential situations involving child labour within and outside the household. A programme

of “family education agreements” is to be implemented which will include a study-grant system (which can replace income from employment), and extracurricular and material support from educational facilities, with a commitment to adolescent assistance and promotion during the academic year.

459. The eradication of child labour also calls for close collaboration with communities and the establishment of an effective inspection system. To that end, it has been decided to involve communities in public-sector action to eradicate the worst forms of child labour (garbage picking, waste sorting, bricklaying, work in the street), to intensify and upgrade the inspection system, and to monitor economic units that seek and employ child and adolescent workers in both rural and urban activities. To that end, INAU has already hired six new labour inspectors who have joined the existing staff.

460. Lastly, the National Committee for the Eradication of Child Labour (CETI) has organized awareness-raising days and campaigns, together with ILO Uruguay, on the issue of child labour with a view to combating the social stigmatization of child victims of economic exploitation.

#### **Reply to paragraph 23 of the list of issues**

461. Uruguay, as a State party to all of the United Nations treaties concerning the rights of refugees, has pursued policies and implemented legislation that ensure full respect and protection for refugees.

462. For example, the Uruguayan State adopted Act No 18076 (annex XIX) and Act No. 18382, which fully reflect the standards and principles enshrined in those treaties.

463. Article 20 of Act 18076 requires the State to guarantee the enjoyment and exercise by refugees and asylum seekers of the civil, economic, social, cultural and all other rights inherent in the human person that are accorded to the inhabitants of the Republic under the international human rights instruments ratified by the State and in its domestic legislation.

464. Article 10 of Act No. 18076 requires the Uruguayan State, when dealing with any request for refugee status, to respect certain principles, namely: non-discrimination; non-rejection at border crossings; non-refoulement (direct or indirect) to a country where his or her life, physical, moral and intellectual integrity, freedom or security are at risk; non-imposition of penalties for illegal entry into the country; most favourable interpretation and treatment; and confidentiality.

465. The Uruguayan State does not return, expel or impose penalties on an asylum seeker for having entered the country without the requisite documents. On the contrary, section IV, article 42, of Act No. 18076 stipulates that: “Any person seeking refugee status is entitled to be issued with a provisional identity document by the National Civil Identification Directorate of the Ministry of the Interior. This document shall remain valid until such time as a final decision is taken on the application for refugee status. Once the legal status of refugee has been recognized, the document shall be replaced by the identity document issued to residents. The refugee shall be issued with the identity document on presentation of the certificate issued by the National Migration Directorate authenticating his or her status as a refugee. The document shall contain affiliation data and the date and place of birth of the person concerned, save in exceptional cases duly substantiated by the body issuing the certificate.”

466. As soon as a person applies for refugee status in Uruguay, he or she is entitled to be issued with a provisional identity document, which has the same characteristics and format as the identity document of any Uruguayan national. With that document the person concerned enjoys equal access to basic services such as health care (welfare card for access to free health care), education and employment. Once the person is accorded refugee status,

the identity document becomes permanent. Anyone who is not recognized as a refugee will be offered advice on how to regularize his or her migratory status.

467. Act No. 18250 (annex XX) recognized the right to education for all persons resident in Uruguay, regardless of their migratory status and nationality. The Uruguayan State takes steps to ensure that migrant persons and their families are rapidly enrolled in competent or authorized public educational facilities to begin or pursue their studies.

468. With a view to ensuring that the children of migrant workers enjoy the right to education in cases where they do not possess the requisite documents for enrolment, the competent or authorized public institutions concerned enrol them provisionally for a period of one year in implementation of this provision. The documents in question are required for certification as and when appropriate. Where access thereto continues to be manifestly impossible for the person concerned, they are issued by the Ministry of Education and Culture.

469. Act No. 18076 also recognizes the right of every refugee to a travel document, as stipulated in article 28 of the 1951 Convention relating to the Status of Refugees (art. 43). This document is valid for a period of two years from its date of issue and may be renewed for a similar period for as long as the holder retains his or her legal status as a refugee.

470. In addition, the Uruguayan State takes all necessary steps to obtain the documents that would normally be issued by his or her country of origin, nationality or provenance.

471. The public authorities facilitate recourse to the relevant mechanisms for application of this criterion in all procedures and bodies in which an applicant for refugee status or a refugee must certify a *de facto* or *de jure* claim; to that end, it is normally necessary to contact the authorities in his or her country of origin.

472. With regard to migrant children, the applicable regulations are contained in Act No. 18250 and its Regulatory Decree No. 394/009.

473. Pursuant to article 10 of Act No. 18250, the Uruguayan State guarantees the right of migrant persons to family reunification with parents, spouses, partners, and single minor or adult children with disabilities, in accordance with article 40 of the Constitution of the Republic. The Uruguayan State thus recognizes the right to family reunification as an inalienable right of migrant persons and their families, irrespective of their migratory status, and will support the enjoyment of that right.

474. The Uruguayan Institute for Children and Adolescents (INAU) is the State entity responsible for ensuring the protection of unaccompanied migrant children and for promoting their human rights, such as the rights to health care, education and housing.

475. Lastly, it should be noted that the Government of Uruguay, acting on behalf of the States parties of MERCOSUR, submitted a formal request to the Inter-American Court of Human Rights, at its ninety-second session, for an advisory opinion on migrant children.

476. The aim of this initiative is to have the Court specify in more precise terms the obligations of the States of the inter-American system and the measures they should apply when dealing with children and adolescents in an irregular migratory situation. It is hoped that this will bring about an improvement in the international standards applicable to the issue.