

United Nations General Assembly Open-Ended Working Group for the purpose of strengthening the protection of human rights of older persons.

Eleventh working session

Uruguay's Report

- **Social Security and social protection**

Definition

- **What is the definition of the right to social security and social protection (including social protection floors) for older people in the national legislation in your country ? Or how should such a right be defined, considering existing national, regional and international legal framework?**

The right to social security and social protection is recognized both in the Constitution and in several laws that are listed below. Likewise, this right is specifically guaranteed for older people in the Inter-American Convention on Older Persons, ratified by Uruguay through Law No. 19.430.

- Constitution of the Republic Art. No. 67
- Law No. 18,560 Recognition of years of work and contributions outside of Uruguay
- Law No. 18,097 Premium by age
- Law No. 18.395 Flexibility conditions for access to pensions
- Law No. 18.241 Assistance to the Elderly (non-contributory benefit)
- Law No. 19.430 Inter-American Convention on Older Persons.

The adoption of Law N° 19,430 on the Inter-American Convention on Older People (here inafter Inter-American Convention) in 2015, represents a milestone in regard to international legal regulations regarding the elderly, within the Organization of American States (OAS).

For a better understanding of the development of the issues, it should be noted that in 2016 the Second National Aging and Old Age Plan 2016-2019 (here inafter Second Plan) coordinated by National Institute for the Eldery (here in after Inmayores) was launched, with the aim of charting the course of policy interaction audiences that address aging and old age. As the Plan is structured taking as strategic axes the rights established in the Convention, reference will be made to it when each of the requested topics is developed.

Scope of the right

2. What are the key normative elements of the right to social protection and social security for older people? Please provide references to existing standards on such elements as below, as well as any additional elements

- **Availability of contributory and non-contributory schemes for older persons**

Economic security is an aim the state tries to accomplish in order to guarantee a life with dignity. In the contributive scheme, people above the age of 60 got retirement funds if they had completed 30 working years.

Among the non-contributory transfers that correspond to the elderly in Uruguay, there is the Old Age Assistance Program (BPS-Mides) and the Old-Age Pensions (BPS). If older people integrate households in a situation of socio-economic vulnerability, they will also receive the Uruguay Social Card (Mides) and, if they are living with underage, the Family Allowances-Equity Plan (BPS-Mides). The Assistance to Elderly is granted for people between 65 and 69 years old that integrate homes with critical needs. In addition, people older than 70 years who do not have the resources to subsistence access to the benefit of Old Age Pension (BPS).

The BPS is an autonomous body created in 1967 (article 195 of the Constitution). Its central role is to coordinate state social security services and organize social security. The Mides, is responsible for national social policies, as well as the coordination, articulation, monitoring, and evaluating plans, programs and projects, in the areas of its competence, tending to the consolidation of a progressive redistributive social policy.

- **Adequacy of benefits to guarantee older persons access to an adequate standard of living and adequate access to health care**

In order to assure more access, in 2009 conditions to retire became more flexible, reducing the number of working years from 35 to 30 and making a parametric reform in order to get the benefit at 65 years old and over with 25 or less working years. Moreover, that law recognizes to women a working year for each child (up to 5 years) for retirement. Likewise, international agreements are implemented for the recognition of working years and contributions outside of Uruguay for people 60 years of age or older. Uruguay is the country of America - together with Chile and Canada - with more international agreements.

In addition, to guarantee adequate levels of income in old age, since 2005 an improvement in the value of pensions and retirements was made on the basis of gradual and constant increase mechanisms. In addition, certain resolutions were adopted simplifying and improving the system by increasing the income limits in the home and limiting the non-cohabiting relatives forced to parents and children. At the same time, pensions carried out since 2007 were increased gradually. These increases were principally received by those who live in low-income households and meet certain age requirements. Complementing the increase in the minimum amounts, in 2011 for retirees aged 70 or over an age premium was included.

Access to health in Uruguay is universal and with the progressive incorporation of retirees and pensioners to Fonasa from the National Integrated Health System, the costs of the tickets for consultation and studies are free or are subsidized. Also, annual controls are provided free of charge.

- **Accessibility, including older persons coverage by social security systems, eligibility criteria, and affordability of contributions**

Uruguay has a high coverage (87.4% for 2014) regarding social security when considering contributory and non-contributory benefits. In 2017, 84.6% of older men and 63.9% of older women received a retirement provision. This proportion is even higher in the ages of 80 and more years in both cases. In the case of women, the lower access to pensions in relative terms corresponds to their smaller and more discontinuous trajectories in the labor market derived from the sexual division of labor. In relation to pensions, the proportion of women who receive this benefit is much higher than that of men. Less than 8% of older men receive a pension, while half of women do.

- **Equitable access by older persons to the enjoyment of the right to social security and social protection, paying special attention to groups in vulnerable situation**

In 2007 a new non-contributory benefit for seniors between 65 and 69 years who were in situations of vulnerability was developed, the Assistance to Elderly. Through this benefit, it was possible to cover those elderly people who, up to the age of 70, did not have access to the old-age pension due to the age requirement. In addition, people older than 70 years who do not have the resources to subsistence access to the benefit of Old Age Pension (BPS).

Since 2014 Inmayores developed a Consultation and Intervention service for older people in a Vulnerability Situation. It is a space of orientation and personalized attention for elderly people in a situation of lack of protection of rights residing in Montevideo and the Metropolitan Area. In addition, within the Mides orbit, there is a specific program (PASC) that works with the homeless.

- **Participation of older persons in the design and administration of the social security system**

The BPS side, it has a Board of Directors that is integrated with a representative for the workers' sector, one for the business sector and the other for the retirement and pensioners sector by a person belonging to the National Organization of Retirees and Pensioners of Uruguay (Onajpu).

Through this participation in the directory, the protection of the rights of retired persons and pensioners is guaranteed. Participation in the discussion on social security and in particular of the planned adjustments in pensions and retirement, deliveries of end-of-year baskets, access to loans, housing solutions offered by BPS among other issues.

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfill the rights of social security and social protection for older people, regarding the normative elements as provided above?

The Uruguayan State has made significant progress in guaranteeing the right to security and social protection, which is reflected in the high levels of coverage. Measures have been taken to facilitate access to pensions and retirement as well as to ensure systematic increases in liabilities. Likewise, special measures have been adopted for those people who have no income and are in a situation of vulnerability through the development of a non contributory scheme.

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to social protection and social security?

In the development of the regulations for the elderly, the human rights perspective must be present, which conceives the elderly as subjects of the policy and recognizes their decision-making capacity and their self-determination for the development of society.

5. How should the responsibilities of non- State parties such as private sector be defined in the context of the right of older persons to social protection and social security?

It is considered of fundamental importance that the non-state sectors and the private sector also promote the human rights perspective towards the elderly. Inmayores has trained some organizations and companies in the perspective of human rights and also coordinates actions with this sector, but it is undoubtedly a line to deepen.

Implementation

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on social security and social protection for older people?

A good practice has been the policy that eases the conditions of access to retirement and contributory and disability pensions. In particular, as a measure of positive discrimination for older women, one year of service is computed for each child born alive (with a maximum of 5 years). In addition to this, international agreements for the recognition of years of work and contributions outside Uruguay of people 60 years of age or older are implemented. An old-age premium was incorporated for those older people with lower incomes.

Regarding the challenges, it is important to apply - at least temporarily and gradually - “tailored” or focused on sectors or groups that are in a situation of greater vulnerability. Another challenge is to continue improving coverage, perfecting programs and benefits and advancing regulations. Promote the participation of social sectors in all instances of the Social Security system

B) Education, Training, Life-long Learning and Capacity- building

Definition

What are the definitions of the rights of older persons to education, training, life-long learning and capacity-building in the national legislation in your country ? Or how should such a right be defined, considering existing national, regional and international legal framework?

The Constitution of the Republic establishes in its article 71 that primary, elementary, superior, industrial and artistic official education and physical education; the creation of training and specialization scholarships are free.

The General Education Law (Law No. 18.437) of 2009 establishes: Article 1. (Of education as a fundamental human right) .- Declared of general interest the promotion of enjoyment and the effective exercise of the right to education, as a fundamental human right(...). Article 2 (Education as a public good) .- Recognize the enjoyment and exercise of the right to education, as a public and social good that aims at the full physical, psychological, ethical, intellectual and social development of all people without discrimination.

Article 6 (Of the universality). - All the inhabitants of the Republic are holders of the right to education, without any distinction.

Article 37. Non-formal education (Concept) .- Non-formal education, within the framework of a lifelong learning culture, will include all those activities, media and fields of education that take place outside of education formal, aimed at people of any age (...)

Scope of the right

2. What are the key normative elements of the rights of older persons to education, training, life-long learning and capacity-building, including such elements as availability, accesibility, acceptanility and adaptability? Please provide references to existing standards where applicable

Article 20 of the Inter-American Convention establishes the right to education, which states “The elderly person has the right to education on equal terms with other sectors of the population and without discrimination, in the modalities defined` by each of the States Part, and to participate in existing educational programs at all levels, and to share their knowledge and experiences with all generations. ”

The Second Plan develops it in its axis economic security and contribution to development, in the strategic line right to education. There are actions that lead to guarantee access to quality education throughout his life.

Programs have been developed that promote access to education for the elderly through: Ibirapitá Plan and the Sectorial Directorate of Education for Youth and Adults (Dseja). The Ibirapitá Plan provides the delivery of tablets for retired elderly people (with a monthly remuneration equal to or less than 868 dollars and that are not active), training for their use and support in the process of appropriation of digital tools. The Dseja, whose mission is to provide quality, comprehensive and relevant educational conditions and opportunities for young people and adults, aged 14 and over, in conditions of educational backwardness, disaffiliated or in risk of disaffiliation in the framework of education throughout life. Although it does not implement a specific line for the elderly, it includes them, since it indicates their active participation.

State obligations

3. What are the measures that should be undertaken by the State to respect, protect and fulfill the rights of older persons to education, training, life-long learning and capacity-building, regarding the normative elements as provided above?

The measures that the State must take to fulfill the right to education consist of facilitating and promoting the access of the elderly to adequate educational and training programs, both formal and informal. In this sense, they must commit to develop programs with the appropriate format and accessible to the elderly, taking care of their needs and motivations. In addition, they must establish the promotion in the use of new information and communication technologies (ICT) in order to eliminate the generational digital divide.

Special considerations

4. What special measures and specific considerations should be considered in developing the normative content of the rights of older persons to education, training life-long learning and capacity-building?

Aligned with the human rights perspective it is essential to promote the principle of autonomy of the elderly, protected from the conception that the elderly are subjects of rights. The incorporation of this perspective forms the basis for training, lifelong learning and capacity building programs to be generated and for the elderly to be accessible.

5. How should the responsibilities of non-state parties such as private sector be defined in the context of the rights of older persons to education, training, life-long learning and capacity-building?

Uruguay has the experience of Open University Permanent Non-Formal Education for Older People (UNI3). It has the sponsorship of the Ministry of Education and Culture (MEC), the

University of the Republic, the BPS and the UNESCO. Currently, there are 22 branches throughout the country with more than 8,500 participants in 581 workshop-classrooms. It is a laboratory where it is about knowing, defining and attending to the reality of the Elderly in a learning situation.

Implementation

6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on education, training, life-long learning and capacity-building for older persons?

Currently, one of the practices carried out in Uruguay to implement the right to education established in the Inter-American Convention and in the strategic line of the Second Plan, is the training of the elderly in the use of ICT through the Ibirapita Plan.

Regarding intergenerational educational projects, the work experience of the Dseja is also highlighted through the Learn All Program of Ceibal Plan. Through this plan, the intergenerational learning module has been developed for students of all education subsystems, who can carry out projects that link the elderly in their community with their educational centers. It is estimated to achieve at least one intergenerational project in each jurisdiction, which represents a total of 23 intergenerational projects throughout the country

One of the main challenges to be included in the implementation of the right to education is to promote the heterogeneity of old age and aging and include a gender perspective. Likewise, the Ibirapitá Plan must expand the population coverage to include the elderly who do not receive pensions.

C) Right to Work and Access to the Labour Market

National Legal and Policy Framework

- **What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?**

Article 18 of the Inter-American Convention develops the Right to work and states that “The elderly person has the right to decent work and equal opportunities and treatment with respect to other workers, regardless of their age.” In relation to this point, the Second Plan, describes in

the strategic line on the right to work, in the economic security and development contribution axis, the necessary actions so that older people access decent and quality work on equal terms.

Beyond these two instruments describe the necessary actions to guarantee the right to work in the elderly, it has not been possible that in Uruguay there is a specific employment policy for the elderly. However, there are measures to ensure the economic independence of the elderly.

- **What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?**

One of the main challenges is to reduce discrimination based on age, which is one of the reasons that explain that older people do not enter the labor market and that when they do, they work in informal conditions. Also that the legislation does not allow them to continue working if they retired (except in some exceptions), which also causes them to work in informal conditions.

- **What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?**

According to the INE's continuous household survey (ECH), the percentage of employed older persons not registered in social security for 2017 reaches to 59.9%, this indicator being higher among women than men (57,4% vs 63.6%).

Availability, Accessibility, Acceptability and Quality

- **What steps have been taken to ensure the access of older persons to the labour market, including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?**

Steps are being taken to make conditions more flexible for older people to continue working and obtain a partial retirement. With regard to training, there is an institutional framework, the National Institute for Employment and Vocational Training (INEFOP) as a tool for social dialogue at the service of human capital development through employment and training.

- **What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?**

As mentioned, Uruguay has the National Institute of Employment and Vocational Training (INEFOP) with tripartite representation in its direction (representatives of the State, capital and labor). This new institutional structure articulates and fosters synergies between the main public agencies and non-governmental institutions responsible for the execution of policies related to

the world of work. In particular, from the entry into force of Law 19,689, which establishes incentives for the creation of new jobs, companies that hire workers over 45 years of age may access a benefit in the employee's monthly compensation 40% of a minimum wage and a half.

- **What good practices are available in terms of ensuring the older persons enjoyment of their right to work and their access to the labour market?**

In 2013, Law 19.160 on the determination of a partial retirement scheme and compatible with the performance of services of the same affiliation is approved. This law enables private sector workers to continue working, under the protection of a partial retirement scheme, which consists in reducing the normal working day with partial cessation of the enjoyment of retirement for services of the same affiliation.

In addition to this, another good practice is the entry into force of Law 19,689, which establishes incentives for the creation of new jobs. Companies that hire workers over 45 years of age may access a benefit in the employee's monthly compensation of 40% of a minimum wage and a half.

- **What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?**

Although there is no specific regulation to guarantee the working conditions of the elderly, there is the minimum wage regime and the approval of Law 10.449 on Salary Councils for all workers in Uruguay. There are also labor inspections to ensure that all workers are registered with social security.

Equality and non-discrimination

- **In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?**

Age discrimination is one of the main reasons that explain the restriction on access to the rights of the elderly in all areas, so the right to work is also affected. In Article 5 of the Inter-American Convention on Equality and Non-Discrimination on the basis of age, this issue is developed and in the Second Plan it is manifested in several strategic lines

Age discrimination increases with the gender inequality of which women are victims, so it directly affects older women. The gender inequalities observed in the labor market and in the unequal distribution of paid and unpaid work (domestic and care) throughout the life cycle, derived from the sexual division of labor, strongly impact the perception of income in old age. In

this sense, women have more unstable, interrupted work trajectories, with lower incomes and therefore generate lower contributions than men.

Remedies and Redress

- **What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market ?**

There are no specific mechanisms planned for the elderly but there is a policy for all workers. The General Labor and Social Security Inspectorate of the Ministry of Labor is responsible for the protection of workers in the employer's compliance with the regulations, in terms of general conditions (minimum wages, salary items, etc.) and conditions of safety, health and environment in which workers work. This includes protection against the violation of other fundamental rights, such as freedom of association, preventing and correcting all forms of harassment and discrimination.

E) Access to Justice

National Legal Framework

- **How is the access to justice by older persons guaranteed under the national legal and policy framework? What judicial and non-judicial mechanisms are in place for all older persons to complain and seek for denial of their rights?**

The Inter-American Convention, in its article 31, deals with the right to access to justice. The Second National Plan mentions two actions: the generation of a working group to analyze and work on mechanisms to reduce the times of judicial processes involving older people and the incorporation of the perspective of protection of people's rights in judicial advisory devices. Both actions are currently underdeveloped because Uruguay does not have specialized agencies for access to justice and reparations for the elderly.

Beyond that, there are some procedures that generate greater guarantees in the access to justice for the entire population, including the elderly, although without specific actions for this group. In November 2017, with the entry into force of the new Code of Criminal Procedure (Law 19.293 and amendments),

Secondly, the approval of Law No. 19,580 on Violence against women based on gender is remarkable.

Availability

- **What steps have been taken to ensure the availability of judicial and non-judicial mechanisms for older persons in urban, rural and remote areas in your country? Are there alternative dispute settlement mechanisms available?**

Although there are not yet specific measures for the elderly, the Victims and Witnesses Unit of the Office of the Attorney General of the Nation attends to all persons who are subject to crimes, which includes the elderly. Inmayores works in coordination with this Unit to integrate the human rights perspective into its work.

Accesibility

- **What steps have been taken to ensure that all justice systems (judicial and non-judicial) are secure, affordable and physically accessible for older persons and adapted to their needs?**

There are no specific measures have been taken for the elderly, given that the deficient conception of old age crosses the entire judicial system and results in a naturalization of the injustices and vulnerabilities suffered by the elderly. The judicial procedures do not consider the specific needs of the elderly and that translates into a lack of accessibility of the judicial system in all areas.

- **What are the existing provisions to guarantee legal assistance for older persons?**

Related to the previous item, in the absence of specific measures, there are also no provisions that contribute to guaranteeing legal assistance for the elderly.

- **What are the specific challenges encountered by older persons in accessing justice and remedy in your country?**

The main challenges for access to justice for the elderly in Uruguay, are mainly in the way of conceiving old age and the elderly in general. The problem currently is not in the lack of regulations, but in the way in which the institutions use or apply what is expressed in these texts. This idea also crosses the people who work in the judicial system, so it is a challenge to raise awareness and train the rights perspective to incorporate specific attention measures.

What good practices are available in terms of ensuring equal and effective access to justice and remedy for older persons?

Uruguay does not have specialized agencies for access to justice and reparations for the elderly but progress has also been made in terms of access to justice.

Nevertheless, the implementation of the New Criminal Code in 2018 can be considered a good practice. The Office of the Attorney General adopts a preponderant role in the protection and care of victims. In this way, specific rights for victims are recognized. In addition, the Victims and Witnesses Unit is created, whose task is to work together with the Police as a support network, so that the victim can exercise his/her rights. Although these innovations are not specific for the elderly, Inmayores works in continuous coordination with the Attorney General's Office in the adoption of a human rights perspective that protects them. Along these lines, joint efforts are being made to develop a protocol for action in cases of violence against the elderly.

Equality and non-discrimination

- **What are the provisions adopted to ensure effective access to justice for older persons on an equal basis with others, including age-appropriate procedures in all administrative and legal proceedings?**

Even though the Inter-American Convention and the Second Plan establishes measures to generate equitable access to justice in the elderly, the judicial system has not modified its procedures so that they are adapted to the elderly. As explained, the main obstacle to the implementation of the Convention Law is the deficit conception of old age that operates in most institutions.

- **Please specify existing public policies and awareness-raising and capacity building programmes established for all justice system personnel to address the negative impacts of ageism and age discrimination in justice system.**

Despite there are not specific actions for the elderly, Inmayores with the Attorney General's Office in the adoption of a human rights perspective that protect them. Along these lines, they are working together to develop a protocol for action in cases of violence against the elderly, so that the entire justice system can apply it.

In addition, Inmayores since 2013 has an Attention Service aimed at elderly people in situations of abuse and / or abuse, which addresses situations in the capital (Montevideo) and the Metropolitan area. As of June 2018, it expanded the scope of its object, migrating from attention to domestic violence to violence in all its dimensions.

There are also Specialized Units in Domestic and Gender Violence (UEVBG) that address older women cases.

Although the mechanisms to reduce judicial times involving the elderly have not yet been analyzed, a common conceptual basis has been shared and agreed upon regarding the approach towards the elderly, which means a fundamental step to achieve this action.

Accountability

- **How do you ensure justice systems function in accordance with the principles of independence and impartiality? Please specify if there is any oversight mechanism in place to address any discrimination against older persons committed by justice system professionals.**

As mentioned earlier, the development of a protocol for action in cases of violence against the elderly, prepared by Inmayores and coordinated with the Attorney General's Office, is underway. The objective is to professionalize the intervention from the perspective of human rights. Through this protocol, it is also intended to supervise that the different organizations incorporate this conception.