



MISION PERMANENTE DEL URUGUAY  
ANTE LAS NACIONES UNIDAS

Note No. 0032/2019

The Permanent Mission of Uruguay to the United Nations presents its compliments to the Open-ended Working Group on Ageing, and has the honour to annex the inputs from the Government of Uruguay.

The Permanent Mission of Uruguay to the United Nations avails itself of this opportunity to renew to the Open-ended Working Group on Ageing the assurances of its highest consideration.

New York, February 22, 2019



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To the Open-ended Working Group on Ageing  
of the United Nations  
New York  
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# OPEN-ENDED WORKING GROUP ON AGEING URUGUAY'S REPORT

## A. Social protection and social security (including social protection floors)

### National legal framework

**1. What are the legal provisions in your country that recognizes the right to social security and social protection, including non-contributory and contributory old-age benefits? Do they have a constitutional, legislative or executive foundation?**

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 persons 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

### **Availability**

**2. What steps have been taken to guarantee universal coverage, ensuring that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor old-age pensions, to ensure an adequate, standard of living in older age?**

The Uruguayan social security system in the retirement phase evidences very high levels of coverage. In 2014, the percentage of people aged 65 and over who received pensions and retirement provision was 87.4% (MIDES, DINEM based on ECH).

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.

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 35 working years. In order to assure more access, in 2009 those conditions became more flexible<sup>4</sup>, 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.

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 resources to subsistence access to the benefit of Old Age Pension (BPS).

**3. What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health and care and support services for independent living in older age?**

The access to the health system in Uruguay is universal, but with the creation of the National Integrated Health System in 2007; there has been a progressive and increasing number of retired people included in the Fondo Nacional de Salud (FONASA). For those who are part of this fund there are a several benefits in the tickets price, free medical controls and the possibility to cover with medical assistance their couple and sons under 18 years old.

The Health System in Uruguay has a series of benefits that are included in the Health Care Plan. These include the Palliative Care and Mental Health programs.

**Adequacy**

**4. What steps have been taken to ensure the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?**

In order 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. Also in 2007 a new non-contributory benefit for seniors between 65 and 69 years who were in situation of vulnerability was developed. 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. On the other hand, as previously indicated, access to health 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**

### **5. What steps have been taken to ensure older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?**

To ensure access to information on social security and social protection, Uruguay has two agencies: the Social Security Bank (BPS) and the Ministry of Social Development (MIDES). 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.

Both agencies have attention and advice offices for the population distributed throughout the national territory. They also have web pages ([www.mides.gub.uy](http://www.mides.gub.uy); [www.bps.gub.uy](http://www.bps.gub.uy)) with accessible information about the benefits they provide and the necessary requirements. BPS periodically launches awareness and information campaigns on the rights of workers, retirees and pensioners. Mides has developed a Resource Guide that presents, in a disaggregated manner by type and age, the public programs available in the State.

It should be noted that in 2009, the Law No. 18.617 created the National Institute for the Elderly (Inmayores) under the orbit of Mides. It is the governing institute for aging and aging policies that works to protect the elderly rights. The Institute has a Consultative Council that meets quarterly and is composed by representatives of State agencies and civil society. In this space, civil society brings its demands and concerns and contributes to the elaboration of public policy. Inmayores in its quest to facilitate dialogue with civil society, has generated a working relationship with Redam. Redam consists of the union of approximately 300 civil society organizations, with heterogeneous and different levels of complexity and objectives, which are distributed throughout the national territory.

On the BPS side, retirees and pensioners are represented on the board of directors by a person belonging to the National Organization of Retirees and Pensioners of Uruguay (ONAJPU).

### **6. The design and implementation of normative and political framework related to social security and social protection benefits included an effective and meaningful participation of older persons?**

The BPS 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. 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.

## **Equality and non-discrimination**

### **7. Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to groups in vulnerable situation?**

As previously mentioned, Uruguay has a high coverage (87.4% for 2014) regarding social security when considering contributory and non-contributory benefits. Assistance for old age and old-age pension is provided for elderly people in situations of vulnerability.

In addition, if older people integrate households in a situation of socio-economic vulnerability, they will receive the Uruguay Social Card (MIDES) and if they have underage at home they receive the Family Allowances-Equity Plan (BPS-MIDES). The assistance to old age is granted to people between 65 and 69 years old that integrate homes with critical needs. After 70 years, if the elderly do not have resources for subsistence, the Old Age Pension (BPS) corresponds to them.

Since 2014 Inmayores developed a Consultation and Intervention service for Seniors 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. People aged 65 or older who need attention and / or professional advice have access to this service if they are going through a situation of rights violation or if someone detects a situation of helplessness, exclusion or abandonment towards an older person.

In addition, within the MIDES orbit, there is a specific program (PASC) that works with the homeless. In particular, this program has two centers in the city of Montevideo that provide 24-hour care for people over 55 years of age who are in a situation of social vulnerability and are self-reliant. BPS also has a specific service for elderly homeless people.

## **Accountability**

### **8. What mechanisms are in place to ensure social security and social protection schemes are effective and accountable?**

Regarding accountability, Uruguay has a law on access to public information (Law No. 18,381) that aims to promote transparency on the administrative function of any public body and guarantee the fundamental right of people to Access to public information. The BPS also has a public access website that has available statistical bulletins with updated information on social security indicators.

### **9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?**

As already mentioned, the coverage of social security in Uruguay reaches levels close to universality. Still, the Law School of the University of the Republic has a Legal Clinic, which provides legal advice and sponsorship services free of charge to those who cannot afford it and it is planned to open legal offices exclusively for the elderly to address your specific needs.

The country has a National Institution for Human Rights (INDDHH) whose mission is the defense, promote and protect in all its extension of the human rights recognized by the Constitution and international law. Its obligations refer to suggest corrective means, make non-binding recommendations and intervene in complaints of human rights violations, without incurring in jurisdictional, executive or legislative functions that correspond to the respective powers. In the exercise of its functions it has faculties such as: carry out inspection visits, with or without prior notice, to any place or sector of activity of the organizations and entities subject to its competence;

ask for reports, examine files, files and all kinds of documents; file criminal complaints and file writs of habeas corpus or amparo; to enter, with or without prior notice, places of detention, hospitals, military establishments and any other establishment in which there are persons deprived of liberty or in an inpatient regime. Within the framework of its broad mandate, the INDDHH is competent to hear and investigate alleged violations of human rights at the request of a party or ex officio.

## **B. Education, training, life-long learning and capacity-building**

### **National Legal Framework**

#### **1. In your country/region, how is the right to education, training, life-long learning and capacity building in older age guaranteed in legal and policy frameworks?**

The Constitution of the Republic establishes in its article 71 that primary, elementary, superior, industrial and artistic official education and of the 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. The State will guarantee and promote a quality education for all its inhabitants, throughout their lives, facilitating educational continuity.

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 the 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, which have educational value in themselves and have been organized specifically to meet certain educational objectives in various areas of social life, job training, community promotion, sociocultural animation, improvement of living conditions, artistic, technological, recreational or sports education, among others. Non-formal education will be integrated by different areas of educational work, among which are mentioned, literacy, social education, education of young people and adults. The articulation and complementarity of formal and non-formal education will be promoted so that it contributes to the reinsertion and educational continuity of the people.

### **Availability, Accessibility and Adaptability**

#### **2. What are the key issues and challenges faced by older persons in your country/region with regard to the enjoyment of all levels of quality education, training, life-long learning, and capacity building services?**

The Ibirapitá Plan frequently carries out surveys on the use of tablets, which allows to know the satisfaction level of the elderly who have access to this service. On the other hand, the information

collected by the Sectoral Directorate of Adult Education is not systematized, which is an obstacle to identifying the challenges in this area.

**3. What steps have been taken to ensure that education, training, life-long learning, and capacity building services are available and accessible to all older persons, adapted to their needs, suited to their preferences and motivations, and of high quality?**

Uruguay has a Sectorial Directorate of Education for Youth and Adults of ANEP 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.

Regarding access to technology and digital literacy, the Ibirapitá Plan provides the delivery of tablets for retired elderly people, training for their use and support in the process of appropriation of digital tools. The Plan delivered 200,000 tablets to retired people from the year 2015 to September 1, 2018.

There is also 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.

**4. In your country/region, are there studies and/or data available on the access of older persons to the right to education, training, life-long learning and capacity building in older age?**

In 2017, 0.08% of the elderly were attending formal education, of which 60% attended tertiary education, 23% attended secondary school, 9% attended primary education and 6% attended technical education. (INE, ECH).

According to the Third Use Survey of the Ibirapitá Plan in October 2017, 61% of the beneficiaries declare that the device is their first contact with a computer, with 47% of the beneficiaries who declare using the tool in the last week, where 66% of the beneficiaries helped by a direct family member for its use. Regarding the types of uses, social networks are used by 40% of the beneficiaries. A noteworthy fact is that only 19% of the beneficiaries did some extra training for the use of the Tablet, although 70% show interest in learning.

**Equality and non-discrimination**

**5. In your country, is age one of the prohibited grounds for discrimination in relation to education in older age?**

Education in Uruguay is universal and free, there is no discrimination of any kind.

The General Education Law establishes: 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 any.

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

Article 18. (Equality of opportunity or equity) .- The State will provide the necessary specific support to those persons and sectors in a particularly vulnerable situation, and will act in a way to include people and sectors that are culturally, economically or socially discriminated, in order to reach a real equality of opportunities for access, permanence and achievement of learning. It will also stimulate the transformation of discriminatory stereotypes based on age, gender, race, ethnicity or sexual orientation.

### **Accountability**

#### **6. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to education, training, lifelong learning and capacity building?**

The country has a National Institution for Human Rights (INDDHH) whose mission is the defense, promotion and protection in all its extension of the human rights recognized by the Constitution and international law. Its obligations refer to suggest corrective means, make non-binding recommendations and intervene in complaints of human rights violations, without incurring in jurisdictional, executive or legislative functions that correspond to the respective Powers.

In the exercise of its functions it has faculties such as: carry out inspection visits, with or without prior notice, to any place or sector of activity of the organizations and entities subject to its competence; ask for reports, examine files, files and all kinds of documents; file criminal complaints and file writs of habeas corpus or amparo; to enter, with or without prior notice, places of detention, hospitals, military establishments and any other establishment in which there are persons deprived of liberty or in an inpatient regime. Within the framework of its broad mandate, the INDDHH is competent to hear and investigate alleged violations of human rights at the request of a party or ex officio.

## **C. Autonomy and Independence**

### **National legal framework**

#### **1. What are the legal provisions in your country that recognizes the right to autonomy and independence? Do they have a constitutional, legislative or executive foundation?**

In 2016 Uruguay became the first country of the world in recognizing older people as subjects of rights when ratifying and making the legal deposit of the Inter-American Convention of Protection of the Rights of the Elderly. The Convention is the first binding legal instrument for this group. In addition, in 2015, the National Integrated Care System was created by law. Also, in 2008, the International Convention on the Rights of Persons with Disabilities was approved. Finally, the civil code includes articles referring to the curatorship of incapable persons.

Law No. 19.430 Inter-American Convention on Older Persons

Law No. 19.353 National Integrated Care System

Law No. 18.418 Disability Convention

Law No.19.355 Regulation, enforcement and audit of social matters, of the establishments for care for older persons



Civil Code art. 431 and following

## **Normative elements**

### **2. What are the key normative elements of the rights to autonomy and independence? Please provide references to existing laws and standards where applicable.**

As mentioned, Uruguay approved the Inter-American Convention on the Protection of the Human Rights of the Elderly. This normative was constituted as the main legal provision that recognizes the rights of the elderly. Article 12 states that the older person has the right to an integral care system and that the state must adopt measures to guarantee the enjoyment of that right.

“The elderly person has the right to a comprehensive care system that provides protection and promotion of health, social services coverage, food and nutrition security, water, clothing and housing; promoting that the older person can decide to stay in their home and maintain their independence and autonomy. It also includes that States Parties should design measures to support families and caregivers by introducing services for those who carry out care activities for the elderly, taking into account the needs of all families and other forms of care, as well as full participation of the older person, respecting his opinion. The States Parties shall adopt measures to develop a comprehensive care system especially take into account the gender perspective and respect for dignity and integrity physical and mental of the elderly person.” (Art. 12)

### **3. How should autonomy and independence be legally defined?**

The Care Law N° 19.353 defines autonomy and dependence as follows:

**Autonomy:** the ability to control, face and take, on their own initiative, decisions about how to live and develop activities and needs of daily life, contemplating equitable cooperation with others people.

**Dependency:** state in which a person requires of the attention or help of another person or others to perform basic activities and needs of daily life.

For its part, Article 20 of decree of law N° 356/016 relative to the regulation in social matters of the long terms care institutions for elderly people defines dependence as: the state by which people who for different reasons related to failure or loss of physical, psychic or intellectual autonomy have needs for assistance and /or help in order to carry out the ordinary acts of daily life and what refers to personal care.

## **Implementation**

### **4. What are the policies and programmes adopted by your country to guarantee older person’s enjoyment of their right to autonomy and independence?**

In 2015 with the approval of Law N° 19.353 the Integrated National System of Care (SNIC) is installed. This System promotes a more active role on the part of the State in the participation of the care of the people. From the implementation of the SNIC and the understanding of care as a right, the State assumes as regulator and provider of care services, which will allow Uruguay to begin a process of transforming the family model.

In its article number 1 the law defines care "both as a right and as a social function and involves the promotion of personal autonomy, care and assistance to people in situations of dependency. It constitutes the set of actions that society carries out to ensure the integral development and daily well-being of those who are dependent and need the help of other people to carry out activities of daily living. "(2015, art.1 )

In 2016, the first National Plan of Care 2016-2020 was launched as a map of implementation of the Care System. It contains policies and lines of action for the coming years. For its part, the Second National Plan for Aging and Aging (2016-2019), coordinated by Inmayores, includes an axis in relation to welfare and care in order to ensure access to quality care for dependent elderly people, regardless of their support networks and their income.

The purpose of the SNIC is to guarantee the right of people in situations of dependency to receive care under conditions of quality and equality, promoting the development of autonomy, care and assistance for people in situations of dependency, as well as child development, within the framework of a model of co-responsibility between families, the State, the market and the community, as well as between men and women.

As defined by law, the System establishes three target populations: childhood, dependent elderly people and people with dependent disabilities. A fourth group is added to them: caregivers. As a specific objective aimed at the elderly population, it is proposed to improve the care of those who are in a situation of dependency by developing co-responsible care strategies that are adapted to the needs and capacities of individuals and households.

Care services for the elderly are classified according to the level of dependency. For people over 70 with mild or moderate dependence, telecare service is launched, which allows the elderly person through a device to contact a family member, friend or neighbor in case of any incident that occurs in their home. It works through a bracelet or necklace that when pressed activates a connection with a 24-hour service center. Currently 913 elderly people receive a subsidy to access the service based on their income and number of household members.

Likewise, the need to create day centers in neighborhoods and inland locations was identified for elderly people in situations of mild or moderate dependency, in order to provide quality care, as well as providing free time to family members, mainly women, who take care of their daily care. Five centers have been created with capacity for up to 40 people per 20 hours per week. The centers are managed through agreements with Municipalities, Municipalities and civil society organizations, reflecting in this model the principle of social co-responsibility between the State, community and families.

On the other hand, in the case of elderly people with severe dependence, the Personal Assistant Program has been deployed (regulatory decree nº 117/016) that provides personal assistance for the activities of daily life of people in a situation of severe dependence. To date-January, 2019, 1945 elderly people receive a cash transfer for the payment of personal assistance hours. In addition, the implementation of the Permanent Care Support Program is foreseen, which will allow, through an economic transfer, to cover quotas in private centers, in order to resolve situations of high socioeconomic complexity and severe dependence.

In addition, the Ministry of Social Development has the National Disability Program (Pronadis) through which the National Center of Technical Aids (CENATT) provides free technical aids to people with disabilities that are not covered by other institutions, such as: prostheses; orthosis; wheelchair; Canes; diapers and all kinds of technical aids.

For its part, the BPS through the Cupo Cama Program provides a subsidy for the payment of the services of a home or residence for pensioners and retirees with dependency. Finally, BPS also provides housing for retirees and pensioners enrolled in the Housing Solutions Program who earn less than the regulatory limit.

#### **5. What are the best practices and main challenges in adopting and implementing a normative framework to implement these rights?**

An experience to be considered as good practice is the “assisted homes” developed by BPS. This organism in 2017 put into operation a housing complex for 30 people, of which 26 are women and 4 are men, with an average age of 80 years and with moderate dependence. Assisted living provides telecare services, tablets, nursing assistants, personal assistants (SNIC), multidisciplinary team (doctor, social worker, psychologist), nutritionist, dentist, prevention and health promotion workshops, recreational activities, etc. Also, each resident has their personal history and if necessary psychogerontological interventions are carried out.

The main challenges related to the rights of the elderly are mainly in the way of conceiving old age and people in general. Judicial decisions, different forms of dispute resolution at the judicial level, administrative and health issues do not go hand in hand with the recognition of rights that the legislation, both national and international, proposes. Old people are placed, in advance, in a place of vulnerability, without the possibility of expression or decision about the problems or situations that concern them personally and directly. Every day large gaps are seen between what is stated in normative texts and the practice carried out by the institutions that implement these norms. Many times the laws are unknown and others, even knowing each other, remain the prejudices related to old age making their application impossible. The problem today is not in the lack of regulations, but in the way in which institutions use or apply what is expressed in these texts.

#### **Equality and non-discrimination**

#### **6. Which are the measures adopted to ensure equitable access by older persons to the enjoyment of the right to autonomy and independence, paying special attention to groups in vulnerable situation?**

In relation to the previously detailed benefits:

The Care System performs a progressive incorporation of the dependent population according to the level of dependency, prioritizing those with greater economic vulnerability. For its part, the CENATT of Pronadis/Mides provides assistance to all persons with disabilities who do not have coverage through other institutions. The BPS offers benefits in terms of housing and accommodation for low-income retirees and pensioners.

#### **Participation**

**7. The design and implementation of normative and political framework related to autonomy and independence included an effective and meaningful participation of older persons?**

The National Integrated Care System has a Consultative Committee as an advisory body. This provides advice for compliance with the objectives, policies and strategies of the System. It is an innovative tool for participation in public policies since it integrates the view of all the sectors linked to care: workers, organized civil society, care providers and academia. In this regard, it is worth highlighting the participation of ONAJPU and Red Pro Cuidados on behalf of the elderly.

Also, BPS has a directory that is integrated with a representative for the workers' sector, one for the business sector and another for the retirement and pensioners sector. Pronadis also has a consultative council composed of several institutions and civil society organizations that represent the different groups with disabilities.

### **Accountability**

**8. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to autonomy and independence**

The country has a National Institution for Human Rights (INDDHH) whose mission is the defense, promote and protect in all its extension of the human rights recognized by the Constitution and international law. Its obligations refer to suggest corrective means, make non-binding recommendations and intervene in complaints of human rights violations, without incurring in jurisdictional, executive or legislative functions that correspond to the respective Powers. In the exercise of its functions it has faculties such as: carry out inspection visits, with or without prior notice, to any place or sector of activity of the organizations and entities subject to its competence; ask for reports, examine files, files and all kinds of documents; file criminal complaints and file writs of habeas corpus or amparo; to enter, with or without prior notice, places of detention, hospitals, military establishments and any other establishment in which there are persons deprived of liberty or in an inpatient regime. Within the framework of its broad mandate, the INDDHH is competent to hear and investigate alleged violations of human rights at the request of a party or ex officio.

## **D. Long-term and Palliative Care**

### **National legal framework**

**1. What are the legal provisions in your country that recognizes the right to long-term and palliative care? Do they have a constitutional, legislative or executive foundation?**

The legal provisions in the country that recognizes the right to long-term and palliative care are: Law N° 19.430 for the approval of the Inter-American Convention of Protection of the Rights of the Elderly and the Law N° 19.353 that created the National Integrated Care System and the Law No. 18.335 that recognizes the right to receive palliative care.

In addition the laws N° 17.066 and N° 19.355 regulate the establishments for the elderly in terms of social and health matters.

Law No. 19.430 Inter-American Convention on Older Persons

Law No. 19.353 National Integrated Care System

Law No. 17.066 Elderly establishments

Law No. 19.355 Regulation, enforcement and audit of social matters, of the establishments for care for older persons

Law No. 18.335 Patients from the health system

## **Normative elements**

### **2. What are the key normative elements of the rights to long-term and palliative care? Please provide references to existing laws and standards where applicable.**

In Uruguay, the care policy has been included with emphasis in the public agenda. In 2015 the National Integrated Care System was created. Its main objective is to promote the autonomy of the dependent people, to attend and assist them. The elderly in a dependent situation are one of the target populations that are being prioritized by this system. Until its creation, caring was provided in Uruguay privately, by families, mainly by women. Therefore the system proposes to defamiliarize the caring and guarantee the right to be cared independently of socioeconomic and social relations through the development of new services.

In terms of long-term care, the long-stay establishments for the elderly are governed by Law No. 17066, which establishes the minimum conditions required for the purpose of authorization, and the possible sanctions to which the establishments are subject. This law attributes to the Ministry of Health (MS) the powers of regulation, supervision and authorization of the establishments. This law must be complemented with article 518 of Law No 19.355 that assigns to the Ministry of Social Development (Mides) the regulatory and control competence regarding the social matter of the establishments that provide care to the elderly. These two laws were regulated by Decree 356/016 that specifically defines the conditions required for operation and articulates the competences of the Ministry of Health and Social Development.

This new regulation is framed under the parameters established by the Convention, incorporated into our domestic legal system by Law No. 19.430, as well as in respect for the fundamental rights set forth in our Constitution of the Republic.

Considering palliative care Law No 18.355 establishes in its article number 6: Everyone has the right to access comprehensive care that includes all those actions aimed at the promotion, protection, recovery, rehabilitation of health and palliative care, according to the definitions established by the Ministry of Public Health.

### **3. How should long-term care and palliative care be legally defined?**

The Ministry of Health for its National Plan of Palliative Care takes the definition of the World Health Organization as: "an approach that improves the quality of life of patients and families who face the problems associated with life threatening diseases, through of the prevention and alleviation of suffering through the early identification and impeccable evaluation and treatment of pain and other physical, psychological and spiritual problems.

In relation to long-term care, the definition of the Inter-American Convention on the Protection of Human Rights of the Elderly is considered. The Convention considers the elderly person receiving long-term care services as: those who temporarily or permanently reside in a regulated establishment, public, private or mixed, who receive quality comprehensive health-care services, including long-stay residences that provide these long-term care services to the elderly, with moderate or severe dependency who cannot receive care at home.

## **Implementation**

### **4. What are the policies and programmes adopted by your country to guarantee older person's enjoyment of their right to long-term and palliative care?**

All the departments of the country have some type of palliative assistance. Fifty-five providers report providing palliative care with different modalities. Of these, 41 refer to provide specific palliative care (75%) through Palliative Care Units, 13 are public health centers, 27 private and one public-private (in San José). Only five departments at the time of the survey have public palliative assistance as reported: Montevideo, San José, Durazno, Río Negro and Salto.

According to the 2011 Census, the population living in long-stay facilities was 13,817 people, of which 11,560 are over 65 years old, representing 2.5% of the older population. These establishments are divided into two types, those for profit (residential) and those for non-profit (elder homes) belonging to civil associations or foundations. According to information from Inmayores, which has registered these establishments twice (2014 and 2015) and maintains an updated database, there are 1.124 long-stay establishments, of which the vast majority are for profit (82 %). The households are approximately 90 and usually receive contributions or exemptions from the Social Security Bank (BPS) or the departmental governments. In the interior of the country operate 7 homes of the State Health Services Administration (ASSE), two of them are managed directly by ASSE and five operate through agreements with civil associations.

Also, the Care System presents a line of work that includes the provision of a transfer to cover quotas in private centers, which allow the use of to solve situations with a high socio-economic complexity and severe dependence. For its part, the BPS through the Cupo Cama Program provides a subsidy for the payment of the services of a home or residence for pensioners and retirees with dependency.

Regarding palliative care, this is a benefit included in the Health Care Plan as a mandatory service since 2008. It is estimated that in Uruguay there are 16 thousand patients who require palliative care. The Programmatic Area of Palliative Care of the Ministry of Health conducted the National Palliative Care Survey in 2016 and, according to the data provided by the providers, the coverage was 50%.

### **5. What are the best practices and main challenges in adopting and implementing a normative framework to implement these rights?**

The main challenges in the implementation related to the rights of the elderly are mainly in the way of conceiving old age and people in general. Judicial decisions, different forms of dispute resolution at the judicial level, administrative and health issues do not go hand in hand with the recognition of rights that the legislation, both national and international, proposes. Old people are placed, in advance, in a place of vulnerability, without the possibility of expression or decision

about the problems or situations that concern them personally and directly. Every day large gaps are seen between what is stated in normative texts and the practice carried out by the institutions that implement these norms. Many times the laws are unknown and others, even knowing each other, remain the prejudices related to old age making their application impossible. The problem today is not in the lack of regulations, but in the way in which institutions use or apply what is expressed in these texts.

A good practice referring to long-term care is the construction of the Integrated National System of Care that guarantees the right to care by law. This system has an institutional framework and services and benefits that were created from regulatory decrees, which gives them normative support.

With regard to palliative care, Uruguay ranks first in Latin America Uruguay in terms of palliative care development. According to the latest figures released by the Ministry of Public Health, half of patients requiring palliative care access them, both in public and private services.

### **Equality and non-discrimination**

**6. Which are the measures adopted to ensure equitable access by older persons to the enjoyment of the right to long-term and palliative care, paying special attention to those who are vulnerable or in vulnerable situation?**

In relation to the previously detailed benefits:

The Care System performs a progressive incorporation of the dependent population according to the level of dependency, prioritizing those with greater economic vulnerability. Also the BPS offers benefits in terms of accommodation for low-income retirees and pensioners.

### **Participation**

**7. Does the design and implementation of normative and political framework related to long-term and palliative care include an effective and meaningful participation of older persons?**

The National Integrated Care System has a Consultative Committee as an advisory body. This provides advice for compliance with the objectives, policies and strategies of the System. It is an innovative tool for participation in public policies since integrates the view of all the sectors linked to care: workers, organized civil society, care providers and academia. In this regard, it is worth highlighting the participation of ONAJPU and Red Pro Cuidados on behalf of the elderly should be highlighted.

The BPS has a directory that is integrated with a representative for the workers' sector, one for the business sector and another for the retirement and pensioners sector.

### **Accountability**

**8. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to long-term and palliative care?**

The country has a National Institution for Human Rights (INDDHH) whose mission is the defense, promotion and protection in all its extension of the human rights recognized by the Constitution

and international law. Its obligations refer to suggest corrective means, make non-binding recommendations and intervene in complaints of human rights violations, without incurring in jurisdictional, executive or legislative functions that correspond to the respective Powers. In the exercise of its functions it has faculties such as: carry out inspection visits, with or without prior notice, to any place or sector of activity of the organizations and entities subject to its competence; ask for reports, examine files, files and all kinds of documents; file criminal complaints and file writs of habeas corpus or amparo; to enter, with or without prior notice, places of detention, hospitals, military establishments and any other establishment in which there are persons deprived of liberty or in an inpatient regime. Within the framework of its broad mandate, the INDDHH is competent to hear and investigate alleged violations of human rights at the request of a party or ex officio.