



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the fifth periodic report of Uruguay*

1. The Human Rights Committee considered the fifth periodic report of Uruguay (CCPR/C/URY/5) at its 3022nd and 3023rd meetings (CCPR/C/SR.3022 and 3023), held on 23 and 24 October 2013. At its 3031st meeting (CCPR/C/SR.3031), held on 30 October 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the new optional procedure for submission of reports and for submitting its fifth periodic report in response to the list of issues prior to consideration of reports (CCPR/C/URY/Q/5), under that procedure. It is gratified to have the opportunity to renew its constructive dialogue with the State party concerning the steps taken by Uruguay during the reporting period to apply the Covenant. The Committee thanks the State party for the responses provided by the delegation orally and for the additional information that it has provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted by the State party:

(a) The promulgation of Act No. 18.831 of 27 October 2011, which restores the State's punitive powers, and the adoption of Executive Resolution CM/323 of 30 June 2011, which set aside Act No. 15.848 concerning the expiry of the punitive powers of the State;

(b) The passage of Refugee Status Act No. 18.076 of 19 December 2006, which provides for the establishment of the Refugees Commission, and of Migration Act No. 18.250 of 6 January 2008, which mainstreams a human rights perspective into migration policy; and

(c) The passage of Act No. 17.938 of 29 December 2005, which repeals the provisions in the Criminal Code and Decree-Law No. 15.032 under which certain sexual

* Adopted by the Committee at its 109th session (14 October–1 November 2013).



offences, such as rape or statutory rape, could be extinguished if the person who committed that offence married the victim.

4. The Committee welcomes the State party's ratification or accession to the nine core human rights instruments and their optional protocols, the Rome Statute of the International Criminal Court (28 June 2002) and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (21 September 2001).

C. Principal subjects of concern and recommendations

5. The Committee takes note of the explanations provided by the delegation of the State party concerning the direct application of the Covenant and the practice of invoking it in court. It has also taken note of the information provided by the State party's delegation regarding communication No. 1887/2009, *Peirano Basso v. Uruguay*, although it observes that this case has not moved forward to any significant degree (arts. 2 and 14).

The State party should provide information to judges, lawyers and the general public on the provisions of the Covenant and on their applicability in the national legal system. The Committee reiterates its earlier recommendation (A/53/40, para. 247) and urges the State party to establish a specific procedure for ensuring full compliance with the Views adopted by the Committee under the Optional Protocol.

6. The Committee regrets that, its previous concluding observations notwithstanding (A/53/40, para. 241 and CCPR/C/79/Add.19, para. 8), the State party has not yet amended the provisions in its Constitution regarding states of emergency. The Committee reiterates its observation that the provisions regarding the basis upon which a state of emergency can be declared, as set forth in article 31 and article 168, paragraph 17, of the Constitution, are too broad. The Committee also notes with concern that the Uruguayan legal order still does not specify which rights may not be restricted or suspended under any circumstances (art. 4).

The State party should take the necessary steps to ensure compliance with article 4 of the Covenant, particularly insofar as it relates to the principle of exceptional threat and the non-derogability of the fundamental rights referred to in paragraph 2 of that article. The Committee draws the State party's attention to its general comment No. 29 (2001), which deals with the matter of temporary derogations from obligations during states of emergency.

7. While taking note of the explanations provided by the delegation concerning the process involved in establishing the National Human Rights Institution and Ombudsman's Office, the Committee remains concerned by the fact that this agency is attached to the Administrative Commission of the legislative branch. The Committee is also concerned by the fact that the National Human Rights Institution does not have sufficient resources of its own to fully execute its mandate, under which it is also required to perform additional functions as the national mechanism for the prevention of torture (art. 2).

The State party should ensure that the National Human Rights Institution and Ombudsman's Office has the financial, human and material resources that it needs to do its job effectively on a fully independent basis in accordance with the Paris Principles. The State party should also take the necessary steps to support the work performed by the Institution in fulfilment of its role as the national mechanism for the prevention of torture and to ensure full compliance with the Institution's recommendations. The State party should encourage the Institution to apply to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) for accreditation.

8. While it is grateful for the information provided by the delegation concerning the progress of draft amendments to the Code of Criminal Procedure, the Committee regrets the fact that the State party has yet to follow up on its preceding concluding observations (A/53/40, para. 242) regarding pretrial detention and that release on bail and other non-custodial alternative sentences are in many cases not possible in law or in practice (art. 9).

The Committee urges the State party to complete the process of amending the Code of Criminal Procedure and, in so doing, to take into account the Committee's preceding concluding observations, in which it called for a review of detention procedures and other restrictions on the liberty of accused persons or defendants in the light of article 9, while also, in particular, bearing in mind the principle of the presumption of innocence.

9. While welcoming the steps taken by the State party to improve conditions in prisons and other detention centres, including juvenile detention centres, the Committee is concerned by reports which indicate that overcrowding continues to be a problem in some of the country's prisons. The Committee takes note of the shortcomings in terms of infrastructure and rehabilitative opportunities in women's prisons to which the State party referred in its periodic report (para. 300). Another cause of concern is the large percentage of the prison population (65 per cent, according to official figures) that is awaiting trial and the fact that the State party's laws do not set a maximum duration for pretrial detention (art. 10).

The Committee encourages the State party to step up its efforts to improve prison conditions and to reduce overcrowding in accordance with article 10 of the Covenant. The State party should, in particular:

(a) **Carry forward the work being done to improve and expand prison facilities;**

(b) **Place a limit on the amount of time during which a person may be held in pretrial detention in accordance with article 9 of the Covenant and ensure that such detention is ordered only as an exceptional measure;**

(c) **Increase the use of non-custodial penalties in accordance with the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).**

10. The Committee applauds the legislative measures adopted by the State party with a view to encouraging women to take part in political affairs. It notes with concern, however, that few women hold seats in the legislature or decision-making posts in the executive and judicial branches of government. The Committee is also concerned about the male/female wage gap and by the fact that the unemployment rate for women is twice as high as the rate for men (arts. 3, 25 and 26).

The State party should continue its efforts to do away with gender stereotypes and to carry out awareness-raising campaigns to that end. The State party should also continue to adopt affirmative action measures, as necessary, to increase women's participation in public affairs at all levels of government and their presence in management positions in the private sector. Steps should also be taken to lower women's unemployment rates and eliminate the male/female wage gap.

11. The Committee notes that, in the course of the reporting period, the minimum age for marriage was made the same for both sexes. Nonetheless, and despite the explanation offered by the delegation, the Committee is concerned that raising the minimum age to 16 does not suffice to ensure the free and full consent of the intending spouses in conformity with international human rights standards (arts. 23 and 24).

The State party should amend its laws so as to bring the minimum age for marriage into line with international standards.

12. Although the Committee takes note of the progress made in respect of legislative and regulatory measures relating to the rights of lesbians and gay, bisexual and transgender persons (LGBT), the Committee is concerned by reports from non-governmental organizations which indicate that people are discriminated against on the basis of sexual orientation and gender identity in employment and in other areas. The Committee also wishes to express its consternation at the violent death of at least five transsexual women in 2012 under circumstances that could be regarded as indicative of a pattern of violence based on gender identity (art. 2, para. 1, art. 6, para. 1, art. 7 and art. 26).

The State party should step up its efforts to combat discrimination against LGBT persons in all areas of life, to offer effective protection to such persons and to ensure that any and all acts of violence motivated by the sexual orientation or gender identity of the victim are investigated and that the perpetrators of such acts are prosecuted and punished. In particular, the State party should:

(a) Use all means at its disposal to investigate the murders of transgender persons that occurred during the reporting period, to bring them to trial and to impose appropriate punishments upon them;

(b) Introduce a statistical system that will make it possible to compile disaggregated data on this type of violence;

(c) Develop awareness-raising programmes to combat homophobia and transphobia.

13. The Committee recognizes the efforts made by the State party to protect the rights of asylum seekers and refugees, but it considers that the provision of humanitarian assistance to asylum seekers arriving in Uruguay and the development of programmes for integrating refugees into the local community continue to constitute major challenges (arts. 2 and 26).

The State party should take purposeful steps to promote the integration of people who have been granted asylum and people who have been granted refugee status in order to ensure that they have equal access to employment, education, housing and health care. The Committee recommends that the State party play a direct and active role in integrating refugees into their local communities.

14. While taking note of the introduction of the offence of torture into the legal order of Uruguay by means of Act No. 18.026 of 4 October 2006 and of the State party's cooperation with the International Criminal Court in its effort to combat genocide, war crimes and crimes against humanity, the Committee considers that the way in which that offence is defined in article 22 of the above-mentioned law is not entirely in accordance with the relevant provisions of international human rights instruments (art. 7).

The State party should adopt the necessary legislative measures to ensure that any and all acts of torture are defined as criminal offences in accordance with article 7 of the Covenant and articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. While it applauds the various efforts made in the legislative and institutional spheres to combat violence against women and domestic violence, in particular, the Committee is concerned by the fact that marital rape is not defined as an offence in the Criminal Code. The Committee also regrets that the State party has provided so few statistics on the various forms of violence to which women are subject. The Committee also lacks information on the evaluation of the results of the National Plan to Combat Domestic Violence, 2004–

2010. The Committee further takes note of the delegation's statement concerning the need to improve coordination among the various agencies working in this area (arts. 3 and 7).

The State party should define marital rape as a criminal offence and use all means at its disposal to investigate incidents of violence against women, to identify those responsible, to bring them to trial and to impose appropriate penalties upon them. The State party should compile detailed statistics on violence against women, including disaggregated data on the number of complaints, investigations, trials, sentences handed down and measures of redress granted to victims. It should also strengthen coordination among the different agencies responsible for preventing this type of violence and punishing perpetrators in order to ensure that these agencies' efforts are more effective.

16. The Committee takes note of the efforts made by the State party to prevent and combat human trafficking. It regrets, however, that it has not received the information that it requested on the outcome of investigations and related criminal proceedings involving human traffickers. Nor has it received the requested information on existing mechanisms for the referral of trafficking victims to the asylum system (art. 8).

The State party should continue to pursue its efforts to prevent and eradicate human trafficking by, in particular:

(a) **Ensuring that all reports of human trafficking are investigated, that those responsible are brought to trial and that, if found guilty, they are punished appropriately;**

(b) **Ensuring that victims receive proper medical care, free legal and social assistance, and redress, including rehabilitation;**

(c) **Establishing effective mechanisms for correctly identifying trafficking victims and referring persons in need of international protection to the asylum system;**

(d) **Compiling statistics on trafficking victims that are disaggregated by sex, age, ethnic origin and country of origin with a view to addressing the underlying causes of this phenomenon and evaluating the effectiveness of the programmes and strategies currently in place.**

17. While taking note of the delegation's assurances that *amparo* appeals are an effective remedy for violations of Covenant rights, the Committee is disturbed by reports from non-governmental sources concerning an over-restrictive application of *amparo* (arts. 2 and 14).

The Committee should ensure that the remedy of *amparo* is guaranteed in practice.

18. The Committee regrets that the State party has not provided it with specific information on the outcome of criminal or disciplinary investigative procedures undertaken in the case of officials of the Uruguayan Institute for Children and Adolescents (INAU) who are suspected of having sexually abused a number of minors who were being held in an admissions centre for adolescents (arts. 3, 7, 10, 24).

The State party should ensure that all reports of abuse in facilities for juveniles are investigated promptly and impartially and that the persons suspected of committing such abuse are brought to trial with a view to preventing any reoccurrence.

19. The Committee is concerned about the content and effects of Supreme Court Decision No. 20 of 22 February 2013, in which the Court found that articles 2 and 3 of Act No. 18.831, which restores the State's punitive powers, were unconstitutional as applied to a case concerning serious human rights violations committed during the dictatorship. The

Committee considers the Court's decision to be unfortunate and believes that its failure to recognize the inapplicability of a statute of limitations to crimes against humanity and other serious human rights violations, such as enforced disappearances, torture and extrajudicial killings, runs counter to international human rights law. The Committee takes note of the delegation's explanations, according to which that decision is, in theory, limited in scope to the specific case in question and will not undermine the intent of Act No. 18.831 (arts. 2, 6, 7, 9 and 14).

The Committee reiterates its earlier recommendation (A/53/40, para. 240) in which it encouraged the State party to find a solution that is in full compliance with its obligations under the Covenant. In this regard, the Committee draws attention to its general comments No. 20 (1992), on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which it states that amnesties are in general incompatible with States' obligation to investigate acts of torture (para. 15), and No. 31 (2004), on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that States parties may not relieve the perpetrators of acts of torture, arbitrary or extra-judicial killings or enforced disappearance of their personal legal responsibility (para. 18). The Committee invites the State party to bring the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) to the attention of the Justices of the Supreme Court.

20. The Committee is disturbed by the existence of citizens' initiatives that would lower the minimum age of criminal responsibility to 16 and make it possible for young people in conflict with the law to be tried as adults in cases involving serious crimes (art. 24).

The State party should ensure that its juvenile criminal justice system upholds the rights set forth in the Covenant and other international instruments. The Committee considers that it is particularly important to uphold the right of minors in conflict with the law to be treated in a way that will promote their integration into society, the principle that detention and incarceration should be used only as a last resort, and the right of minors to be heard in criminal proceedings that concern them and to have appropriate legal assistance made available to them.

21. The Committee is concerned by reports of the exploitation of child labour in the State party, although it does acknowledge the efforts made to assist children who live or work in the streets (arts. 23 and 24).

The State party should continue to adopt effective measures to address the situation of street children and to combat the exploitation of children in general and invites the State party to organize campaigns to raise public awareness of children's rights.

22. While taking note of the general explanations provided by the delegation regarding the factors that obstruct access to the justice system in Uruguay for the most vulnerable groups in the population and groups at risk of social exclusion, the Committee regrets that so little information has been provided to it regarding the steps being taken to provide persons of indigenous origin and persons of African descent with equitable access to the courts and administrative bodies (arts. 14 and 26).

The State party should ensure that mechanisms are in place to provide vulnerable groups with access to the justice system without being subject to discrimination of any kind.

23. The State party should widely disseminate the Covenant, its two Optional Protocols, its fifth periodic report and these concluding observations with a view to raising the awareness of judicial, legislative and administrative authorities, civil society, non-governmental organizations operating in the country and the general public. The Committee

also requests the State party, when preparing its next periodic report, to undertake broad-ranging consultations with civil society and non-governmental organizations.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, within one year the State party should provide information on its implementation of the recommendations made by the Committee in paragraphs 7, 8 and 19.

25. The State party is invited to submit its next report, which will be its sixth periodic report, by 1 November 2018. To that end the Committee will send the State party in due course a list of issues prior to submission.
