



Institución Nacional de
Derechos Humanos y Defensoría del Pueblo

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishments

**Committee Against Torture
52nd Session**

Report by the National Institution of Human Rights and Ombudsman of Uruguay

[April 11th, 2014]

I. Introduction

1. The National Institution of Human Rights and Ombudsman (INDDHH) submits the present report for the 52nd Session of the Committee Against Torture, during which the Third Periodical Report of Uruguay will be examined, in order to contribute to strengthening the Rule of Law and effective protection against Torture.
2. The present report provides answers to some of the requests included in the **List of issues prior to the submission of the third periodic report of Uruguay (CAT/C/URY/3)**.
3. The INDDHH expresses its satisfaction concerning progress achieved in various aspects not mentioned in the present report but included in the report of the Uruguayan State.

II. About the National Institution of Human Rights and Ombudsman

4. The National Institution of Human Rights and Ombudsman (INDDHH) is an autonomous state body within the Legislative Power, aimed at the defense, promotion and protection of human rights acknowledged by the Constitution and International Law.
5. It was created by Law N° 18.446 of December 24th, 2008 (amended in articles 1, 36, 75 and 76 by Law N° 18.806 of September 14th, 2011), in compliance with the guidelines established by the Paris Principles, adopted by the UN General Assembly by Resolution 48/134 of 1993, as well as with commitments undertaken under the Vienna Declaration and Program of Action, resulting from the World Conference on Human Rights of year 1993.
6. The INDDHH is an additional mechanism complementing other already existing ones and it is aimed at providing individuals stronger guarantees for the effective enjoyment of their rights and at verifying that laws, administrative practices and public policies comply with international standards protecting human rights.
7. Due to the fact that the INDDHH was only recently created, this is the first report submitted by said Institution before the Committee Against Torture.

III. Answers to Specific Questions by the Committee

Articles 1 and 4

Answer to Paragraph 1 of the List of Issues

8. Uruguay criminalized torture through Law N° 18.026 of Cooperation with the International Criminal Court to combat genocide, war crimes and crimes against humanity, of September 25th, 2006.

9. To this date, there has been no progress in the parliamentary process for the reform of the Criminal Code, initiated in 2010 and which should specifically include the criminalization of torture. However, amendments to the Criminal Code in force have been passed.

10. Law N° 19.120 on Offences and Preservation of Public Areas (*Ley de Faltas y conservación y cuidado de los espacios públicos*) was passed on August 20th, 2013. By amending the Criminal Code, said Law introduces, among other things, penalties such as seven to thirty days of community service for those who cause or take part in disturbances during public events; offend or fail to assist authorities; sell or commercialize public event tickets without authorization; abuse alcohol or drugs and show up in public places and due to their “serious state of mental and physical disturbance” cause harm to others. It also establishes the duty of all individuals to collaborate with public authorities to “eradicate behaviors that may affect, disturb or harm citizen cohabitation”.

Answer to Paragraph 2 of the List of Issues

11. Law N° 18.667 on Prison Emergency, of July 15th, 2010, authorized the Executive Power to spend up to \$292,291,934 to improve the buildings of existing detention centers and to build new ones; to buy equipment and to create 1500 civilian prison staff positions.

12. With regard to measures leading to a deep and comprehensive reform of the criminal justice system, there has been no progress in terms of the parliamentary process for the reform of the Criminal Procedure Code, initiated in 2010.

13. The INDDHH emphasizes the urgent need to reform the inquisitorial criminal procedure in force and replace it with an accusatorial, democratic, transparent and efficient criminal procedure, adjusted to international standards, which provides stronger guarantees to the parties and ensures the autonomous participation of victims in criminal actions.

14. Law N° 18.489 was passed on May 17th, 2009. Said Law authorizes the National Board for Detainees and Released Detainees (*Patronato Nacional de Encarcelados y Liberados*) to hire detainees with temporary license for work and released detainees to fulfill duties within the framework of agreements with private and public institutions.

15. On September 24th, 2010, Law No. 18.690 was passed, replacing article 61 of Decree-Law N° 14.470 of December 2nd, 1975, changing the temporary license system.

16. Law N° 18.717 was passed on September 24th, 2010. Said Law authorizes the Executive Power to appoint military staff, until December 31st 2012, to temporarily fulfill duties as perimeter guards or controlling access to prisons, penitentiary and recovery facilities. Said Law establishes that if said military staff appointed for such functions is forced to apply coercive measures, they shall do so in a rational, progressive and proportional manner, previously exhausting all persuasion mechanisms available, according to each case.

17. Law N° 19.081 amending article 1 of Law N° 18.717 was passed on May 22nd, 2013, extending the term to “appoint military staff under the Ministry of National Defense to temporarily fulfill duties as perimeter guards in the Detention Centers for Persons Deprived of their Liberty to be determined” until July 1st, 2015.

Article 2

Answer to Paragraph 3 of the List of Issues

18. The Institute of Juvenile Criminal Responsibility (*Instituto de Responsabilidad Penal Adolescente*) (IRPA) was created through Law N° 18.771 of July 1st, 2011.

19. Said Law assigns the Institute for Children and Adolescents of Uruguay (*Instituto del Niño y Adolescente del Uruguay*) (INAU) the task of creating the Juvenile Criminal Liability System (*Sistema de Responsabilidad Penal Adolescente*) (SIRPA), a temporary deconcentrated body.

20. Law N° 18.771 also established the structure for the new system, allocating resources for infrastructure, communications, surveillance and vehicles.

21. To this date, the establishment of the IRPA, which according to the Law should take place “during the current government term, as soon as possible”, has not yet been completed.

22. Law N° 18.777, which modifies article 69 of the Code for Children and Adolescents (CNA, Law N° 17.823 of September 2004) was passed on July 15th, 2011. This reform created a criminal records registry for adolescents who commit certain crimes, it increased the term to issue a ruling in certain situations, it created the new criminal offence “attempt of theft” and it changed the time range for the application of precautionary measures – especially pre-trial detention – from 60 to 90 days¹.

23. Also on July 15th, 2011 Law N° 18.778² was passed, on adolescents in conflict with the Law and on the keeping of criminal records in certain situations, modifying article 116 of the Code for Children and Adolescents, stating that the Supreme Court of

¹ Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18777&Anchor>

² Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18778&Anchor=>

Justice will create and regulate a National Registry of Criminal Records of Adolescents in Conflict with Criminal Law, organized in two sections. The first section shall correspond to criminal records of crimes of rape, robbery, robbery with deprivation of victims' liberty (*copamiento*), kidnapping, willful and ultra-intentional homicide and the second section to all other violations of the criminal Law provided in the CNA.

24. Law N° 17.778 also modifies article 222 of the CNA, stating that information relative to children and adolescents may not be used as a data base to track them once they are of age and that judicial and administrative records of children and adolescents in conflict with the Law must be immediately destroyed once they turn eighteen or by the end of the term of the measure they were imposed. This limitation allows for exceptions, when the adolescent in conflict with the Law has been convicted for rape, robbery, robbery with deprivation of victims' liberty (*copamiento*), kidnapping or any of the various forms of intentional homicide. In the abovementioned cases, "the Judge, at the moment of ruling, may impose – as an additional punishment – the preservation of criminal records so that, once said adolescent turns eighteen, if he or she commits another willful or ultra-intentional crime, he or she is not considered a first-time offender". In addition, it provides that adolescents' criminal records will be eliminated in all cases: A) Two years after they turn eighteen and B) two years after the sentence has been completed, when said sentence goes beyond their eighteen years old.

25. The INDDHH was consulted by Parliament regarding a new initiative for legislative reform. On August 14th, 2012, the Institution submitted before the Commission on Constitution and Legislation of the Senate its opinion on the Bill introducing changes to the CNA³.

26. Against the INDDHH's opinion, on January 4th, 2013, Law N° 19.055 was passed, which modifies articles 72 and 76 of the CNA, establishing a classification of offences in serious and very serious and providing for a special system in case of very serious offences committed by adolescents between fifteen and eighteen years old, which among other measures, includes mandatory precautionary deprivation of liberty until judgment is issued and minimum sentences of 12 months. This has resulted in a significant increase in the juvenile detainees population, affecting overcrowding and the risk of situations of ill-treatment.

27. The INDDHH is concerned with the passing of the abovementioned regressive legislative measures.

28. The INDDHH has expressed its concern regarding the initiative to submit to plebiscite the lowering of the age of criminal responsibility. Said plebiscite is to be held together with national elections in October 2014. Said reform may be against the *corpus juris* of the rights of children to which Uruguay is a party, and may have serious consequences in terms of citizen security, since by introducing these adolescents to

³ See: Report by the INDDHH on Bill for CNA Reform, available at <http://inddhh.gub.uy/wp-content/uploads/2013/09/Informe-Modificaciones-al-CNA-y-a-la-legislaci%C3%B3n-penal-14.08.2012.pdf>

adult detention facilities and holding them equally responsible, institutional violence may be increased, affecting the violence circuit at a general level. In addition, this might aggravate structural problems of the national prison system.

Answer to Paragraph 4 of the List of Issues

29. The executing unit 026 “National Rehabilitation Institute” (INR), under the Ministry of Interior and with national jurisdiction, was created by Article 221 of Law N° 18.719 - National Budget for the 2010 – 2014 period, of December 27th, 2010, within section 04 “Ministry of Interior”, program 461 “Management of Deprivation of Liberty”,

30. Said Law established that the INR shall be in charge of organizing and managing the various penitentiary institutions established or to be established in the country, under its jurisdiction; of the rehabilitation of pre-trial and convicted detainees and of managing alternative measures to deprivation of liberty.

31. To this date, the INR is working under the Ministry of Interior.

32. Parliament has not yet initiated the process to consider the bill for the Regulation of the INR, submitted by the Executive Power on August 10th, 2011.

Answer to Paragraph 5 of the List of Issues

33. The National Institution of Human Rights and Ombudsman was formally established on June 22nd, 2012, when the first Board of Directors elected by the General Assembly took office in a public ceremony in the Parliament Building.

34. The Board of Directors of the INDDHH is a collegiate body of five members: Juan Raúl Ferreira Sienra, Ariela Peralta Distefano, Juan Faroppa Fontana, Mariana González Guyer and Mirtha Guianze Rodríguez.

35. The INDDHH has faced some difficulties, resulting from legal gaps in the Law creating the Institution, referring to its legal nature and institutional position. This has forced it to carry out its functions with minimum infrastructure, mainly in terms of human resources.

36. The INDDHH believes that these gaps must be overcome by providing it with an adequate legal-administrative framework and more budgetary and operational autonomy, ensuring greater independence and effectiveness.

37. Also due to the administrative and budget-related difficulties mentioned above, and since the building allocated to the institution needs major repairs, the INDDHH is currently working in temporary rented premises. Repairs of the Institution’s

headquarters are about to begin, within the framework of an agreement between the INDDHH and the National Housing Agency (*Agencia Nacional de Vivienda- ANV*)⁴.

38. In addition, as a result of the lack of definition regarding its legal nature, there was a delay in the call for bids to hire staff. As a consequence, the term of 30 calendar days after the first election of the Board of Directors, as established by Article 81 of Law N° 18.446, was not complied with. The INDDHH has initiated the process and hopes to complete it during the second term of 2014.

39. The INDDHH is preparing its accreditation before the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). It hopes the Subcommittee on Accreditation will agree to assess its application in 2014.

40. With the contributions of the South American Regional Office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Spanish Agency for International Development Cooperation (AECID), the INDDHH has hired consultants to address specific issues (carrying out National Human Rights Assemblies provided by Article 61 of Law N° 18.446, reports, strategic planning, communication and press).

41. The INDDHH has taken part in exchange activities within the framework of the PROFIO project of the Ibero-American Ombudsman Federation (FIO) together with the Ombudsman of Colombia and the Ombudsman of Costa Rica. It also shares experiences within the framework of an agreement signed between the South American Regional Office of the United Nations Office of the High Commissioner for Human Rights, the Human Rights Institution of Chile and the INDDHH.

42. In accordance with the Law creating the Institution, during its first year of mandate the INDDHH carried out its first two extraordinary sessions called “National Human Rights Assemblies” and the third one will be held on June 9th, 2014. Civil society organizations that are qualified and registered with the corresponding registry, government bodies and other entities may take part in these meetings without voting rights. These meetings are a very important opportunity to exchange views and allow for the collection of input for the preparation and follow-up of the institutional agenda.

43. The Board of Directors has submitted eleven reports on bills for laws upon request of the various parliamentary commissions⁵.

44. The INDDHH has published two thematic reports; one regarding migrant workers, human trafficking and labor exploitation and the other one regarding the grounds for the right to vote of Uruguayan citizens living abroad⁶.

⁴ See: <http://inddhh.gub.uy/contrato-entre-la-inddhh-y-la-anv-para-el-programa-de-refaccion-de-la-sede/>

⁵ Reports are available at: <http://inddhh.gub.uy/category/informesparlamento/>

⁶ The corresponding thematic reports are available at: <http://inddhh.gub.uy/category/informestematicos/>

45. On May 8th, 2013 the INDDHH submitted its first performance report before the General Assembly of Parliament, according to what is required by the Law. Said report includes information about activities carried out within the framework of its various fields of competence⁷.

46. It has also submitted reports before various international control bodies⁸.

47. With regard to the institutional budget, Article 2 of Law N° 18.806 states that the remuneration of the members of the Board of Directors of the INDDHH shall be equivalent to 75% of the nominal salary of a Senator of the Republic. The salary of the members of the Board of Directors, in force as from January 1st 2013, amounts to \$102,172. Representation expenses, amounting to \$17,180 (seventeen thousand, one hundred and eighty Uruguayan pesos) are added to the budget allocation corresponding to salaries.

48. The annual budget allocated for the operation of the INDDHH amounts to \$ 51,023,059 corresponding to personal payments (salaries of the Board of Directors); \$6,384,133 to expenses; \$ 3,224,309 to the purchase and maintenance of equipment; \$ 2,149,540 to various repairs and \$ 27,600,000 to building infrastructure (single allocation corresponding to the repair works of the headquarters).

49. To this date, the INDDHH has incorporated 10 employees on secondment. Their remuneration is budgeted by the state bodies they come from.

50. Article 83 of Law N° 18.446 states that the INDDHH shall fulfill the task of National Preventive Mechanism (NPM) referred to in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments.

51. Due to the expressed difficulties, even though the INDDHH has carried out some activities as NPM, as from May 2013, this Mechanism was designed and implemented as a specialized unit within the INDDHH, with an interdisciplinary team which began its functions on December 2013.

52. It is worth pointing out that the Law creating the INDDHH does not establish the form in which the NPM should be established, nor does it specify its structure.

53. Throughout the process of creation, strategic planning and launching of the NPM, the INDDHH has paid special attention to complying with the requirements established in the OPCAT.

54. During the process towards the establishment of the NPM, the INDDHH contacted international experts, it has taken into consideration other experiences in the region, and it has maintained an ongoing dialogue with the South American Regional

⁷ Available at: <http://inddhh.gub.uy/category/informes anuales/>

⁸ See: <http://inddhh.gub.uy/category/organismos-internacionales/>

Office of the UNOHCHR, it has taken part in international meetings and it has coordinated actions with national organizations, according to what is established by the Law creating the Institution.

55. During the stage of realization of the NPM, the INDDHH signed a Protocol for Action establishing the formal mechanisms for inter-institutional coordination and for the exchange of information with the Ministry of Foreign Affairs (MRREE), according to what is provided in Article N° 83 of Law N° 18.446.

56. Said Protocol states that, notwithstanding the obligations of collaboration undertaken by both parties, “the INDDHH shall be in charge of fulfilling the functions appointed by the OPCAT to the National Preventive Mechanism, and it shall act in accordance with the Paris Principles, approved by Resolution 48/134 of the United Nations General Assembly of December 20th, 1993, developing all activities it deems relevant for the adequate compliance thereof”.

57. The OPCAT states that the National Preventive Mechanism shall visit places of detention with the purpose of preventing torture or other cruel, inhuman or degrading treatment or punishments (torture and ill-treatment).

58. The INDDHH has a wide interpretation of the concept “places of detention” established in Article 4 of the OPCAT, understanding that said places include any place where a person may be deprived of his or her liberty, even with the “consent or acquiescence” of a public authority: “any place under its jurisdiction and control where there are or there may be people deprived of their liberty, either by order of a public authority or by their own instigation or with their own express or tacit consent”.

59. The universe of establishments destined to deprivation of liberty includes but is not limited to police stations, adult prisons and juvenile detention centers, military barracks, psychiatric institutions, old people’s homes, establishments for disabled people, treatment centers for people with substance-abuse issues, under State or private control.

60. In the definition of its first strategic plan, the NPM established its VISION: “Uruguay as a country free from torture or other cruel, inhuman or degrading treatment or punishments, wherever there is a person deprived of his or her liberty, detained or in custody or who is not able to leave freely”. As MISSION it defined: “An efficient National Torture Prevention Mechanism with autonomy and independence in terms of operation, budget and judgment, acting complementarily with the Subcommittee on Prevention of Torture (SPT) in accordance with the OPCAT for all persons deprived of their liberty in national territory”.

61. In addition, it determined the following strategic axes: 1) Know about and monitor the situation in official and unofficial establishments where there are persons deprived of their liberty, detained, in custody or not allowed to leave freely and 2)

Position the role of the NPM in torture and ill-treatment prevention at a national and international level as well as within the INDDHH.

62. The NPM believes that for the development of its task it is essential to be able to efficiently interact with other actors; therefore, it carried out a mapping of all public and private stakeholders with whom its activities may be articulated.

63. In addition, it defined a work method to develop its strategic axes. Among other activities it carries out the following: inspection and monitoring visits, coordination, reports and recommendations, networking, training and awareness-raising, follow-up of legal framework on torture prevention, dissemination and communication.

64. To this date, the NPM is not autonomous in terms of budget. The Board of Directors of the INDDHH has decided to provide it with the necessary resources for the progressive implementation of its strategic plan. For such purpose, in the budget modification approved by the Senate on October 2013, economic resources were allocated and new positions were created to provide the NPM with at least two additional technicians. Currently, the INDDHH has begun studying the conditions and terms of reference for hiring said technicians.

65. In the definition of a progressive strategy, the INDDHH agreed to focus its first approach on juvenile detention centers and centers for juveniles subject to alternative measures.

66. Monitoring of facilities destined to adolescents deprived of their liberty by resolution of a competent court as a result of a behavior categorized as crime (offence) and to adolescents subject to alternative measures other than deprivation of liberty provided in the juvenile criminal liability system was prioritized in this first stage for two main reasons: Accusations of ill-treatment suffered by adolescents deprived of their liberty received by the accusations section of the INDDHH and repeated observations and concerns by international control bodies, civil society organizations and coalitions dedicated to monitoring conditions of detention of adolescents in Uruguay.

67. Following-up, studying and analyzing the application and execution of alternative measures that avoid the use of institutional confinement is seen as a very significant aspect in the proactive task of preventing torture or other cruel, inhuman or degrading treatment or punishments.

68. To this date, the NPM has carried out 29 visits to detention centers under the Juvenile Criminal Liability System (SIRPA).

69. As a result of their inspection visits, special inspection visits and follow-up visits, twelve (12) recommendations were issued to *Centro SER (Colonia Berro)*; eight (8) recommendations were issued to *Centro de Ingreso Adolescente Femenino (CIAF)*; twelve (12) recommendations were issued to *Centro de Ingreso Transitorio (CIT)*; twelve (12) recommendations were issued to *Centro Desafío*; ten (10) recommendations were issued to *Centro de Privación de Libertad (CEPRILI)*; eleven (11)

recommendations were issued to *Centro de Medidas de Contención (CMC)*; fourteen (14) recommendations were issued to *Centro de Diagnóstico y Derivación (CEDD – Burgues)*; seven (7) recommendations were issued to *Centro Sarandí (Colonia Berro)*; eight (8) recommendations were issued to *Centro Paso a Paso*; five (5) recommendations were issued to *Centro Cimarrones (Colonia Berro)*; nine (9) recommendations were issued to *Centro El Hornero (Colonia Berro)*; eight (8) recommendations were issued to *Centro Ariel (Colonia Berro)* and seven (7) recommendations were issued to *Centro de Medidas Cautelares (CEMEC)*.

70. After each visit, the NPM issued detailed reports including information about the visit, observations and recommendations⁹.

71. These reports are presented to SIRPA authorities and have data and information that has been duly verified, processed and analyzed by the NPM. Recommendations made to each institution include recommendations specifically aimed at SIRPA authorities and others aimed at the Management of the corresponding institution.

72. On March 28th, 2014, upon request of the Commission on Population and Development of the Chamber of Representatives, the NPM submitted a report about visits carried out until then, as well as a compendium of all recommendations issued¹⁰¹¹.

73. The NPM has planned a discussion process regarding the follow-up and implementation of recommendations issued, for the purpose of effectively complying with said recommendations.

Answer to Paragraph 6 of the List of Issues

74. Within the context of coordinations inherent to the Institution's functions, according to Article 10 of Law N° 18.446, the INDDHH and the Parliamentary Commissioner for the Prison System (*Comisionado Parlamentario para el Sistema Penitenciario*) have had a fluid and constant relation from the very beginning.

75. The mechanism agreed has been to refer to the Parliamentary Commissioner all accusations received by the INDDHH relative to adults deprived of their liberty. The Parliamentary Commissioner, in turn, sends all information regarding referred cases, so that the INDDHH can carry out a follow-up.

76. The Observers Committee in charge of monitoring the process of adjustment of the system of execution of adolescent criminal justice measures to the Convention on the Rights of the Child and the Code for Children and Adolescents, created by

⁹ Reports on each visit are available at: <http://inddhh.gub.uy/informes/>

¹⁰ The compendium of NOM reports as of March 28th, 2014 is available: <http://inddhh.gub.uy/wp-content/uploads/2014/04/13-Informe-presentado-en-Comisi%C3%B3n-de-Poblaci%C3%B3n-y-Desarrollo-Social.pdf>

¹¹ The minutes of the session are available at: http://inddhh.gub.uy/wp-content/uploads/2014/04/VersiontaquigraficaCom_Poblacion-y-Desarrollo-Social_3-abril-2014.pdf

resolution 2923bis/2007, of November 23rd, 2007, has ceased to function, according to what was reported to the INDDHH.

77. In terms of coordination with the Inspectorate General of Psychopaths, it is worth mentioning that the head of said office recently passed away and, as a result, negotiations for the execution of a cooperation agreement between said institution and the INDDHH were suspended. To this date, said position, which must be directly appointed by the President of the Republic, is still vacant.

Answer to Paragraph 10 of the List of Issues

78. On November 25th, 2013, International Day for the Elimination of Violence Against Women, the INDDHH publicly acknowledged the progress achieved in the implementation of public policies, and it celebrated accountability by competent bodies. It also emphasized the important role of civil society organizations, especially women organizations and feminist groups, in making the issue of violence against women visible.

79. The INDDHH understands that this issue is a priority at a national level, since Uruguay is the second country in Latin America with the highest rate of women killed by their partners or former partners.

80. Uruguay has increased psychological, social and legal attention services; it has established specialized courts; it has improved and increased specialized police units and reference teams in the health system, as has already been reported by the State.

81. However, the INDDHH believes it needs to report some of the difficulties detected since the Institution began its functions.

82. The INDDHH has deepened its work on women's rights, based on a series of accusations received and on issues raised by various feminist and women groups during the theme sessions on "Women" and on the "Implementation of Public Policies for the Prevention of Gender Violence" that took place during the I and II National Human Rights Assembly, respectively.

83. In terms of activities for prevention and an approach from the education sector, various actions have been taken towards providing comprehensive solutions to these situations. Organizations involved have approved Protocols for Action, such as the "Road Map for Situations of Ill-treatment and Sexual Abuse in Children and Adolescents Detected in the School Context". However, the INDDHH has received many accusations relative to the application of said Road Map and it has even issued recommendations to the Initial and Primary Education Council, in a particular case.

84. In said case, it was detected that initially "the procedures established in the referred protocol were not complied with and that measures adopted did not guarantee the protection of the children. In particular, this was reflected in the report issued by the Zone Inspector Teacher where she states that she "believes that the children should

attend school, problems should be solved by adults and that technicians working on the situation should insist on this and achieve legal guarantees as soon as possible.”

85. Regarding access to justice by women in situations of violence, the Board of Directors would like to point out that on November 2012 the Supreme Court of Justice passed Resolution N° 7755, as a result of a constitutional petition submitted by more than 100 civil organizations.

86. Through said petition, civil society organizations reported the existence of institutional practices that did not comply with human rights of women protected by national and international regulations in force. In Section IV of the recitals of the Resolution, the Court states that “it considers appropriate to partially sustain the claim submitted – through the right to petition (Article 30 of the Constitution) – by different civil society organizations committed with the issue of domestic and family violence, establishing through these Resolution” a number of practices.

87. The abovementioned practices include the banning of confrontation or joint appearance in court, the inconvenience of issuing generic statements, the inconvenience of adopting reciprocal protection measures, the importance of ensuring compliance with precautionary measures, the duty to provide grounds for all resolutions adopted during the process, the regulation of telephone resolutions and call to hearing, the need to adopt the necessary measures to ensure adequate supervision of effective compliance with precautionary measures imposed, the duty to provide a comprehensive solution without further delay to situations of violence against women, children and adolescents and the duty to report behaviors that appear to be criminal, among others.

88. Nevertheless, the INDDHH, based on some accusations received relative to potential cases of domestic violence and/or sexual offences, has expressed its concern to the Supreme Court of Justice regarding compliance with national and international standards relative to access to Justice.

89. The INDDHH emphasizes the importance of using presence and location verification technologies, to make sure protection mechanisms for people at risk of suffering domestic violence are fulfilled. This initiative is carried out by the Ministry of Interior, together with the Judicial Power and the Ministry of Social Development (MIDES). It is a pilot project that has been put in place in Montevideo since February 2013.

90. The term of the court order varies between 90 and 180 days, and there is Community Police follow-up in every zone, working based on a satellite location system under the Gender and Domestic Violence Department, detecting alerts and responding with police units. There are 25 police officers working in this department, monitoring screens and communicating with victim and aggressor, in case any “events” should take place. There are 15 different alert signs: aggressor in restricted area, aggressor in warning area, victim’s panic alert, tampering of the ankle bracelet, low battery of tracking device, aggressor out of range of the tracking system, etc. In addition, MIDES conducts a psychosocial approach of aggressors and victims.

91. In terms of the creation of shelters, the INDDHH acknowledges that the policies developed have improved significantly, just as the State has informed. However, there have been some accusations before the INDDHH regarding the quality of the services provided.

92. More specifically, there have been complaints about 2 of the 5 shelters run by INAU for boys, girls and adolescents with their significant adults, mainly mothers, who live in a situation of domestic violence.

93. These complaints were mainly about infrastructural deficiencies, scarce or no individual support for women, children and adolescents to address the consequences of domestic violence situations experienced and potential situations of re-victimization. In one of the cases in particular, the INDDHH recommended the development of an Action Plan that would allow maintaining the current coverage while initiating the administrative procedures required for the termination of the Agreement with the organization in charge of managing the center; this recommendation has not been followed to this date.

Articles 2 and 3

Answer to Paragraphs 11 and 13 of the List of Issues

94. To this date, there has only been one accusation filed to the INDDHH regarding human trafficking for labor exploitation

95. On July 27th, 2012, the Civil Society Organization *Centro de Comunicaciones Virginia Woolf* (commonly known as NGO *Cotidiano Mujer*) filed a written accusation, about alleged human rights violations testified by six Bolivian women, referred to the hiring of workers entering the country with Bolivian IDs and tourist visas, who were employed in family homes where they worked for long working hours without time limits, who were not allowed to rest during working hours and whose weekly rest was restricted to a few hours (an average of half a day). In addition, they were restricted on food and cleaning devices (in both cases they were provided different products than the rest of the family). The workers also claimed they were victims of psychological ill-treatment and they referred to situations of restriction of physical freedom (“*libertad ambulatoria*”) which in some cases included not being allowed to go out during daylight or to carry out necessary proceedings.

96. Apparently, some workers were victims of an abrupt return to their country of origin without prior notice, the travel costs of which were deducted from the workers’ salary.

97. The NGO *Cotidiano Mujer* submitted the testimonial evidence without revealing the victims’ identity, in accordance with article 12 of Law No. 18.446 and requested the INDDHH to file the accusation and to take measures to protect the rights of those affected and to put an end to the alleged human rights violations.

98. According to what is provided by articles 11 *et. seq.* of Law No. 18.446, referring to the procedure for accusations, the INDDHH initiated the customary investigation proceedings.

99. Among measures carried out, in order for the accusation to follow the proper course of action and taking into consideration that it was made public through various means of communication, the INDDHH requested information about the case, the investigation proceedings and the status thereof from the Supreme Court of Justice, the Criminal Court of First Instance specialized in Organized Crime, the National Attorney General's Office, Ministry of Interior and Ministry of Labor and Social Security.

100. The Supreme Court of Justice replied that a pre-trial investigation was opened before the Criminal Court of First Instance specialized in Organized Crime, initiated on June 18th, 2012.

101. The National Attorney General's Office replied that the Second Prosecutor's Office specialized in Organized Crime intervened and that proper measures were being taken.

102. The Ministry of Interior, through the National Secretary's Office (*Dirección Nacional de Secretaría*), replied that police procedures were carried out by the General Directorate for the Fight against Organized Crime (*Dirección General de Lucha Contra el Crimen Organizado*) and INTERPOL.

103. The Ministry of Labor and Social Security, through the General Inspectorate of Labor, reported that the investigated employer had been penalized with three fines in Readjustable Units (UR) and that said resolution had been appealed by said employer.

104. After the accusation, the women were taken care of and assisted by the Ministry of Social Development (MIDES), through the Assistance Service for Female Victims of Trafficking, and by the diplomatic representation of the Republic of Bolivia in Uruguay.

105. In compliance with articles 19 and 31 of Law No. 18.446, the INDDHH stopped all its investigations regarding this specific case. However, and based on the abovementioned article 19, it issued and made public a special report on the general issues stated in the accusation. The INDDHH is currently following up on the situation of the criminal accusation in progress.

106. On October 12th, 2012, the INDDHH published its "Report on Migrant Workers, Human Trafficking and Labor Exploitation: The Uruguayan State's Obligations"¹². The Report summarizes national and international regulations on the subject and presents definitions and characteristics of trafficking for labor exploitation, domestic servitude and the main regulatory background related to migrant workers. The

¹² Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Informe-Trabajadores-Migrantes-Trata-de-Personas-y-Explotaci%C3%B3n-Laboral.pdf>

report ends by issuing a number of recommendations and includes an annex with a compilation of regulations and institutions related to the subject.

107. In said report, the INDDHH recommended implementing a permanent surveillance of institutional practices to ensure that the condition of migrant does not imply any kind of limitation or restriction to the enjoyment and exercise of human rights by any individual; promoting activities to raise awareness about and promote the rights of immigrants among the general population and government officials; adequate and permanent training of public officials to ensure the protection of human rights of individuals, regardless of their condition as migrants or their political citizenship; monitoring compliance with regulations in force on the subject of migration and constantly assessing public institutions' practices and procedures that may affect the right to guarantees of due process and access to justice for migrants and members of their families, so as to guarantee the existence of effective remedies and a proper reparation; that decisions by competent authorities related to labor rights of migrants should take into account, in addition to applicable regulations, the stance of the Inter-American Court of Human Rights, which states that the rights arising from a labor relation must be acknowledged, regardless of the migration status; that the State ensures that migrant workers may effectively claim before the Justice System any impairment of their labor rights, guaranteeing efficient remedies and an adequate reparation; that any situation presenting evidence of a potential case of human trafficking should be duly investigated by staff trained for this type of interventions; the implementation of informative campaigns about formalities required for the employment of migrant workers; compliance with obligations undertaken by the State under international treaties on human rights in general and migrants rights in particular; strengthening cooperation between States of origin, of transit and employment to regulate and control hiring and placement processes, as well as periodic reporting and articulation and cooperation in terms of justice; the creation of a tri-partite mechanism where the State, workers organizations and employers can analyze and implement sustainable plans and programs for labor migrations, preventing conducts that may eventually constitute violations of human rights of migrant workers and, finally, the design and implementation of a public policy on labor migration, as a tool for compliance with national and international obligations in terms of human rights.

108. On August 21st 2013, within the framework of its functions and powers as per articles 1 and 4 (sections C, H and I) of Law No. 18.446, the INDDHH submitted a report stating its opinion on the *Bill on Stateless Persons, their Acknowledgment and Protection*.¹³ The INDDHH considered that the passing of the bill would constitute a further step towards compliance by the national legal system with obligations under International Human Rights Law and it expressed its satisfaction with the national

¹³ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Informe-INDDHH-proyecto-Ley-Ap%C3%A1tridas.pdf>

authorities' interest in adjusting internal regulations and procedures to the framework established by International Human Rights Law.

109. Pursuant to the information provided to the public opinion by State authorities regarding the potential arrival to the country of several individuals who are currently deprived of their liberty at the US Guantanamo Bay Naval Base, the Board of Directors of the INDDHH issued a statement on March 26th, 2014¹⁴.

110. The INDDHH acknowledges the humanitarian gesture of the Uruguayan government contribution to put an end to the indefinite detention of a group of individuals who have been deprived of their liberty for many years, without even the most basic safeguards of their rights to personal integrity or due process of law, clearly protected by the regulations under International Human Rights Law. This decision was made after the announcement to close the detention facility still in place at Guantánamo Bay, which represented, and still represents an affront to human dignity.

111. The INDDHH considers that this humanitarian gesture is probably the only chance these detainees have not to be returned to their countries of origin where their lives or rights might be threatened.

112. The principle of non refoulement of detainees to countries where they are at risk of being subject to ill-treatment is one of the fundamental principles of International Law.

113. The INDDHH understands, however, that this humanitarian intent needs to be clearly and precisely based on the existing legal framework in our country, especially on regulations regarding asylum, refuge and the rights of migrants.

114. This means that the people potentially arriving in our country under the aforementioned condition cannot be treated differently or fall under a legal status that is not established in the abovementioned regulations, since they are not coming to the country to fulfill a punishment they have never been tried for.

115. Uruguay has a rich and longstanding democratic tradition of welcoming people of the most diverse origins as refugees, in asylum or under a legal status that will allow them to have a dignified life and protect them from suffering further irreparable damage.

116. The INDDHH is awaiting further information from the competent authorities before making any decisions whether or not to issue specific recommendations about the situation expressed *ut supra*.

¹⁴ Available at: <http://inddhh.gub.uy/wp-content/uploads/2014/03/Declaraci%C3%B3n-de-la-INDDHH-sobre-eventual-llegada-al-pa%C3%ADs-de-PPL-en-Guant%C3%A1namo-26.3.14.pdf>

Article 10

Answer to Paragraph 21 of the List of Issues

117. On February 21st, 2013, the INDDHH issued a statement about justice administration and human rights¹⁵ pursuant to the decision by the Supreme Court of Justice (within the framework of its current powers) to transfer to a Civil Court one of the criminal judges in charge of most of the cases which investigate human rights violations committed during the period of State terrorism.

118. The Supreme Court of Justice never clearly provided the reasons for such transfer, in such way that the entire population would be fully aware of the reasons why that decision was made.

119. The INDDHH was of the opinion that the transfer of said criminal judge generated the risk that those cases undertaken by her about human rights violations during the period of State terrorism would not be dealt with as promptly and efficiently as required.

120. The INDDHH believes it is necessary for the country to start working on a public agenda that will reach further agreements and consensus to implement reforms towards a judicial power in full compliance with the regulations set forth in international agreements.

121. Among other measures, it will be necessary to work on the creation of a High Judicial Council, an agency that would free the Supreme Court of Justice from complex administrative functions so that it may fully and exclusively focus on its jurisdictional function. This Council would be responsible for the judicial career (call, selection, training, promotion system, transfers and disciplinary system of judges). It would also be responsible for their specialization, so that each field has qualified judges with expertise on the matter they need to resolve.

122. The creation of a High Constitutional Council is also important. It would be responsible, as in other countries, for dealing with unconstitutionality, releasing the Supreme Court of Justice from this complex task, allowing it to focus on the many other issues under its scope.

123. In addition, there should be a reform of the National Attorney General's Office, to ensure at least a proper course of the professional career of prosecutors (call, selection, training, specialization, promotions system, transfers and disciplinary system).

124. As mentioned above, it is vital to approve the new Criminal Procedure Code; this measure has been delayed in the past years for no apparent reason. Within this

¹⁵ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Declaracion-INDDHH-sobre-administraci%C3%B3n-justicia-y-derechos-humanos-21.01.2013.pdf>

reform, crime victims' participation is an essential aspect (in a way that can be determined by taking into consideration comparative Law), so they can receive a fair and dignifying treatment and information, and be able to participate in a process where their personal interests are at stake.

125. The INDDHH points out that international regulations regarding the independence of the Judicial Power set forth a number of requirements for appointments and tenure and, according to these, "one of the practices that most affects the independence or impartiality of the Judicial Power is the system of promotions and mobility. The Basic Principles on the Independence of the Judiciary establish that these criteria should be objective. The Statute of the Ibero-American Judge follows the same line when it states that tenure stability is essential for judicial independence and decisions regarding promotions should be based on the same objective criteria as for appointments, and these should be the result of a transparent and fair procedure. That is the stance of the principles and guidelines regarding independence in the administration of justice and of the observations of Rapporteurs and the Human Rights Committee, which state that appointment, tenure and removal of judges must also be controlled by an independent and impartial body represented by judges, lawyers and scholars.

126. The INDDHH considers that the provisions established in articles 96 to 99 of the Charter of the Judiciary and Organization of Courts (Law N° 15750 dated June 24th, 1985), should be adjusted to the provisions of human rights treaties that protect the right to an effective appeal before an independent and impartial judge, as a guarantee of human rights protection. In this sense, the justice administration should set clear and transparent rules as well as informed decisions that allow the involved party and society in general to know the reasons behind them. Such harmonization would strengthen the rule of law and the independence and impartiality of the Judicial Power. In addition, efficient mechanisms should be put in place to ensure a correct allocation of resources to adequately fulfill the functions pertaining to the administration of justice, providing, in a mandatory and continuous manner, permanent professional training for judges.

127. Within the framework of visits carried out by the national preventive mechanism (NPM) to monitor juvenile detention centers, it has been observed that for the most part, judges comply with the provisions set forth in Article 100 of the Code for Children and Adolescents (CNA), regarding periodic visits.

128. The NPM has verified the aforementioned through the study of the pertinent records in each of the detention centers.

Article 11

Answer to Paragraph 28 of the List of Issues

129. *Centro SER* has not been shut down nor has *Colonia Berro* been relocated.

130. The NPM, as part of its schedule of periodic visits to detention centers, inspected and then followed up on their visits to *Centro SER*, six times: May 14th, November 22nd and 25th, 2013; December 27th, 2013; February 4th and February 25th, 2014.

131. On May 14th, 2013 the INDDHH visited the aforementioned center for the first time after receiving reports and accusations, from different sources, regarding the situation of the adolescents detained in these establishments, as a result of which this visit was made a priority, within the context of the future inspections program to be developed by the NPM. The objective of the visit was to determine the cohabitation system, material conditions of the premises, number of detainees, medical services, physical condition, medication prescribed and staff taking care of the adolescents.

132. The INDDHH identified a number of situations that present a risk for the wellbeing of adolescents, in terms of infrastructure and hygiene conditions, education and recreation, knowledge of cohabitation rules and regulations, disciplinary sanctions, notifications and potential challenge of resolutions, health and visits.

133. In the report of the visit¹⁶, the INDDHH stated that “The existing living conditions at *Centro SER*, pose a violation of the right to dignity, integrity, health, education, recreation, culture and participation (art. 9, art. 89 and 92 of the Code for Children and Adolescents, arts. 2 and 40.1 of the Convention on the Rights of the Child ratified by Law no. 16137, art. 10 of the International Covenant on Civil and Political Rights ratified by Law no. 13751, art. 5 of the American Convention on Human Rights (San Jose Pact) ratified by Law no. 15737. The rights under art. 102 of the Code for Children and Adolescents are especially violated, aimed at counteracting the negative effects of institutional confinement and to promote social integration.

134. The INDDHH, within the scope of competence established in arts. 4 sections J) and K) of Law no. 18446 and taking into account the scope of action of the National Institute for Children and Adolescents (INAU) as the governing administrative body in terms of childhood and adolescence policies appointed by art. 68 of the Code for Children and Adolescents recommended: a) to repair the facilities of *Centro SER* and make the necessary improvements to protect adolescents’ right to dignity within 120 days; b) to provide for an adequate space for permanent and appropriate medical care inside the premises of *Centro SER* within 90 days; c) to provide for an adequate space for visits within 60 days; d) to plan and implement government intervention in *Centro SER* so as to make sure that detention measures fulfill their ultimate social-educational goal, providing adolescents with the educational and recreational activities adequate for such purpose within 60 days; e) to allocate to *Centro SER* the technical and nontechnical staff required to adequately fulfill social-educational measures within 60 days; f) to significantly reduce the number of hours during which adolescents are locked-up within 30 days; g) to provide for the necessary measures to ensure hygiene conditions in *Centro SER* within 15 business days; h) to make sure every adolescent that

¹⁶ Disponible en: <http://inddhh.gub.uy/informes/>

arrives at the detention center is informed of the cohabitation rules and regulations in writing; a term of 15 working days is provided to implement this mechanism; i) to provide for the necessary mechanisms to make sure that every adolescent who receives a disciplinary sanction is duly informed in writing about the details and length of such disciplinary action and is given the possibility to appeal. This right should come into effect within 15 business days; j) to thoroughly monitor the performance of *Grupo GEO* (Special Operations Group) when conducting searches in *Centro SER* so as to prevent the violation of adolescents' rights and/or ill-treatment or degrading treatment. This control mechanism should be put in place within 15 business days; k) to implement proper telephone use regulations to protect adolescents' right to intimacy within 15 business days.

135. On November 22nd and 25th, 2013, the NPM conducted several visits to *Centro SER*. The aim of these visits was to control the infrastructure and material conditions of the facilities, hygiene conditions in common areas, bathrooms and cells, cohabitation system, number of detainees as well as their distribution, educational, labor and recreational activities, medical services, physical wellbeing, medication prescribed and staff taking care of the adolescents. The objective was mainly to verify whether the recommendations made in June 2013 had been complied with.

136. During these visits the INDDHH verified some improvements. The INDDHH stated in their visit report¹⁷ that “the following was confirmed: a) the lack of written communication of the recommendations made by the INDDHH to the authorities of the institution; b) infrastructure improvements in the Center are still insufficient; C) the opening of level 4 with an adequate infrastructure; d) there is still a need for a place that is intended solely for the provision of adequate and permanent medical care; e) there is still need for a place that is intended solely for visits, especially on rainy days; f) improvements regarding educational activities are still insufficient. No institutional information or registries about these activities have been provided to this date; g) there are not enough technical and nontechnical staff to fully comply with social-educational measures; h) Detainees still remain locked-up for excessive periods of time. Educational and recreational activities are not properly recorded. The INDDHH is still waiting for written information by the institution; i) hygiene conditions within the institution have improved, although there are still some deficiencies; j) cohabitation guidelines have been drafted and adolescents are informed upon arrival; k) disciplinary measures are not properly recorded; l) although the GEO Group does not take part in searches anymore, there have been some occasions where the use of force did not correspond with the principles of exceptionality, proportionality and rationality.

¹⁷ Available at: <http://inddhh.gub.uy/wp-content/uploads/2014/04/02-Informe-preliminar-Centro-Ser-22-y-25-11-2013.pdf>

Articles 12 and 13

Answer to Paragraph 28 of the List of Issues

137. Although the State of Uruguay has made significant efforts in terms of accountability and reparation on human rights violation cases occurred during the last civil-military dictatorship (June 27th, 1973 to February 15th, 1985), the INDDHH has expressed its concern regarding a series of events that undermine the progress made in the field.

138. The Supreme Court of Justice has issued two judgments, dated March 8th and 13th, 2013, stating, under special circumstances, the unconstitutionality of articles 2^o and 3^o of Law N° 18831, which state that no procedural, expiry or prescription periods will be calculated during the period between December 22nd, 1986 and the entry into force of the law for the crimes committed during the dictatorship years and it is declared that such crimes represent crimes against humanity.

139. The INDDHH believes, in agreement with the Inter-American Court of Human Rights (Gelman vs Uruguay) that the States should abide, by virtue of international law principles, by the agreements made in good faith, and cannot call upon domestic Law or further interpretation – “even a constitutional regulation or judicial ruling” – to ignore their international liability¹⁸.

140. In order to strengthen the investigation proceedings regarding crimes against humanity committed during the last civil-military dictatorship, the INDDHH, addressing concerns of some civil society organizations, has issued recommendations to the Ministry of Interior, Judicial Power and the Attorney General’s Office regarding the creation of Specialized Units for the investigation of such violations. The Ministry of Interior has created, by Resolution dated July 26th, 2013, A Special Agency to assist the justice system in such cases.

141. On December 6th, 2012 the INDDHH recommended the Executive Power the modification of public policies on Reparations to State Terrorism Victims, with the understanding that national legislation in force poses some limitations that do not comply with international obligations on the matter¹⁹.

142. In addition, on February 21st, 2013 that INDDHH issued a statement²⁰ acknowledging the need to harmonize the Charter of the Judiciary and Organization of Courts (Law N° 15750), regarding the system of transfers, with provisions of human rights treaties. Especially with article 14 of the International Covenant on Civil and

¹⁸ See Statement by the INDDHH on Grounds for Domestic Human Rights Protection: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Declaracion-de-la-INDDHH-sobre-fundamentos-de-la-proteccion-de-los-derechos-humanos-en-el-ambito-nacional-25.02.2013.pdf>

¹⁹ Resolution available at: <http://inddhh.gub.uy/wp-content/uploads/2013/07/Recomendaci%C3%B3n-en-materia-Reparaciones-06.12.2012.pdf>

²⁰ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Declaracion-INDDHH-sobre-administraci%C3%B3n-justicia-y-derechos-humanos-21.01.2013.pdf>

Political Rights which demands the establishment of clear and transparent rules that ensure independence and impartiality of the judges.

143. On February 25th, 2013 the INDDHH issued a statement on the “Grounds for the domestic protection of human rights”²¹, to promote the effective implementation of the provisions of human rights treaties and of decisions of control bodies regarding the international obligations on the matter.

Article 16

Answer to Paragraph 46 of the List of Issues

144. The INDDHH acknowledges some progress in the reform of the juvenile detention system, such as the creation of the Juvenile Criminal Liability System (SIRPA), as a previous step towards the establishment of the Juvenile Criminal Liability Institute (IRPA). SIRPA was created by Law N° 18.771 of July 1st, 2011, as a deconcentrated body in charge of everything related to the execution of social-educational measures applied to minors in conflict with criminal Law.

145. The INDDHH believes that in addition to institutional reforms, a reform of the juvenile justice system is essential for the execution of social-educational measures, focusing on the prevention of crime and rehabilitation, where judges use deprivation of liberty as a last resort and where pre-trial detention is as limited as possible, encouraging the use of alternative measures.

146. In year 2013, the INDDHH received many accusations regarding situations of ill-treatment suffered by adolescents detained within SIRPA.

147. In June 2013, the authorities of *Centro SER* (maximum security detention facility) were changed. As from July 2013, the INDDHH received accusations by staff and former staff who, requesting to remain in anonymity, reported possible irregularities in the appointment of senior positions to officials undergoing administrative and criminal investigations on account of allegations of ill-treatment, who are currently working in direct contact with adolescents.

148. Accusations refer to retaliation, threats and intimidation against staff members who express their disagreement with ill-treatment suffered by adolescents. A similar situation has been reported in relation with relatives and adolescents.

149. The INDDHH has issued a number of recommendations towards improving conditions of security of detainees in terms of situations of ill-treatment, as well as the development of investigations aimed at dealing with accusations.

²¹ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Declaracion-de-la-INDDHH-sobre-fundamentos-de-la-proteccion-de-los-derechos-humanos-en-el-ambito-nacional-25.02.2013.pdf>

150. The reaction by SIRPA authorities has been to discredit accusers who did not exercise their right to protect their identity before the INDDHH. To this date, no conclusions have been reported regarding administrative investigations. In accusations where the INDDHH believes to have enough evidence of the existence of abuse, the Institution has proceeded to file accusations before criminal justice.