



# **Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in Uruguay: A Shadow Report**

**Submitted for consideration at the 109th Session of the Human  
Rights Committee**

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## I. Introduction

This shadow report is submitted by Colectivo Ovejas Negras,<sup>1</sup> the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights to the United Nations Human Rights Committee on the occasion of its consideration of the State of Uruguay's implementation of the International Covenant on Civil and Political Rights at the 109<sup>th</sup> session taking place in Geneva, Switzerland, in October 2013.<sup>2</sup>

Uruguay signed the Covenant on February 21, 1967 and ratified it on April 1, 1970.<sup>3</sup> Uruguay was last reviewed by this Committee in 2009.

The purpose of this report is to highlight the positive developments in Uruguay's legislation to promote lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights, but also to bring to the Committee's attention the human rights violations that continue to be experienced by the Uruguayan LGBTI population. These include, notably, the following: (1) violations of the rights to life and to freedom from torture and cruel, inhuman or degrading treatment or punishment; (2) violations of the right to non-discrimination and equality; and (3) violations of the State Party's positive obligation to ensure Covenant rights.

This report will conclude with suggested recommendations to be made to Uruguay to promote more complete compliance with its Covenant obligations, and suggested questions that might be asked of Uruguay during the periodic review session. We ask that the violations noted in this report be raised by the Committee during its review of Uruguay, and that the Committee consider our proposed recommendations and questions.

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<sup>1</sup> Colectivo Ovejas Negras is an organization of lesbians, gays, bisexuals, and transgenders in Uruguay founded in 2004, committed to fighting against all forms of discrimination, particularly discrimination based on sexual orientation and gender identity. Its main objective is the promotion of social, political and cultural developments towards recognizing, protecting and promoting the rights of LGBTI people in Uruguay.

<sup>2</sup> This report was authored by Zahira Flores (J.D. 2014, Northwestern University School of Law), Caitlin Martini (J.D. 2014, Northwestern University School of Law), and Professor Bridget Arimond of the Center for International Human Rights of Northwestern University School of Law. The report was prepared in collaboration with Colectivo Ovejas Negras and was guided by Stefano Fabeni, Managing Director of GIHSR and Marcelo Ferreyra, Latin America and Caribbean Coordinator of GISHR.

<sup>3</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

## II. Positive Developments

Over the past decade, Uruguay has taken a leadership position within Latin America by enacting a series of significant laws enhancing LGBTI rights within the Uruguayan legal order. In 2003, Uruguay reformed its Penal Code to include a provision criminalizing acts of hate, contempt, and other forms of physical or moral violence on the basis of sexual orientation or gender identity.<sup>4</sup> The following year, Uruguay adopted Law 17.817, which declared a national interest in combating all forms of discrimination, including, specifically, discrimination on the basis of sexual orientation or gender identity.<sup>5</sup> This law provided for the creation of an Honorary Commission against Racism, Xenophobia and all forms of Discrimination (“Honorary Commission”) whose responsibilities were to include, *inter alia*, (1) monitoring and reporting on compliance with anti-discrimination laws, (2) developing proposals to achieve greater compliance with these laws, (3) designing and implementing educational campaigns to combat discriminatory attitudes, and (4) providing a free advice service for victims of discrimination.<sup>6</sup> In 2009, Uruguay modified Law No. 18.590, the Code on Children and Adolescents, making it possible for LGBTI individuals to adopt children.<sup>7</sup> That same year, Uruguay adopted Law No. 18.620, on the Right to Gender Identity and Change of Name and Sex in Identification Documents.<sup>8</sup> Most recently, on May 3, 2013, Uruguay adopted the Equal Marriage Law, Law No. 19.075, which modified the Civil Code to define marriage as a “permanent union, in accordance with the law, between two people of different or the same sex.”<sup>9</sup> Each of these legislative developments is to be applauded, and Uruguay rightly deserves recognition for them.

## III. Violations of Covenant Rights

Despite the progress noted above, individuals in Uruguay continue to experience violations of the human rights guaranteed them in the Covenant because of their sexual orientation and gender identity. This report will highlight, in particular, violations of the right to life (Article 6), the right to freedom from torture and cruel, inhuman or degrading treatment (Article 7), and the right to equality and non-discrimination (Articles 2(1) and 26). Most of these violations stem from the continued prevalence within Uruguayan society of homophobic and transphobic attitudes. These attitudes manifest themselves in acts of discrimination, remarks that assault the dignity of LGBTI individuals, and acts of physical violence, including in the most extreme cases murder. While most of the incidents related in this report involve the actions of private actors, these matters

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<sup>4</sup> Article 149 of the Penal Code was modified by LEY NO. 17.677, Incitación al Odio, Desprecio o Violencia o Comisión de estos Actos contra Determinadas Personas (2003).

<sup>5</sup> LEY NO. 17.817, Lucha Contra el Racismo, la Xenofobia y la Discriminación (2004).

<sup>6</sup> *Id.*

<sup>7</sup> LEY NO. 18.590, Modificaciones al Código de la Niñez y la Adolescencia (2009).

<sup>8</sup> LEY NO. 18.620, Derecho a la Identidad de Género y al Cambio de Nombre y Sexo en Documentos Identificatorios (2009).

<sup>9</sup> LEY NO. 19.075, Matrimonio Igualitario (2013).

nevertheless engage the responsibility of the Government of Uruguay under Article 2(1) of the Covenant.

Article 2(1) obliges States Parties to “ensure,” as well as to respect, the rights set out in the Covenant. As this Committee has noted,

[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights . . .<sup>10</sup>

Accordingly, a State Party can violate its Covenant obligations by “failing to take measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>11</sup> Article 2(3) imposes on States parties a particular obligation to “provide an effective remedy” to anyone whose Covenant rights have been violated.<sup>12</sup> A State Party’s failure to investigate allegations of violations or to bring those responsible to justice “could in and of itself give rise to a separate breach of the Covenant.” Of particular importance, there exists “an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant.”<sup>13</sup>

Unfortunately, as will be shown, Uruguay has not succeeded in complying with its positive obligation to ensure Covenant rights to LGBTI individuals.

This section will proceed as follows: (A) Violations of the Article 3 and Article 7 rights to life and to freedom from torture and cruel, inhuman or degrading treatment or punishment; (B) Violations of the Article 2(1) and Article 26 right to non-discrimination and equality; (C) Violations of the Article 2(1) positive obligation to ensure Covenant rights to LGBTI people.

#### **A. Article 6 (Right to Life) and Article 7 (Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment)**

Article 6 guarantees the right to life and provides that no person should be arbitrarily deprived of his or her life. This Committee has described the Article 6 right as “the Supreme right from which no derogation is permitted.”<sup>14</sup> Article 7 recognizes the right of every individual to be free from torture and cruel, inhuman or degrading treatment or

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<sup>10</sup> U.N. Human Rights Comm. (ICCPR), General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article ), CCPR/C/21/Rev.1/Add.13, ¶ 8, 26 May 2004 [hereinafter General Comment No. 31].

<sup>11</sup> See General Comment No. 31, *supra* note 12.

<sup>12</sup> ICCPR, *supra* note 4, Article 2(3); General Comment No. 31, *supra* note 12, at ¶¶ 8 & 15.

<sup>13</sup> See General Comment No. 31, *supra* note 12, at ¶ 17.

<sup>14</sup> U.N. Human Rights Comm. (ICCPR), General Comment No. 14: Nuclear weapons and the right to life (Art. 6 of the Covenant), ¶ 1, U.N. Doc. A/40/40(SUPP) (11 Sept. 1984).

punishment. It is “implicit” in this article “that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”<sup>15</sup>

In recent years there have been hate crimes perpetrated against transgenders based on the victims’ gender identity. In 2012, the Uruguayan government recorded five murders of transgender women.<sup>16</sup> These murders occurred in the provinces of Canelones, Cerro Largo, and Montevideo, Uruguay.<sup>17</sup> News reports have documented the names of two of these women. On March 10, 2012, the police found the body of 37-year-old Gabriela Larronda in Roosevelt Park with two gunshot wounds to the neck and skull. Later that year, authorities found the body of another transgender woman, Pamela, in a well. Pamela’s body was in a state of advanced decomposition, but authorities were nonetheless able to identify signs of rape and battery on her body. To date, Uruguayan authorities only succeeded in resolving one of these five murders.<sup>18</sup>

Because of the absence of an effective mechanism for monitoring hate crimes against LGBTI individuals, it is impossible to provide a comprehensive account of the frequency or nature of these crimes. However, the results of a survey conducted during the 2005 Gay Pride Parade indicated that 3% of the respondents had been the victims of sexual aggression and an additional 10% had been the victims of other acts of physical violence.<sup>19</sup> Overall, 48% of the respondents reported that they had been threatened or verbally insulted at least once in open public places (such as schools or workplaces) due to their sexual orientation or gender identity.<sup>20</sup>

## **B. Articles 2(1) (Nondiscrimination) and 26 (Equality before the Law)**

Articles 2(1) and 26 of the Covenant guarantee the right to equality and prohibit discrimination on grounds such as race, color, and sex. In the landmark decision of *Toonen v. Australia*, the Committee found that the reference to “sex” in Articles 2(1) and 26 includes sexual orientation among the prohibited grounds of discrimination.<sup>21</sup> In addition to prohibiting discrimination with respect to Covenant rights and to matters covered by the laws of a State Party, the Covenant imposes a positive obligation: “In

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<sup>15</sup> See General Comment No. 31, *supra* note 12, at ¶ 8.

<sup>16</sup> The organization RedLactrans asserts that there were a total of seven murders of transgender women in Uruguay in 2012. *La Red Latinoamericana y del Caribe de Personas Trans Denuncia al Estado Uruguayo po Violencia contra la Población Trans*, RedLactrans & Asociación Trans del Uruguay (2012), available at [https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=924143d935&view=att&th=14133a114bbc7237&attid=0.4&disp=inline&safe=1&zw&saduie=AG9B\\_P9DiKirRHapTTGztl0s13L&sadet=1379886720100&sads=vH3Qa5W96LK1Oja4ulcAmubk2o4](https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=924143d935&view=att&th=14133a114bbc7237&attid=0.4&disp=inline&safe=1&zw&saduie=AG9B_P9DiKirRHapTTGztl0s13L&sadet=1379886720100&sads=vH3Qa5W96LK1Oja4ulcAmubk2o4).

<sup>17</sup> See *No Más Transfobia en Uruguay*, Video, Amnesty International Uruguay (25 Sept. 2013), available at <https://amnistia.org.uy/nomastranfobia-enuruguay/> [hereinafter Amnesty International].

<sup>18</sup> The one murder for which the killer was brought to justice occurred in Cerro Largo. See Amnesty International, *supra* note 19.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, Pre-Sessional Working Group, November 2009.

<sup>20</sup> *Id.*

<sup>21</sup> *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, ¶9-11 (1994).

fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.”<sup>22</sup>

Notwithstanding these guarantees, LGBTI people in Uruguay continue to suffer from acts of discrimination and from the prevalence of homophobic and transphobic attitudes among members of the Uruguayan public.

### ***1. Discrimination in Employment***

In its November 2010 Concluding Observations, the Committee on Economic, Social and Cultural Rights found that discrimination on the basis of sexual orientation was “widespread” in Uruguay, including in the area of employment.<sup>23</sup>

Transgender women in Uruguay report widespread discrimination in terms of their access to employment. Many transgender women are forced to find work in the sex trade because they face systematic restrictions in accessing the Uruguayan job market.<sup>24</sup> As was acknowledged in 2011 by the Directorate of Human Rights of the Uruguayan Ministry of Education and Culture, transgender people face automatic rejection in applying for jobs nearly 100 percent of the time, which leads them to resort to sex work.<sup>25</sup> Collette Richard, an activist of the transgender organization Unión Trans del Uruguay, reported in comments posted in 2013 that 90 percent of transgender women in Uruguay end up working as sex workers because they are unable to secure other employment or education due to the lack of acceptance of transgender people in Uruguayan society.<sup>26</sup>

### ***2. Discrimination in Health Care***

In its November 2010 Concluding Observations, the Committee on Economic, Social and Cultural Rights found that discrimination on the basis of sexual orientation was “widespread” in Uruguay, including in the area of health care.<sup>27</sup> Consistent with this conclusion, Colectivo Ovejas Negras reports that only a few Uruguayan hospitals can be considered “LGBTI friendly.” This is so, despite the Uruguayan Ministry of Health’s inclusion of a Sexual Diversity Chapter in its Guidelines on Sexual and Reproductive

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<sup>22</sup> See General Comment No. 31, *supra* note 12, at ¶ 8.

<sup>23</sup> U.N. Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations: Uruguay, U.N. Doc. E/C.12/URY/CO/3-4, ¶ 7, 1 Dec. 2010.

<sup>24</sup> See *Arco Iris de Propuestas*, Lanzamiento de la Semana de la Diversidad, MINISTERIO DE DESARROLLO SOCIAL (MIDES) (24 Sept. 2013), available at [http://www.mides.gub.uy/innovaportal/v/24100/3/innova.front/arco\\_iris\\_de\\_propuestas](http://www.mides.gub.uy/innovaportal/v/24100/3/innova.front/arco_iris_de_propuestas) [hereinafter *Arco Iris de Propuestas*]; *Transformaciones*, Trabajo, empleo y población trans en Uruguay, MINISTERIO DE DESARROLLO SOCIAL (MIDES) (25 Sept. 2013), available at [www.mides.gub.uy/innovaportal/v/24101/3/innova.front/transformaciones](http://www.mides.gub.uy/innovaportal/v/24101/3/innova.front/transformaciones) [hereinafter *Transformaciones*].

<sup>25</sup> Towards a National Plan Against Racism and Discrimination, *supra* note 3, at 15.

<sup>26</sup> See Amnesty International (video), *supra* note 19.

<sup>27</sup> U.N. Committee on Economic, Social, and Cultural Rights (CESCR), Concluding Observations: Uruguay, U.N. Doc. E/C.12/URY/CO/3-4, ¶ 7, 1 Dec. 2010.

Health, in an effort to promote respect for sexual diversity in all public health facilities. More must be done.

Transgender people in Uruguay face discriminatory restrictions in accessing the types of healthcare that are fundamental to their well-being. Transgender individuals are often referred to mental health institutions in which the staff is not trained on how to properly support transgenders in dealing with the issues they face.<sup>28</sup> Additionally, there is presently no medical institution within Uruguay that offers the full range of medical treatments that transgender individuals may wish to receive (*i.e.*, hormone therapy, reassignment surgery, plastic surgery, psychological counseling). The Gender Identity Clinic (Policlínica de Identidad de Género) of the Hospital de Clínicas of the University of the Republic (Uruguay) had been the only Uruguayan medical institution that provided this full range of services and the only healthcare center in the country to provide reassignment surgeries. However, five transgender persons have confirmed to Ovejas Negras that, due to alleged funding shortages, sex reassignment operations are no longer being performed and the Clinic is being shut down.

There is also a discriminatory policy against homosexual men regarding blood donation in Uruguay. Under this policy, men who have had sex with men within the prior 12 months are barred from donating blood.<sup>29</sup> This excludes, in practice, all non-celibate homosexual men. In May 2012, several civil society organizations and individuals submitted a letter to the President requesting the partial repeal of this policy. In June 2012, in public statements made to the authorities, many of the signatories requested a meeting with the Minister of Health on the subject. To date, the provisions have not been repealed, and no meeting with the Minister of Health has been granted. While the blood donation policy may be intended as a protective measure to reduce the risk of blood donations by persons with HIV/AIDS, the policy should be based on behaviors that make individuals high-risk donors, as opposed to being based, *de facto*, on sexual orientation.

Furthermore, there is no policy in place to address the medical needs of intersex individuals.<sup>30</sup> There should be a protocol of action established so that doctors present at the time of birth wait for the child to reach an appropriate age to self-identify before conducting any surgical sex changes.

### **3. *Discrimination in Education***

In its November 2010 Concluding Observations, the Committee on Economic, Social and Cultural Rights found that discrimination on the basis of sexual orientation was “widespread” in Uruguay, including in the area of education.<sup>31</sup>

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<sup>28</sup> Towards a National Plan Against Racism and Discrimination, *supra* note 3, at 15.

<sup>29</sup> *Conducta sexual inhabilita a donar sangre*, El Observador, 15 June 2012, available at <http://www.elobservador.com.uy/noticia/226085/conducta-sexual-inhabilita-a-donar-sangre/>.

<sup>30</sup> Towards a National Plan Against Racism and Discrimination, *supra* note 3, at 18.

<sup>31</sup> U.N. Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations: Uruguay, U.N. Doc. E/C.12/URY/CO/3-4, ¶ 7, 1 Dec. 2010.

Over the past two years, Ovejas Negras has received complaints of a number of incidents of discrimination against LGBTI individuals in the educational setting. One example involved a 14-year-old boy who was harassed at a public school after classmates discovered a love letter he had written to his boyfriend. The other students called the boy names, harassed him outside of school, and hung posters on the walls of the school insulting him. Another case occurred at a secondary school, and involved an openly lesbian couple. The girls were called names in class and harassed by their classmates. The teaching staff failed to intervene to stop this harassment. These examples illustrate the kind of bullying and harassment that too often takes place in Uruguayan schools.

The discriminatory attitudes towards LGBTI people are held not just by students but by some school officials, as well. This was illustrated by remarks made during a 2011 television program by Olga Rivero, the director of a public polytechnic school located in San Carlos, Uruguay. Ms. Rivero stated that she was “distressed” by the gay “condition” of her son, and she denounced the existence of groups that, in her view, lead young people towards homosexuality.<sup>32</sup> Ms. Rivero further stated that she believes homosexuality to be a disease.<sup>33</sup> She said that she has no problem with homosexuals being employed as teachers, but she insisted that the authorities should monitor these teachers to prevent their transmission of their condition to their students.<sup>34</sup>

A 2013 interview with a group of Uruguayan students and teachers further corroborates the prevalence of discriminatory attitudes towards LGBTI individuals in educational institutions.<sup>35</sup> Many students stated that transphobia, lesbiphobia and homophobia exist everywhere in schools, including in classrooms and recreational areas.<sup>36</sup> Rodrigo Fuster, a nursing student, said that many people view LGBTI students as outcasts who are not entitled to an education.<sup>37</sup>

Transgender individuals in particular are excluded from educational opportunities. Among the 576 transgender individuals who obtained financial assistance from Uruguay Social, financial aid program for needy individuals (Ministry of Social Development), 68% reported that they had not completed the minimum nine years of formal education; this is well above the national average of approximately 45%.<sup>38</sup> Fernando Alvarez, an Uruguayan school teacher and sex educator, stated that transgender individuals experience an absence of any social integration within the school setting and are made to feel that students and school personnel fail to recognize a transgender person as a person;

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<sup>32</sup> Clara Esmoris, *Directora de UTU investigada por declaraciones homofóbicas*, 180.com.uy, 16 Sept. 2011, available at <http://www.180.com.uy/articulo/21482-Directora-de-UTU-investigada-por-declaraciones-homofobicas>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Uruguay International Day Against Homophobia and Transphobia, Uruguay IDAHO Report, June 2013, available at <http://dayagainsthomophobia.org/uruguay-idaho-report-2013/> [hereinafter IDAHO Report] (video).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Towards a National Plan Against Racism and Discrimination, *supra* note 3, at 17.

as a consequence, he said, transgender students simply decide to leave. No one, according to Mr. Alvarez, objects to their being pushed out of school in this manner.<sup>39</sup> Michelle Suarez, a transgender lawyer, agreed: “It is violent towards trans women [in schools]. I don’t blame them for leaving since they are excluded.”<sup>40</sup>

Uruguayan school textbooks contribute to the problem. Even those that include new elements of sexual education still contain restrictive explanations of alternative gender identities, rather than accurate descriptions.<sup>41</sup> Transgender individuals have indicated that there is a dire need to improve these texts and to adopt more effective teaching methods.<sup>42</sup>

#### **4. *Prevalence of discriminatory homophobic and transphobic attitudes***

Homophobic and transphobic attitudes remain all too prevalent among the Uruguayan population. As a consequence, LGBTI individuals in Uruguay often are confronted with homophobic or transphobic remarks or conduct. Results of a survey conducted during the 2005 Uruguayan Gay Pride Parade indicated that 65% of the respondents had experienced some sort of derogatory treatment based on their sexual orientation or gender identity. Three percent of respondents reported having been victims of sexual aggression, 10% reported having been victims of other physical aggression, and 6% reported having been blackmailed. Almost half (48%) of all respondents reported that they had been threatened or verbally insulted at least once in open public places (such as schools or workplaces) due to their sexual orientation or gender identity.<sup>43</sup>

One example of the Uruguayan public’s acceptance of homophobic slurs occurred at Uruguay’s Carnival this year, during a performance by the comedy group C4. One of the characters portrayed in the comedy routine was called “Gayman,” and was dressed in all pink, with bananas in his hands, representing phallic symbols.<sup>44</sup> Despite this disparaging parody of a homosexual man, no one in the audience said anything or complained during the performance. In response to this incident, one individual, Martin Inthamossu, wrote a letter to Uruguayan government officials entitled “Homophobia in Carnival,” in which he discussed the discriminatory attitudes of Uruguayans towards homosexuals and the discriminatory portrayal of Gayman in the C4 performance.<sup>45</sup> He argued that these types of images make fun of homosexual people and incite hatred and disrespect towards

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<sup>39</sup> See IDAHO Report, *supra* note 38.

<sup>40</sup> *Id.* (translation).

<sup>41</sup> Towards a National Plan Against Racism and Discrimination, *supra* note 3, at 17.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Mercedes Galindez, *Uruguay: Carnival Comedy Group Accused of Homophobia*, PULSAMERICA, 6 Feb. 2013, available at <http://www.pulsamerica.co.uk/2013/02/06/uruguay-carnaval-humorist-group-accused-of-homophobia/> [hereinafter PULSAMERICA].

<sup>45</sup> See *Bailarín Martín Inthamossu acusa de homofobia a grupo de humoristas C4*, El Observador, 31 Jan. 2013, available at <http://www.elobservador.com.uy/noticia/242649/bailarin-martin-inthamossu-acusa-de-homofobia-a-grupo-de-humoristas-c4/> [hereinafter El Observador]; see PULSAMERICA, *supra* note 47.

them.<sup>46</sup> The acceptance in Uruguayan society of the attitude displayed in the C4 Carnival performance demonstrates an acceptance of discrimination against homosexual Uruguayans.

Another example of the prevalence of prejudiced attitudes against LGBTI people stems from a 2009 public awareness and anti-discrimination campaign. This campaign, called “A Kiss is a Kiss,” was designed to increase awareness about the laws that protect against discrimination on the basis of sexual orientation and gender identity.<sup>47</sup> The campaign, designed by Ovejas Negras and funded by the Embassy of the Netherlands in Uruguay, was to be advertised via posters and commercials on television and radio. Two of the major private television stations in Uruguay refused to air the 30-second commercial, which featured three LGBT couples kissing in emblematic public spaces of Montevideo.<sup>48</sup> While a third station agreed to broadcast the commercial, it did so only during non-prime-time hours, notwithstanding that it still charged the price of a prime-time slot.<sup>49</sup> This example further reflects the existence of discriminatory sentiment in Uruguay against LGBTI individuals.

### **C. Article 2(1) (Positive Obligation to Ensure Covenant Rights)**

As discussed more fully above,<sup>50</sup> a State Party violates its obligations under the Covenant if it fails to “take appropriate measures” and to “exercise due diligence” to prevent violations of Covenant rights, whether by the State or by private actors, and to respond to violations that nevertheless occur by investigating the violation, punishing those responsible, and affording an effective remedy to those harmed by the violations.

Two Uruguayan initiatives begun in recent years held potential promise as means for ensuring Covenant rights to LGBTI victims of hate crimes and discrimination. One stems from Law 17.817, enacted in 2004, which declared a national interest in combatting all forms of discrimination, including, specifically, discrimination on the basis of sexual orientation or gender identity. That law called for the creation of an Honorary Commission against Racism, Xenophobia and all forms of Discrimination. Moreover, the law assigned the Honorary Commission a comprehensive list of responsibilities which, if carried out, would have gone a long way towards ensuring Covenant rights to LGBTI individuals. Unfortunately, it appears that the Honorary Commission, first appointed in 2007, never carried out these responsibilities appropriately, perhaps due, at least in part, to a lack of adequate staff and resources. According to information received by Ovejas Negras, the recently renewed Honorary

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<sup>46</sup> See El Observador, *supra* note 48.

<sup>47</sup> See *Uruguay: Investigate TV Discrimination*, Human Rights Watch, 27 Mar. 2009, available at <http://www.hrw.org/en/news/2009/03/27/uruguay-investigate-tv-discrimination>.

<sup>48</sup> *Id.* These two stations have combined ratings indicating that they are viewed by over seventy percent of the viewing public in Uruguay.

<sup>49</sup> *Id.*

<sup>50</sup> See *supra* Section III, at 5.

Commission still has no assigned budget or staff, other than a part-time technical secretary.

A second initiative that once held promise was the initiative to develop a National Plan against Racism and Discrimination (“National Plan”). In its 2009 UPR report, under paragraph 93 section VI Challenges and Commitments, Uruguay committed to develop and implement a Plan Against all forms of Discrimination. The government began work on a National Plan in June 2010. Unfortunately, after an initial assessment phase that was completed by August 2011, so far as we know, this plan remains, at best, in the development stage. A National Plan has not been finalized and adopted, much less implemented.

Thus, overall, despite its laudable enactment of important legislation, Uruguay has failed to take appropriate measures and has failed to exercise due diligence to prevent, investigate, punish and provide an effective remedy for the violations of Covenant rights discussed above.

### ***1. Violations of the Obligation to Prevent***

#### **(a) Failure to establish a monitoring mechanism**

In order to design and implement effective policies for the prevention of human rights violations on the basis of sexual orientation and gender identity, the policy makers must first have a clear understanding of the nature and extent of violations that are occurring in Uruguay. This requires the establishment of a monitoring body with the authority, staff, and resources needed to maintain statistics and prepare reports on the frequency and nature of acts of violence and discrimination against LGBTI individuals. This monitoring body should have procedures in place for inviting, receiving and investigating complaints from LGBTI individuals whose Covenant rights have been violated. It should also undertake its own efforts to study and report on the nature and extent of these violations.

No such monitoring mechanism currently exists in Uruguay. According to Law No. 17.817, the Honorary Commission was assigned responsibility to “monitor compliance” with relevant laws and to “analyze the national situation with regard to discrimination.”<sup>51</sup> Although the Honorary Commission was established, it does not appear that it ever undertook comprehensive monitoring or analysis; nor does it appear that it ever was given sufficient staff and resources to do so. And, as noted above, the Honorary Commission at present has no budget or staff (other than a part-time secretary). While Uruguay’s National Human Rights Institution has shown particular responsiveness to homophobic incidents and complaints, no governmental body in Uruguay has assumed responsibility for monitoring and assessing the nature and extent of discrimination against LGBTI individuals.

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<sup>51</sup> LEY NO. 17.817, Lucha Contra el Racismo, la Xenofobia y la Discriminación.

**(b) Failure to implement appropriate educational initiatives**

Because so many of the violations discussed in this report stem from the prevalence in Uruguayan society of homophobic and transphobic attitudes, educational campaigns to change these attitudes are an essential element of any strategy to prevent future violations of Covenant rights. Unfortunately, Uruguay has not implemented appropriate educational initiatives in the schools or in society at large.

For example, schools in Uruguay do not teach a comprehensive sex education curriculum that presents the variety of human sexualities in a way that encourages respect for the human dignity of LGBTI individuals. Such a curriculum was envisioned in 2007 by Uruguay's National Administration of Public Education (ANEP), and funding was anticipated from UNESCO to finance this initiative. This program would have contributed in an important way to the reduction of discriminatory attitudes by educating students about discrimination on the basis of sexual orientation and gender identity. Unfortunately, when the financing from UNESCO was finalized in 2010, the Sexual Education Program was included in a program focused on coexistence in education centers. However worthwhile this alternative program may have been, the result was the cancellation of plans to implement a comprehensive sex education curriculum with a human rights perspective on sexuality.

The Honorary Commission, discussed above, was assigned responsibility for designing and implementing educational campaigns to eliminate discriminatory attitudes and to promote respect for diversity. Unfortunately, it appears not to have carried out this responsibility, at least not with respect to attitudes of homophobia and transphobia. Because, as noted above, the Honorary Commission currently has no budget, it is not in a position to design and implement the necessary educational campaigns and initiatives.

**2. *Violations of the Obligation to Investigate, Punish and Provide an Effective Remedy***

Uruguay frequently has failed to meet its positive obligation to investigate violations of the Covenant rights of LGBTI individuals, to punish those responsible for the violations, and to provide redress to the victims of the violations. The failure to bring to justice the perpetrators of four of the five 2012 murders of transgender women, noted above, is an example of this failure.

According to Law 17.817, the Honorary Commission was supposed to receive complaints from victims of hate crimes and discrimination and file appropriate legal complaints; it was also supposed to provide a comprehensive, free advice service to individuals or groups identified as victims of discrimination.<sup>52</sup> It does not appear that the Honorary Commission ever carried out these duties; now, with no budget, it certainly cannot do so. The Honorary Commission's ability to provide remedies to victims and to hold

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<sup>52</sup> LEY NO. 17.817, Lucha Contra el Racismo, la Xenofobia y la Discriminación, Article 5(G), (I).

perpetrators accountable is also limited by its lack of authority to impose penalties and carry out administrative conciliations.

#### **IV. Recommendations**

1. Uruguay should finish developing, publish and implement a comprehensive “National Plan Against Racism and Discrimination,” one aspect of which should involve public awareness campaigns to combat hate crimes and discrimination on the basis of sexual orientation or gender identity and the homophobic and transphobic attitudes that give rise to them.
2. Uruguay should strengthen the Honorary Commission against Racism, Xenophobia and all forms of Discrimination by (a) enlarging its powers to allow it to impose penalties and carry out administrative conciliations, and (b) by providing it with adequate human and financial resources to enable it to effectively carry out all of its responsibilities under Law 17.817.
3. Either through the revision of the Honorary Commission’s powers and resources or otherwise, Uruguay should establish and implement an effective monitoring mechanism to receive and investigate complaints of violence and discrimination on the basis of sexual orientation and gender identity, and to prepare periodic reports and maintain statistics documenting the nature and frequency of these violations of human rights.
4. Either through the revision of the Honorary Commission’s powers and resources or otherwise, Uruguay should ensure that cases of violence and discrimination on the basis of sexual orientation and gender identity are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.
5. Uruguay should review its national health policies and revise them as needed to assure the availability of all services needed by LGBTI individuals and to correct any aspects of health policy that discriminate on the basis of sexual orientation or gender identity. In particular, Uruguay should:
  - a) Review and revise as necessary its blood donation policies so that donor exclusions are based on risky behaviors rather than homosexual status;
  - b) Assure that transgender individuals have access to the full range of medical services (*i.e.*, hormone therapy, reassignment surgery, plastic surgery, psychological counseling) from which they may wish to choose;
  - c) Put in place policies to assure that medical service providers maintain an atmosphere of respect for the human dignity of all patients, including LGBTI patients.

6. Uruguay should review its national education policies and revise them as needed to assure that schools at all levels maintain an inclusive atmosphere that recognizes the inherent human dignity of every student, teacher, and other staff member, including those who are LGBTI individuals. In particular, Uruguay should:
  - a) Assure that each school adopts and disseminates a policy statement that condemns and strictly prohibits any kind of harassment or bullying, whether verbal, physical or other, of LGBTI students, faculty or staff;
  - b) Require every school to appoint an appropriate person within the school to receive and respond to complaints of harassment or bullying on the basis of sexual orientation and gender identity;
  - c) Require every school to adopt and implement an age-appropriate sex education curriculum that presents the variety of human sexualities in a way that promotes understanding and encourages respect for the human dignity of LGBTI individuals.
7. Uruguay should adopt and implement policies to prevent job discrimination and to expand employment opportunities for LGBTI individuals, with a particular emphasis on employment opportunities for transgender individuals.

## **V. Suggested Questions**

1. Is Uruguay continuing to work on the development of a National Plan Against Racism and Discrimination? If so, when will the National Plan be completed and disseminated to members of the Uruguayan public? What plans are in place to ensure implementation of the National Plan once it is completed?
2. What steps will Uruguay take to strengthen the Honorary Commission against Racism, Xenophobia and All Forms of Discrimination so that it can effectively carry out the responsibilities it has been assigned by Law 17.817, including its responsibilities with respect to discrimination on the basis of sexual orientation and gender identity? In particular, when will the Honorary Commission be given a budget, and will that budget be sufficient to enable the Honorary Commission to carry out its important responsibilities, such as monitoring compliance with anti-discrimination laws, assisting victims of hate crimes or discrimination, and designing and implementing public education campaigns?
3. What steps will Uruguay take to protect LGBTI individuals from discrimination in the educational, employment and healthcare sectors on the basis of their sexual orientation or gender identity?