



Institución Nacional de
Derechos Humanos y Defensoría del Pueblo

International Convention on the Elimination of All Forms of Racial Discrimination

Committee on the Elimination of Racial Discrimination

91° Session

Report by the National Institution of Human Rights

[October 31st 2016]

I. Introduction

1. The National Institution of Human Rights (INDDHH) submits the present report for the 91st session of the Committee on the Elimination of All Forms of Racial Discrimination (CERD), during which the combined 21st and 23rd periodic reports of Uruguay will be examined, in order to contribute to strengthening the Rule of Law and effective protection of human rights.
2. This report is submitted because of the Committee's recognition of the important role that NHRIs play in combating racism and racial discrimination
3. For its 91st session, the Committee has encouraged the NHRIs concerned to provide country-specific information on issues relevant to the implementation of the Convention by the States parties scheduled for consideration. In the case of Uruguay, it will take place the examination of 21st to 23rd periodic reports as well as alternative reports.
4. The INDDHH expresses its satisfaction concerning progress in various aspects related to actions and principles against racial discrimination and all forms of intolerance. These progresses are expressed in the ratification of universal treaties against discrimination as well as all treaties protecting human rights. These progresses will not be emphasized in this report because they are included in the report of the Uruguayan State.
5. This report follows the same form of presentation as the report submitted by Uruguay referring to the Committee final recommendations but it focuses in three lines of work on which the INDDHH has supplementary contributions to those reported by the by the State and civil society organizations. Notwithstanding, the INDDHH emphasizes the importance of continuing to strengthen public policies to eradicate all forms of racial discriminations and to guarantee access to justice, equal participation in the labor market, equity in access to education and representation in public office of all people.
6. The INDDHH submits this first report to this Committee in the understanding that its recent installation requires support and guidance from all international monitoring bodies in order to strengthen its capabilities and to contribute to deepening our country's culture of promotion, protection and defense of human rights.

II. About the National Institution of Human Rights

7. 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.
8. 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.
9. 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.
10. It is a new Institution recently created within the Uruguayan State in order to fulfill requirements from both national human rights organizations and international bodies which monitor Human Rights treaties signed by the State. Last August, the INDDHH received Accreditation Grade A before the International Coordinating Committee of National Human Rights Institutions (ICC). This decision of the Committee represents an important recognition of the efforts made by the Uruguayan government and the INDDHH to consolidate an independent organization dedicated to the promotion and protection of human rights enshrined in the Constitution of the Republic and International law.
11. Article 83 of Law N° 18446 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”, ratified by Uruguay under Law No 17914 of October 25th, 2005. As provided in the abovementioned Article, coordination with the Ministry of Foreign Affairs (MRREE) shall be established to fulfill the functions of such Mechanism.

12. The INDDHH has established the NPM according to OPCAT principles. The OPCAT states that the National Preventive Mechanism shall visit places of detention (in the broad concept referred to in article 4), conduct interviews and access all relevant information (articles 19 and 20 of the OPCAT), as well as exercise the right to publish reports on such visits and make recommendations, proposals and comments on national legislation (articles 19 and 23 of the OPCAT).

**III. Statistical data disaggregated by race / ethnicity to assess the effective exercise of civil, political, economic, social and cultural rights.
Paragraph 8 of the concluding observations.**

13. Collecting information on sociodemographic characteristics of the population and incorporating ethnic-racial origin is a fundamental tool not only to visualize the existence of ethnic and racial groups but to design policies and resource allocation to overcome discrimination.
14. In recent years, the Uruguayan State has developed a clear strategy for incorporating ethnic-racial dimension both in sociodemographic information collection and in official records, materializing international commitments.
15. This strategy reflects in the 2011 National Population Census and 2009 University Census which collected data on self-perception of ethnic and racial origin.
16. The inclusion of questions on ethnic-racial origin in the census questionnaire represented a fundamental recognition of minority populations as subjects of rights, thereby enabling the construction of a more just and inclusive society. At the same time, it implies an alignment with the recommendations of this Committee and with the experience of other countries in the region in previous census rounds.
17. Moreover, Uruguay has data on ethnic - racial origin and living conditions of the population through the Continuous Household Survey (ECH). While the same are surveyed continuously since the seventies by the National Statistics Institute (INE), only for 1996/1997 Survey some questions about race were

introduced. Since 2006, it systematically included the question of racial origin through self-identification.

18. In addition, various government agencies are developing records for the ethnic-racial variable. Such is the case of the Management System of Education at the Universidad de la República, the records of the Civil Service National Office, the registration form from the National Institute of Employment and Vocational Training (INEFOP), the Prison System Management from the National Institute of Rehabilitation (INR), records of social programs from the Social Development Ministry (MIDES) as well as some records from services of the Municipality of Montevideo.
19. However, these efforts are still insufficient both in extent and in coverage, as there are several state agencies that have not yet taken up this challenge and others where there are problems of data availability. The INDDHH is tasked with promoting and defending the full exercise of rights of all citizens. To fulfill this role access to quality information on plans and social programs with information on racial and ethnic origin, among other variables, is indispensable. Availability of these data for monitoring agencies and organized civil society is crucial.
20. In particular, difficulties to access systematic and periodic information to monitor detention units in the country given the mission entrusted to the INDDHH as National Prevention Mechanism should be taken into account. Given prison conditions and the vulnerability of all persons deprived of their liberty, ethnic-racial origin is a particularly important variable and there is no official information regarding it up to now.
21. The INDDHH understands that the construction of state information systems is under development in the country, but stresses the need to continue and extend registration efforts and emphasizes that availability of administrative records, including demographic data like racial and ethnic origin, is very limited in the country. Moreover, the INDDHH states that in order to achieve transparency and promote citizen participation it is urgent to assume this challenge.
22. Only by prioritizing and extending the availability of administrative records, the Uruguayan State will be able to construct indicators to monitor the effective exercise of human rights.

IV. Act No. 19.122 on standards for the promotion of persons of African descent in education and employment and on affirmative action measures to ensure their access to work and improve their working conditions.

Paragraph 9 of the concluding observations.

23. Act No. 19.122, of August 21st 2013, represents a major breakthrough in terms of building racial equity in Uruguay. This Law recognizes trafficking and the slave trade as crimes against humanity and people of African descent as historically victims of racial discrimination.
24. It is a measure without precedents in the country. It declares of public interest to design, promote and implement affirmative action for African descent in both public and private spheres. It requires 8 per cent of public administration posts to be reserved for persons of African descent (at the central government, autonomous entities, decentralized services and local governments) and introduces quotas in vocational training, student scholarships and student support.
25. Decree 144/014 of May 22nd 2014 regulates Act No 19.122. The Uruguayan State has also taken steps to properly monitor its implementation. In this regard, it stands out the progress reports of the Implementing Committee composed of MIDES, the Ministry of Education and Culture (MEC) and the Ministry of Labor and Social Security (MTSS) and their respective Advisory Council civil society.
26. The INDDHH highly evaluates the process initiated by the Uruguayan government with the approval of this law. The INDDHH has accompanied the discussion on its implementation, also the INDDHH has received a complaint regarding its implementation by organized civil society¹ and finally, the INDDHH itself has gone through a process of fulfilling vacancies and has implemented the aforementioned quota.

¹ In June 2016, the INDDHH received a civil society complaint regarding non-compliance with Act 19.122 by the State.

27. Despite the continuing effort made by the Uruguayan State, according to 2014 and 2015 reports by the National Civil Service Office (ONSC)², the Uruguayan State is not complying with the quotas established by Act 19.122.
28. The INDDHH is concerned by the small number of quotas in the state. This outcome needs a reflection on the cultural change that this kind of law implies in our country.
29. The INDDHH will recommend intensifying efforts in order to implement measures from the Act itself, the regulatory Decree and the 2015-2020 Action Plan. This plan is led by MIDES through its Human Rights Division of the National Direction of Sociocultural Promotion.
30. In this regard, it will be pointed out the need for awareness raising campaigns, training activities for state officials and specific promotion of scholarships in the educational system that will enhance participation and full exercise of rights of African descendants. The population of African descent, as expressed in data published by the National Social Policy Direction of MIDES and Uruguay Report 2015³, has lower educational levels and higher dropout rates. It is necessary to pursue a stronger public policy aimed at promoting retention in the educational system for the African descendant population in both secondary and tertiary education.
31. In addition, it will be recommended to seek for more effective incentives for public institutions to comply with the law.

V. Complaints on Racial Discrimination.

Paragraph 18 of the concluding observations.

32. In the last fifteen years, Uruguay has developed a regulatory framework for racial discrimination: Act No. 17.677 of 2003 refers to incitement to hatred, contempt or violence on the grounds of discrimination, Act No. 17.817 of 2004 takes action against racism, xenophobia and discrimination, Act No. 18,059 of 2006 values and disseminates African descent cultural expression and recognizes their contribution to shaping the cultural identity of the

² Report on Afrodescendant population entry to Public Administration. Presidencia de la República | Oficina Nacional del Servicio Civil Observatorio de la Gestión Humana del Estado.

³ http://www.opp.gub.uy/images/ReporteUruguay2015_OPP_web.pdf

country and the aforementioned Act No. 19.122 promotes standards for encourage the participation of African descendants in education and employment.

33. These notable progresses with regard to formal legislation require a process of realization of rights that goes hand in hand with a cultural change. In turn this cultural change is necessary to make effective the existing regulatory framework.
34. The Honorary Commission against Racism, Xenophobia and All Other Forms of Discrimination (CHRXD) – created by aforementioned Act No.17.817 – receives complaints on racial discrimination. The Commission is tasked with analyzing all forms of discrimination in Uruguay, planning and promoting campaigns intended to preserve social, cultural and religious pluralism, receiving and centralizing information on racist, xenophobic and discriminatory behavior, keeping a record of such behavior and filing the corresponding legal complaints, providing advice to victims of discrimination and informing public opinion on discriminatory attitudes and behavior.
35. Since its formal establishment in 2012, the INDDHH has publicly stated the need for a cultural change to prevent all acts of ethnic and racial discrimination⁴. The Institution has worked with the CHRXD and the Public Defender of the city of Montevideo in developing protocols. In addition, since September 2016, there is a reference working group on racial discrimination in the INDDHH.
36. Complaints received by the INDDHH on issues of racial discrimination have increased slightly as a percentage of total complaints of violation of the right to equality and non-discrimination from 2012 to date⁵. These cases are jointly worked with the CHRXD and other government bodies such as the General Inspectorate of Labor and Social Security when it comes to cases of workplace. The analysis of these complaints yields important clues about

⁴ In December 2012, the INDDHH made a public statement and subsequently issued a Public Resolution in response to an assault to a woman of African descent at a local dance. In 2013, as a result of violent outputs of a sport event, the INDDHH made a Recommendation to the Football Association. In both instances, it is important to highlight the cultural elements at stake and the impact on the mass media and public opinion.

⁵ Cases related to racial discrimination have risen from representing a 20% in 2012 to 27% in 2015 from all discrimination complaints.

key bottlenecks for racial equity in our country. There is a clear need for further promoting awareness raising campaigns and access to information for both state officials and vulnerable groups. Persistence of discriminatory stereotypes, lack of information on mechanisms to combat discrimination and absence of systematic human rights training policies can be corrected if adequate measures are put in place.

37. The INDDHH celebrates the creation of the "African descendants Education and Teaching Guide" from the interagency coordination of the Department of Education and Health and the Department of Women of African Descent from MIDES-INMUJERES and the Human Rights Department, the Sectorial Department of Educational Planning and Gender Network and the Working group for Ethno Racial Equity in Education from the National Administration for Public Education. The INDDHH encourages the promotion of human diversity principles in education through a curriculum that addresses diversity as part of an inclusive and intercultural school.
38. It should be noted that information published by the Justice System does not allow for the quantification of cases of racial discrimination brought to justice. This information gap may be due to different factors such as the absence of cases brought to justice, the absence of records of these cases or lack of indicators related to the subject⁶. This lack of important information should be remedied to enable an analysis of access to justice for victims of racial discrimination.
39. Finally, the INDDHH recognizes the Executive initiative of sending the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance to Parliament for ratification as an important step, since all measures to strengthen current legislation will enhance the promotion of human rights in an area where much remains to be done.

⁶ While there is plenty of data available on the Justice System, it is difficult to visualize relevant information concerning racial discrimination. The Report on Criminal Proceedings of the Planning and Budget Division performs a descriptive analysis on information on criminal matters introducing a categorization that does not single out proceedings on racial discrimination. In the case of information from labor or civil courts, identification of cases where discrimination is argued is complex because these cases are subsumed within other legal figures. Moreover, the Statistical Yearbook analyzes indicators such as initiated matters, final judgments and hearings but no indicators on crimes and sentences to enable analysis of the figure of racial discrimination are presented.