

EXECUTIVE SUMMARY

TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT OF CHILDREN AND ADOLESCENTS IN URUGUAY

UN COMMITTEE AGAINST TORTURE - 2022

OMCT, SERPAJ, CDNU



This executive summary includes the main information of the alternative report submitted by SERPAJ, the OMCT and the CDNU in view of the fourth review of Uruguay by the Committee against Torture (CAT).

The Committee on the Rights of the Child of Uruguay (CDNU) is a coalition of non-governmental, social and cultural organisations created in 1991 following the ratification by our country of the International Convention on the Rights of the Child (CRC). Servicio Paz y Justicia Uruguay (SERPAJ) is a non-governmental organisation for education, promotion and defence of human rights and peace, which began working in 1981, during the civil-military dictatorship (1973-1985). It is the first organisation dedicated to the promotion and defence of fundamental rights to be created in Uruguay¹. SERPAJ works in partnership with the World Organisation Against Torture (OMCT) to protect children in detention from torture.

1 - Violations of the rights of children and adolescents in Juvenile Criminal Justice

Modifications made to the Code for Children and Adolescents (CNA) and to the Law of Police Procedure (No. 18.315) between 2011 and 2013 weakened the rights and guarantees of adolescents, reinforcing punitive power and establishing deprivation of liberty as the rule. In turn, in 2021, a Law of Urgent Consideration (LUC)² which was approved deepened major setbacks in the juvenile criminal justice regulations, by increasing minimum and maximum sentences, which doubled from 5 to 10 years of deprivation of liberty; restricting the use of semi-liberty; maintaining of criminal records for adolescents; and incorporating and applying to juvenile justice proceedings the mechanism of the abbreviated judicial process, which is criticised for not respecting several fundamental judicial guarantees, and contradicts the principle of differentiated treatment of children, and of the special protection that should be afforded to children³.

A referendum organised on 27th March 2022 which called for the abrogation of 135 articles of the LUC did not succeed. All regressive provisions have therefore been confirmed.

1.a - Violation of articles 12 and 14 of the CAT in relation to the investigation of abuses committed in SIRPA⁴ in 2014

¹ More information at <http://www.serpaj.org.uy/quienes-somos/>

² Constitutional mechanism through which a law is sent from the Executive Branch in urgent situations and must be discussed within 90 days. This Urgent Consideration Law has 427 articles on aspects related to education, security, economy, adoptions, gender violence, among other areas.

³ The abbreviated process is a mechanism for sentencing without a prior trial, based on a negotiated or consensual justice, which can be incompatible with fundamental guarantees, and in particular the right to no self-incrimination or the presumption of innocence, among others.

⁴ The Adolescent Criminal Responsibility System was a decentralised body of INAU created in 2011 (through law n°18.771), in charge of implementing socio-educational measures for adolescents in conflict with criminal law. This body disappeared with the creation of INISA in 2016 (Law n°19367).

In August 2015, a case of serious violation of the human rights of adolescents deprived of their liberty in the Uruguayan juvenile penal system was reported in the local press, where cameras showed a brutal beating of adolescents, a situation denounced on several and numerous occasions by the CDNU. Initially, 16 officials of the union were prosecuted for torture, plus another 9 for the same crime as accomplices (without imprisonment). However, even with the documented background, in December 2016 the Judiciary issued an appeal sentence for the officials, classifying it as a crime of "abuse of authority", reversing the first instance where they were sentenced for torture. This marked a legal reversal of what could have been a legal precedent for condemning institutional practices of torture.

1.b - Setbacks in terms of guarantees and rights of adolescents in conflict with criminal law

The amendments made to the CNA contravene international human rights standards. In this regard, the persistence of the application of custodial sentences for children/adolescents, and the absence of alternatives to detention have already been raised with Uruguay by international mechanisms on numerous occasions due to the (2015 CRC Concluding Observations – paragraphs 69 to 72 and the 2014 Concluding Observations of the CAT - paragraph 12). The LUC deepens the provisions contrary to international standards and recommendations; it reinforces criminal proceedings as the only solution, substantially increases the length of imprisonment and reduces judicial guarantees for adolescents, without any resort to of extrajudicial measures or alternatives to deprivation of liberty.

1c - New institutions, old problems: deficient conditions of adolescent deprivation of liberty

In Uruguay, the implementation of socio-educational measures for adolescents in conflict with criminal law is not complied with. Socio-educational measures are subordinate to security measures, which are a priority for the system despite the institutional changes that have been made. Furthermore, the composition of the judicial system staff reveals weaknesses in the capacities and roles defined by the institution. For instance, the permanence within the system of officials convicted or under investigation for mistreatment of adolescents is serious and worrying. From 23 visits made in the context of the Serpaj-OMCT project to all the detention centres in the country, it can be seen that the system is marked by the logic of reward-punishment, with practices of extensive confinement (where in some centres adolescents spend between 21 and 23 hours a day locked up), isolation as a widespread punishment practice, widespread and excessive practices of medicalisation of adolescents, and serious deficiencies in the infrastructure of some centres, with deteriorated spaces and poor building conditions. There is a high number of attempts of self-harm by the adolescents detained.

1.d - Torture, cruel, inhuman, and degrading treatment in detention centres where adolescents are deprived of their liberty

Through the aforementioned monitoring visits of detention centers, reports of torture, cruel, inhuman and degrading treatment of adolescents deprived of their liberty were confirmed. We heard reports of beatings, searches carried out with physical violence, reduction, threats, aggravations and ill-treatment by officials, in particular by security forces established to act in conflict situations within the centres. The

report describes two criminal complaints filed by our organisations, and several descriptions of the treatment of the adolescents that arise from our visits, especially to MD1, Piedras, Pre Egreso and CIAM centres and which can amount to ill-treatment.

RECOMMENDATIONS:

- *Comply with the provisions of the CAT regarding the State's obligation to impartially and promptly investigate situations of suspected torture of children (article 12).*
- *Comply with article 14 of the CAT regarding the State's obligation to guarantee children victims of torture reparation and the right to fair compensation.*
- *Ensure compliance with article 4 of the Convention, referring to the need to criminalise torture in national legislation.*
- *Adjust national legislation in relation to adolescent criminal offences to the conventions, treaties and international human rights standards that Uruguay has signed and confirmed, which prescribes to only detain children as a last resort and for the shortest time possible. In particular, to implement the observations and recommendations of the CAT (2014) and of the CRC (2015). This implies the elimination of the following laws: 18.777, 18.778, 19.055, and the abbreviated process (Article 28 of law n°19.889).*
- *Prohibit beatings, isolation and threats against children and adolescents deprived of their liberty, creating safe and independent mechanisms to denounce and punish the staff responsible, as established in Article 13 of the CAT.*
- *Remove from office those officials who work in centres where children are deprived of their liberty and who have been convicted of cruel, inhuman and degrading treatment, as stated in article 16 of the CAT and in particular the recommendation made to Uruguay in 2014, paragraph 13.*
- *Comply with the implementation of socio-educational measures for adolescents in detention, including educational, recreational, cultural and social activities, and on the inclusion and connection of the adolescent with his or her environment. Security measures should be subordinate to educational needs and measures. In addition, promote activities of this type outside the detention centres.*
- *Promote the implementation of Article 90 of the CNA, which establishes the execution of measures in semi-liberty, reducing confinement and promoting practices that link adolescents with the community.*
- *Comply with international conventions and treaties to which Uruguay is a party, in relation to the implementation of alternative measures to deprivation of liberty for children and adolescents in conflict with criminal law, with deprivation of liberty being the last measure to be executed, and for the shortest possible time.*
- *Definitely close the MD1 centre, where practices of torture, cruel, inhuman and/or degrading treatment occur on a daily basis, such as isolation, beatings and ill-treatment, and which lacks mechanisms aimed at the social insertion of adolescents, that are always subordinate to special security measures.*

- *Close the ETTI whose infrastructure, with a strong prison-like character, are not adequate for adolescents serving a socio-educational measure depriving them of their liberty. Furthermore, the detention in this centre of adolescents under precautionary measures with those who have already been sentenced (Article 17) does not comply with international recommendations and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Likewise, the temporary transfer of an adolescent to the centre ETTI for up to 90 days implies a cut and loss of his or her educational, work and/or recreational activities, the only meaning of which is the imposition of a punishment.*
- *Ensure the training of the personnel with specific training on children's rights, mediation and interventions with adolescents from an approach of respect and promotion of human rights, in compliance with Article 10 of the CAT.*
- *Prohibit the training of officials that work with children by the Republican Guard.*
- *Guarantee adequate health care, generating inter-institutional conditions so that adolescents are attended to in adequate spaces and trained for their care. In particular, it is urged to improve mental health care and reduce the medicalisation of adolescents, offering comprehensive therapeutic approaches.*
- *Prohibit the use of forced and unpaid labour by adolescents in the detention centres.*
- *As the "yes campaign" of the national referendum on 27 March that proposed to repeal the 135 articles of the LU did not succeed, we recommend repealing articles 75, 76, 77, 78, 79 and 80 of the LUC.*

2. Children deprived of their liberty with mothers deprived of their liberty

In October 2016, the specific detention centre for mothers deprived of their liberty with children in their care "El Molino" (called Unit n°9) was transferred and located inside the Prison for women deprived of their liberty (called Unit n°5). The transfer was denounced by several human rights organisations and academic institutions⁵ as "totally inadequate, risky and regressive, since it would not comply with the tendency to promote the least possible harm to the subjects"⁶, and do not respect children's rights and in particular the principle of the best interests of the child. During a visit to the Unit in 2018 by the UNHRC and OMCT, it was found that the conditions of hygiene, infrastructure, health care and food were poor for women, as well as for children.

RECOMMENDATIONS

⁵ Public statement available at: Sobre el traslado de la Cárcel El Molino - Comunicado - Cotidiano Mujer (03/17/2022). In addition, institutions such as the Parliamentary Commissioner and the Supreme Court of Justice expressed their opposition to the transfer.

⁶ SERPAJ Annual Report 2016. p. 208. Available at [Autores.uy](https://autores.uy) | [Derechos Humanos en el Uruguay. Informe2016](https://autores.uy/Documentos/Informe2016)

- *Ensure adequate conditions of detention, which place the best interests of the child at the centre, basing the management of deprivation of liberty on access to fundamental rights, as set out in the Bangkok Rules.*
- *To transfer Unit n°9 to a specific establishment for mothers deprived of their liberty with dependent children, guaranteeing adequate conditions for their development.*
- *That both the INR⁷ of the Ministry of Interior (MI) and the bodies responsible for social policies (MIDES, education system and health system) coordinate the necessary actions to allow for an effective system of home detention for women, making possible for them their right to treatment and rehabilitation, also attending to the special needs of their minor children or persons with disabilities in their care. Comply with the Protocol for the Care of Children and Adolescents in situations of deprivation of liberty, training judicial, police and civil agents linked to the system.*

3 - Children and adolescents with an adult carer deprived of liberty

In Uruguay, it is estimated that by 2018, more than 13,000 children and adolescents⁸ had an adult carer deprived of liberty. Children and adolescents with adult relatives deprived of liberty generally come from contexts marked by families living in situations of extreme vulnerability, including situations of violence and links to crime and delinquency, high school dropout rates in adolescence, child labour, etc. In 2016, several governmental institutions and civil organisations⁹ developed a Protocol for the Care of Children and Adolescents in situations of deprivation of liberty¹⁰.

RECOMMENDATION

- Comply with the Protocol for the Care of Children and Adolescents with persons responsible in situations of deprivation of liberty, training judicial, police and civil agents linked to the system.

4. Homicides and disappearances of children and adolescents

Between 2012 and 2019, 186 intentional homicides of children and adolescents were registered¹¹. Half of them in Montevideo, and particularly in neighbourhoods with the lowest quality of life indicators in the country. Out of every 10 homicides, 7 were committed against a male child or adolescent and 3 against a female child or adolescent. In the case of the murders of the latter, more than half were killed in domestic episodes of intra-family violence. In the case of boys or male adolescents, a good part of them were killed

⁷ National Rehabilitation Institute, in charge of the management of custodial sentences in the adult penal system.

⁸ Regional Study available at: Estudio-Regional-Ninez-que-cuenta-web.pdf (gurisesunidos.org.uy)

⁹ Judiciary, Inau, Mides, Inisa, Ministry of Interior, and the Uruguayan Committee on the Rights of the Child.

¹⁰ <https://www.gurisesunidos.org.uy/wp-content/uploads/2017/05/Protocolo-de-actuaci%3b3n-Atenci%3b3n-a-NNA-con-responsables-en-situaci%3b3n-de-privaci%3b3n-de-libertad.pdf>

¹¹ Observatorio de los Derechos de la Niñez y Adolescencia del Uruguay. Committee on the Rights of the Child of Uruguay (ODNAU-CDNU). "Homicidios a niños, niñas y adolescentes. 2012 a 2019" (2020).

in contexts typified by the State as "conflicts between criminals and/or settling of scores"¹². The difficulties of the justice system in investigating and clarifying homicides perpetrated against children and adolescents are evident: between 2012 and 2016, 56% of the homicides were not clarified¹³.

RECOMMENDATIONS

- Comply with Article 12 of the CAT regarding the State party's obligation to guarantee a prompt and impartial investigation into situations that may be considered acts of torture.
- Guarantee the protection of children and adolescents in contexts where their physical integrity is at risk.

5- Mental health of children and adolescents - emergency care centres as places of torture.

The model of mental health care for children and adolescents is based on a pathologizing and a medicalised conception of the suffering and experiences, without offering a comprehensive view of their situations. The health system's response is based on an adult-centred approach, whose "rapid" and widespread diagnostic practice relies on psychiatric drug treatments and devices that reinforce the control and exclusion of children and adolescents in need of mental health care. Institutionalisation in monovalent psychiatric centres, configured as spaces of confinement, isolation, control, and punishment, constitute practices of cruel, inhuman and degrading treatment, in violation of the fundamental human rights of children.

5.1 Regulatory framework

The approval in 2017 of a new Mental Health Law in our country (n°19.529)¹⁴ forgot children and adolescents, as it did not have special provisions for them, remaining under the same provisions as adults. In particular, the absence of an explicit reference to the elimination of care centres for children and adolescents with an asylum and monovalent model, as determined by Law n°19.529¹⁵, and in contrast to the proposal established for the adult world, is a cause for concern.

5.2 Pathologising and medicalising practices in childhood and adolescence

The practices and treatments of medicalisation of children and adolescents have been a source of concern for human rights organisations and institutions and have been the subject of observations by the international human rights system. The CDNU has collected and accompanied adolescents with high levels of medicalisation and short treatment times, generating actions of omission and institutional violence.

¹²Tenenbaum, G. Fuentes, M. Viscardi, N. Salamano, I. Espíndola, F. "Relatos de Muerte. Homicidios of young Montevideans in settling of scores and conflicts between criminal groups" (2021).

¹³ Unicef. "Los homicidios de niños, niñas y adolescentes en Uruguay. 2012-2018". (2019).

¹⁴ The previous law was from 1936.

¹⁵ Article 37 "The deinstitutionalisation of people with mental disorders shall be promoted through a progressive process of closing asylum and monovalent structures, which shall be replaced by a system of alternative structures.

5.3 Institutionalisation and practices of torture and cruel, inhuman and degrading treatment

The institutionalisation mechanisms still in force for children and adolescents in need of mental health care not only contravene the provisions of Law n°19.529 and the recommendations of the international human rights system in this regard, but also imply the commission of serious violations of their fundamental rights. These care facilities are based on an asylum and monovalent model, are based on isolation from the children's environment, and banishment to the extent that they are moved from their environment, their neighbourhood and flat, their education, and implies a disconnection from affective references, attacks on privacy with unjustified camera surveillance, or removal of personal clothing.

They develop practices that are conceptually deprivation of liberty, restriction or elimination of education in the community, limitation of leisure, generating another type of violence that severely affects the development and mental health of children and adolescents. In the monitoring carried out between 2019 and 2020, the NPM systematised these situations of violence, identifying widespread practices of cruel, inhuman and degrading treatment, physical violence, threats, excessive sanctions and high levels of control in these centres.

5.4 Prolonged detention and undue deprivation of liberty: medical discharges not respected

The permanence of children and adolescents in acute care centres beyond their medical discharge constitutes a situation of undue imprisonment and a violation of their fundamental rights, which is the responsibility of the State and is in charge of their protection. Their stay in these facilities implies the continuity of drug treatment, dissociation from their environment, and practices of confinement and mistreatment, which profoundly affect children's integral development.

The monitoring carried out by the National Preventive Mechanism in 2020 reports that 21% of the children and adolescents interned remain in these transitory centres for more than two years (beyond the 2-year limit established by INAU for internment), while 1 out of every 5 adolescents remain in these centres for between 3 and 9 years.

At the same time, and in relation to the hospitalisations carried out in the Pereira Rossell Hospital Centre located in the country's capital, the medical team has noted the persistence of prolonged hospitalisations of children who have been discharged from hospital but have no other mental health care system to assist them, thus prolonging their hospitalisation in the hospital.

5.5 Lack of reporting mechanisms

There are no safe reporting mechanisms for children and adolescents who pass through the different mental health care settings. There are reports of adolescents admitted to these centres being punished for making a complaint.

RECOMMENDATIONS

- *Comply effectively with the mental health law in force (n°19.529) which establishes the closure of asylum and monovalent centres such as acute care centres and halfway houses. Close immediately these centres based on practices of torture, cruel, inhuman and/or degrading treatment.*
- *To have paediatric hospitals or general hospitals with paediatric wards specialised in mental health care for children and adolescents throughout the national territory, with infrastructure and specialised human resources for their adequate care.*
- *Guarantee in mental health care facilities respect for fundamental rights such as education, recreation and free time, links with family members and their environment, health, and information about their situation at all times.*
- *Respect established hospitalisation periods and, when children and adolescents are discharged from hospital, offer immediate, comprehensive, and alternative care responses that do not involve undue confinement and the violation of fundamental rights.*
- *To have effective mechanisms for reporting and protection in situations of torture, cruel, inhuman and degrading treatment of children and adolescents in mental health care facilities, guaranteeing their protection and immediately removing those responsible.*
- *Comply with the right to information and participation of children and adolescents in the indicated psychiatric and pharmacological treatments.*
- *Strengthen outpatient treatment, which implies adequate follow-up and care for children and adolescents within and in contact with their community.*

5. 24-hour centres NPM Report 2016

In the 24-hour protection centres, multiple shortcomings and rights violations have been observed, including: exposure to ill-treatment and abuse, lack of therapeutic care appropriate to the situation, prolonged internment in centres designed for temporary care, inadequate infrastructure and lack of staff.

The Annual Report of the National Preventive Mechanism (NPM) reveals a series of serious violations in "gateway" centres to INAU's 24-hour protection system.

It was also observed the absence of any educational activities and resources, and that the activities proposed by the staff did not usually take into account the preferences of the adolescents.

RECOMMENDATIONS

- *Investigate situations of torture, cruel, inhuman and/or degrading treatment in 24-hour protection centres, as established in Article 12 of the CAT, immediately removing suspected officials (Article 13 CAT) and establishing prompt protection measures for violated children and adolescents. In addition, making reparation to these victims (Article 14).*
- *Recruitment of adequate staff with specific training in child, adolescent and family issues. In addition, train personnel in service on the prohibition of torture (Article 10 of the CAT).*



- *Allocate resources to territorial mechanisms for family accompaniment to strengthen community networks and adequate monitoring of situations of greater vulnerability.*
- *Strengthen INAU's support and counselling mechanisms to its initiative Familia Amiga, which organises for foster families to receive children temporarily when they cannot be with their parents.*