



Institución Nacional de
Derechos Humanos y Defensoría del Pueblo

Convention on the Elimination of All Forms of Discrimination against Women

Committee on the Elimination of Discrimination against

Women (CEDAW)

64th session

Report by the National Institution of Human Rights of Uruguay

[June 10th, 2016]

I. Introduction

1. The National Institution of Human Rights (INDDHH) submits the present report for the 64th session of the Committee on the Elimination of Discrimination Against Women (CEDAW), during which the eighth and ninth periodic reports of Uruguay will be examined, in order to contribute to strengthening the Rule of Law and for the protection of women rights.
2. This report is submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women.
3. For its 64th 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.
4. The INDDHH expresses its satisfaction concerning progress in various aspects related to women's rights. This progress will not be emphasized in this report because they are included in the report of the Uruguayan State.
5. This report focuses in two lines of work on which the INDDHH has supplementary contributions to those reported by the State and civil society organizations. Notwithstanding, the INDDHH emphasizes the importance of continuing to strengthen public policies to eradicate all forms of violence against women, ensure access to justice, equal participation in the labor market, representation of women in public office and respect for sexual and reproductive rights.
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.

I. About the National Institution of Human Rights and Ombudsman

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.
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).

II. Women prisoners. Recommendation paragraph 45.

13. This section focuses in general aspects of the Uruguayan adult female prison system and the detention centers for adolescents in conflict with criminal law.

Adult women prisoners

14. The INDDHH, specifically the NPM has observed State efforts to generate changes in the female prison system; nevertheless it should be a priority to promote measures to meet specific needs of the female population.

15. In particular, the INDDHH highlights the importance of having gender specialized units which promote institutional policies. In this sense, it is necessary to strengthen the work of the Commission on Gender from the National Rehabilitation Institute of the Ministry of Interior by endowing it with institutional hierarchy and resources.

16. In December the number of women in prison was 570 in a total population of 9877 (6% of the prison population). The NPM has indicated that this percentage of women held in penal institutions is higher than the Argentinean and Paraguayan percentage and similar to the Brazilian and Chilean rate.

17. The prison system consists of 28 units distributed around the country. Women are concentrated in the metropolitan area¹ (65% of female population) where the only two units to accommodate exclusively women are located. These two units are different from each other. One of them is intended solely to accommodate women with children with a locative capacity of 28 places (Unit 9 "El Molino"). The other unit has a capacity for 650 women (Unit 5) and hosts the bulk of the female population (62%)².

18. This spatial distribution implies that all women prisoners outside the metropolitan area (35% of the female population) are accommodated in 19 mixed units, originally thought for men, representing a small number within each unit. In addition, Unit 4 located in Montevideo has a small area for trans population.

¹ The metropolitan area includes the departments of Montevideo, Canelones and San José which account for 59.3% of the national population.

² All data provided by the Ministry of Interior.

19. Both building and human resources within the prison system deepens gender gaps to the extent that women are located in the worst parts of the units. This location generates material difficulties (in the access to food, intimate spaces and contact visits with family members) as well as into difficulties in access to information and technical and human resources.
20. As for the legal situation of women, it can be seen that the rate of women who have conviction is less than that of men. While the total percentage of men prosecuted without sentence is 70%, in the case of women is 80%, which could account for a postponement of women in the justice system. If we compare this figure with the surveyed in the First National Inmate Census of 2010, the percentage of women without conviction has increased from 64% to 80%, similar situation occurs with males increasing from 52% to 70%.
21. Foreign women account for 5% of the total female population, slightly higher than men who are 2% percentage. This figure is in line with the trend observed in several studies indicating greater presence of foreign women than foreign men in prison³.
22. The INDDHH is concerned by the overall situation of women prisoners regarding their access to decent material conditions, resources and information, as well as their postponement in the justice system. It is of greater concern the situation of women of other nationalities because of their eventual lack of understanding of the Uruguayan justice system.
23. Regarding motherhood, national law provides that women may have their children with them until they are four years and may request an extension for four additional years (Decree Law No. 14,470, art. 29). Moreover, Law 17.897 provides, in article 8, the use of home detention during the last 3 months of pregnancy and the first 3 months of lactation. Information collected during visits to the prison system reflects that many women are unaware of the above mentioned regulations. In 2010, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment⁴ observed the same lack of information among the female population.

³ Vigna, A. 2010. *Análisis de datos del I Censo Regional de Reclusos desde una perspectiva de género y derechos*.

⁴ Nowack, M, 2010. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading

24. The INDDHH-NPM has expressed concern regarding the excessive use of preventive detention and the need to make use of home detention for pregnant women.
25. In December 2015 the number of pregnant women in prison was 15 and the number of children who lived with their mothers in prison units was 55 (29 boys and 26 girls). 76% of these children were less than 2 years.
26. In 2010 when Unit 9 "El Molino" was settled, a big proportion of the child population was concentrated in this unit which has been considered as a good practice in the specific and differential treatment for women imprisoned and their children. However, material and financial resources for this center have proved insufficient, to the point that today, the center is going to be shut down and transferred to a new location within the domain of the other center for women, Unit 5.
27. On December 27th 2015, the INDDHH released a public statement regarding the transfer of Unit 9 "El Molino" to Unit 5. The INDDHH states and reports to the public the following:
- "1) Its serious concern regarding Unit 9 move, since it means giving up a recognized good practice, both at the national and international level, in addressing motherhood in prisons, which would not be in line with the Principle of non regression of International Law on Human Rights.*
- 2) Its firm belief that women with children should not be housed in a facility that holds the entire female prison population, even if mothers and children are housed in a separate sector, because it affects their rights and does not constitute a State specific approach for at their protection ⁵".*
28. Despite the many recommendations contrary to the transfer of Unit 9 to a sector within Unit 5, in February this year the Ministry of Interior initiated reforms in the building. The INDDHH- NPM has been monitoring this process and considers it is important that the Uruguayan government continues its efforts to strengthen practices that protect the rights of women prisoners addressing the importance of mother - child bond.

Adolescents in conflict with criminal law

treatment or punishment.

⁵ For further information see Report 49/2015. October, 13th 2015. Available at <http://www.inddhh.gub.uy>

29. The INDDHH-NPM has been monitoring the development of the Juvenile Criminal Liability System (*Sistema de Responsabilidad Penal Adolescente*) since 2014. The NPM has focused its work on particularly vulnerable groups, such as adolescents under 15 years old, women, and adolescents in homes classified as maximum security.
30. The *Centro de Ingreso Adolescente Femenino* (CIAF) located in Montevideo is the only detention center for female adolescents in conflict with criminal law. Its location implies that adolescents from outside Montevideo have to serve their sentence far away from their families and often without receiving visits, food or clothing due to economic difficulties.
31. INDDHH-NPM visits and follow up reports indicate that the CIAF presents strong risks of rights violations, both because insufficient material conditions and problems in its operational dimension.
32. Regarding institutional violence, the INDDHH- NPM has observed unequal treatment based on gender. Teenage girls do not have access to a center for diagnosis, classification and referral. In addition, both waiting hours as detainees before the preliminary hearing, as well as precautionary and definitive measures are met in the same center with the same staff and in the same conditions. Moreover, the INDDHH- NPM considers that there is a negative differential treatment regarding courses and recreational activities, which strengthen adaptive behavior stereotypes for women.
33. Finally, teenage girls show a high level of psychotropic drug consumption and a poor rate of diagnosis of psychiatric disorders. In December 2015, CIAF housed 34 teenagers, 30 of them were medicated with psychotropic drugs but only 3 were diagnosed with psychiatric disorders.

III. Necessary Legislative Reforms.

Penal Code Reform. Recommendation paragraph 19 and 25.

34. The country has spent several years discussing and exchanging on a possible reform of the penal system. In December 2014, Law 19.293 provided to amend the Criminal Procedure Code was enacted. This law would take effect in 2017. However, the reform of the Penal Code was not approved because the proposed text presented strong shortcomings.

35. In December 17th, 2014, the INDDHH issued some recommendations to the Parliament on the draft of the new Penal Code⁶. These recommendations were sent to the President of the General Assembly.
36. With regard to the necessary introduction of a gender perspective in the Penal Code, the INDDHH reminded the Parliament of all recommendations issued by international bodies (Working Group on the Universal Periodic Review, Committee of Experts on Violence from the Inter-American Commission on Women and CEDAW). These recommendations were not taken into account in the original draft. International reports stated that the Penal Code contains discriminatory concepts such as modesty, virtue and public scandal in the characterization of sexual offences and noted that the Penal Code should expressly prohibit sexual violence including oral sexual violence as well as s contemplate sexual abuse in children and adolescents.
37. In addressing this issue, the INDDHH ends the paragraph by recommending to the Legislature:
- a) *To eliminate gender stereotypes that are still in the draft reform of the Penal Code, in particular in relation to sexual offenses, in compliance with recommendations by international human right bodies,*
 - b) *To avoid all forms of discriminatory language from a gender perspective, as is the case already mentioned Libro II (About the offenses), Title I.*
 - c) *To take into account international standards for the penalization of violence, procuring and abortion ⁸”*
38. So far, though multiple exchanges, contributions and alternative wordings have been made to the Parliament, no new draft reform of the Penal Code is known.
39. The INDDHH is concerned about the new draft and its approval process since changes in criminal proceedings should be accompanied by a reformulation of substantive criminal law to allow the Uruguayan State meet international obligations.

⁶ <http://inddhh.gub.uy/recomendaciones-sobre-nuevo-codigo-penal/>

⁷ In the *Libro II (About the offenses), Título I*, the Penal Code refers to “Crimes against physical and moral personality of man”

⁸ The INDDHH notes that Article 158 of the draft reform only sanctions exploitation of the prostitution of another person if there is no consent of the victim. This Article should be brought into line with international obligations of the Uruguayan State. In relation to domestic violence offenses, the draft reduces violence to physical and psychological violence in cohabitation situations, eliminating for women and children all aggravating factors, not in compliance with treaty obligations assumed by the State.

**Comprehensive bill to guarantee women a life free of gender-based violence.
Recommendations 8, 9 and 23**

40. In April 2013, the INDDHH presented a report for the monitoring of the recommendations made to the country at the First Cycle of the Universal Periodic Review (2004-2008) in the framework of the Second Cycle of the Universal Periodic Review⁹. That report noted that despite the efforts made by the State, difficulties persist in the response to violence against women. It also noted the existence of institutional practices that invisibilize domestic violence and promote revictimization of women. In addition, Uruguay fails to decrease the rate of women killed in situations of domestic violence.
41. Furthermore, both civil society organizations and state agencies have pointed out that the national regulatory framework does not provide a comprehensive response to violence against women. Building on those inputs, the National Advisory Council for Combating Domestic Violence drafted the aforementioned bill to guarantee women a life free of gender-based violence.
42. The INDDHH has stated the need to review current legislation in order to adopt a comprehensive approach to gender-based violence.

Law on political participation. Recommendation. Paragraph 15

43. To address women underrepresentation in the political sphere, Law 18.476¹⁰ was approved in 2009. The above mentioned law declares equal participation of both sexes in the integration of national and departmental elected bodies and in the leadership of political parties as a general interest principle. It explicitly states that people of both sexes have to be included on every three positions throughout the entire list
44. The above mentioned law was applied only once in the 2014 elections. The number of elected women increased, but unequal representation was not reversed. The percentage of women legislators after the elections amounted to 19, 4% (in the Senate female representation increased from 12.9% to 26.7%

⁹ <http://inddhh.gub.uy/wp-content/uploads/2013/10/Informe-INDDHH-de-Uruguay-a-la-2da.-ronda-del-EPU.pdf>

¹⁰ This law was applied in 2014 general elections and in 2015 local elections in 2015.

after the last elections, while in the House of Reps, it only increased by two percentage points, de 15,2% to 17.2%).

45. The weaknesses presented by the norm itself and the political parties usage of the minimum legal requirement, determined that there were no substantial changes in the political participation of women. Therefore, it is necessary a Parliamentary discussion of a new law to achieve equitable political representation.