 

**Committee on Economic, Social and Cultural Rights**

**Sixty-first Session**

**Report by the National Institution of Human Rights**

**Uruguay**

[May 7th, 2017]

1. **Introduction**
2. The National Institution of Human Rights (INDDHH) submits the present report for the Sixty-first session of the Committee on Economic, Social and Cultural Rights, during which the fifth periodic report of Uruguay will be examined in order to contribute to strengthening the Rule of Law and effective protection of human rights.
3. This report is submitted because of the Committee’s invitation to submit information to National Human Rights Institutions.
4. The INDDHH expresses its satisfaction with the progress achieved in various aspects related to the promotion and defence of the economic, social and cultural rights contemplated in the International Covenant on Economic, Social and Cultural Rights in the country. These advances will not be highlighted in this report, since they are duly reported in the communication made by the Uruguayan State.
5. The report focuses only on two articles of the Covenant and underlines for that purpose those aspects included in the list of issues of the Committee and already answered by the State.
6. These aspects, Non-discrimination and the Right to Physical and Mental Health (E / C.12 / URY / Q / 5, Paragraph 5 and 24, respectively) represent lines of work on which the INDDHH counts on more complementary elements to those reported by the State and civil society organizations. This is without prejudice to the fact that the INDDHH stresses the importance of continuing to strengthen public policies aimed at promoting rights relating to equitable and satisfactory working conditions, social security, an adequate standard of living, the highest attainable standard of physical and mental health, education and the enjoyment of the benefits of culture.
7. In particular, the INDDHH insists that the country continue to work on overcoming obstacles to the full exercise of economic, social and cultural rights already enshrined in the INDDHH reports to other treaty bodies such as CEDAW, CERD and CAT[[1]](#footnote-1) as well as in resolutions and recommendations made to the Uruguayan State (specifically those related to the rights of migrants and persons with disabilities).
8. 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 defence of human rights.
9. **About the National Institution of Human Rights**
10. The National Institution of Human Rights (INDDHH) is an autonomous state body within the Legislative Power, aimed at the defence, promotion and protection of human rights acknowledged by the Constitution and International Law.
11. It was created by Law Nº 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.
12. 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.
13. It is a new Institution recently created within the Uruguayan State in order to fulfil 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.
14. Article 83 of Law N° 18446 states that the INDDHH “shall fulfil 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 fulfil the functions of such Mechanism.
15. 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).
16. Non discrimination (Art. 2, Paragraph 2)
17. In view of the fact that the Committee requests the State to provide information on existing legal mechanisms to prevent and punish all forms of discrimination, on the existence of an independent mechanism for receiving complaints and on the number of complaints received (see E / C. 12 / URY / Q / 5, paragraph 5), the INDDHH as an autonomous State body complements the information already submitted by the State and devotes this section to providing specific information on the complaints received.
18. In 2016 584 cases were received and152 were filed as complaints of violation of human rights[[2]](#footnote-2).
19. Complaints involving the right to equality and non-discrimination amount to 45 in the last year (30% of total complaints). This figure shows a significant growth in this type of complaints that amounted to 26 in 2015 (17% of the total).
20. The composition by type of discrimination has also varied significantly with respect to 2015. Complaints related to the right to equality and non-discrimination for disability represent the highest percentage, 30% of all complaints involving this right, while in the previous year it did not represent a relevant percentage. It is followed by complaints of discrimination based on age, racial / ethnic origin, migrant status, sexual identity and, lastly, gender discrimination.
21. The distribution of complaints involving this right as a cause of discrimination can be seen in detail in table 1.

Table 1. Distribution of complaints involving rights to equality and non discrimination by type of discrimination. Year 2016 [[3]](#footnote-3).

|  |  |  |
| --- | --- | --- |
| Causes for discrimination | Number | Percentage |
| Equality and non discrimination because of disability | 14 | 31% |
| Equality and non discrimination because of age (children, adolescents, older persons) | 9 | 20% |
| Equality and non discrimination because of ethnic and racial background | 6 | 13% |
| Equality and non discrimination because of migrant status | 5 | 11% |
| Equality and non discrimination because of sexual identity and sexual orientation | 4 | 9% |
| Equality and non discrimination because of gender | 3 | 7% |
| Discrimination because other causes | 4 | 9% |
| Total | 45 | 100% |

1. It should be noted that the INDDHH conducts proceedings with the State offices complained of and also coordinates complaints received on issues of discrimination with the Honorary Commission against Racism, Xenophobia and any other form of Discrimination. It also acts together with other State offices such as the General Inspection of Labour and Social Security (Ministry of Labour and Social Security) and the Ombudsman's Office of Neighbours of Montevideo.
2. Finally, it is important to emphasize the handling of complaints and issued resolutions related to the right of equality and non discrimination that have resulted in satisfactory evaluations according to the INDDHH. In particular, the case of complaints made by a group of users of the Personal Assistants program of the Ministry of Social Development. This new program grants the right to the provision of personal assistants to all people with severe dependency. As a new device in the country's social protection network, the program has been establishing and modifying coverage parameters. The INDDHH, in use of its faculties received the complaints, managed them and made recommendations that resulted in actions evaluated as satisfactory.
3. **Right to physical and mental health (Art. 12)**
4. The Committee urges the State to provide information on the new Mental Health Act and the development of a national policy on mental health. Information is also requested on the psychiatric clinics of Bernardo Etchepare and Santín Carlos Rossi (see E/C.12 /URY/Q/5 Paragraph 24). To complement information provided in the national report and in the response to the list of issues, the INDDHH addresses in this section the current situation and reports on the steps taken by the Institution in its role as a National Mechanism for the Prevention of Torture (NPM) focusing on three key points: the Mental Health Act itself, the monitoring activity on psychiatric clinics, and the particular situation of children and adolescents in the state protection system.

**Mental Health Act [[4]](#footnote-4)**

1. In Uruguay's legal system, Law 9.581 on mental health from 1936 ("Law on the Psychopath"), remains in force until now. This law perpetuates stigmatization, discrimination and violation of the human rights of persons with disabilities based on real or perceived presence of a psychosocial disability, which enables among other things, the deprivation of freedom for people with mental illnesses.
2. For more than a decade, different groups of professionals and civil society organizations have made important efforts to adjust the current national legislation to the international instruments related to the field of mental health from a human rights perspective.
3. Since its inception, the INDDHH has addressed the right to mental health. In November 2014, the Working Group on Mental Health and Human Rights was set up (in accordance with Law No. 18,446, Art. 66) to ensure the implementation of a human rights approach in the field of mental health.
4. This working group has facilitated the exchange of State actors with civil society and academia in the production of documents and contributions for a Mental Health Law based on the universality, integrality and indivisibility of human rights, which effectively realizes and protects dignity, equality, the prohibition of discrimination, the right to privacy and personal autonomy, the prohibition of inhuman and degrading treatment, the principle of the least restrictive environment of freedom and the right to information and participation.
5. The role of National Mechanism for Preventing Torture (NPM) played by the INDDHH contributed particularly to the definition of the periodic inspection tasks to be carried out by an independent Monitoring and Review Body in all mental health institutions, as well as in all aspects related to the legal representation of people with severe mental suffering.
6. In December 2015, the Executive Branch sent to Parliament a "Bill to regulate the right to the protection of mental health within the framework of the National Integrated Health System", which proposes changes in the approach to Mental Health and that will replace present legislation, drafted in the first half of the last century. In July 2016, the INDDHH sent a report to Parliament with considerations related to this Bill and was received by the Public Health Commission of the Senate to present it. In October 2016 the Senate voted the mental health bill with minor changes. To date it is still under study by the Chamber of Deputies.
7. Among other things, it is worth noting that the text of the Law seeks to reflect a new paradigm based on the concepts of mental health as a human right, community approach, intersectorality and interdisciplinarity, as well as proposing the principle of the alternative less restrictive with the intention of leaving behind the prevailing asylum logic.
8. The ministerial decision, expressed in Article 37 of the Bill, related to the closure of asylum structures and progressive deinstitutionalization of the resident population of these institutions, is also highlighted. The Bill ensures attention to health care needs and necessary support for a dignified life, and, contemplates the need to define temporary limits when hospitalization is necessary as well as the consideration of age factors.
9. Among other considerations made to this Bill, the INDDHH has recommended that special attention be given to those groups particularly affected by mental health policies, strategies and programs (children, adolescents, women, older adults, ethnic, religious and linguistic minorities, refugees, migrants, persons with disabilities, persons deprived of liberty, groups with economic and social vulnerability, LGTBI groups).
10. It has also been recommended to ensure legal safeguards to protect human rights of persons affected by serious mental suffering, including the establishment of an independent and impartial Monitoring and Review Body as set out in the Convention on Human Rights Of Persons with Disabilities (Approved on December 13, 2006 and ratified by Uruguay by Law 18,418 dated November 20, 2008).

**Monitoring activities by the NPM [[5]](#footnote-5)**

1. Since 2013 the INDDHH has made several visits to psychiatric institutions[[6]](#footnote-6) and have presented reports and recommendations. Specifically, in 2016, the INDDHH team assigned to the fulfilment of functions as MNP has made efforts to integrate psychiatric clinics into the monitoring system of the NPM for the year 2017. In these visits Colonia Etchepare and Santín Carlos Rossi were specifically targeted, given the asylum model that has predominated in them. These Psychiatric Care Colonies have 750 patients (average age of 51 years and an average length of stay of 14 years and a half) hospitalized in the Pavilion modality (some with up to 80 people) and represent the most painful manifestation of the complex reality of psychiatric clinics.
2. In the last exploratory visit made by the NPM to the Colonies, currently unified and named "Centre for Occupational and Psychosocial Medical Rehabilitation" (CE.RE.MOS), it was possible to observe that despite the important efforts to overcome the asylum model, the results remain insufficient to guarantee the dignity of people with mental suffering.
3. Consistent with Uruguay's commitment to the closure of asylum institutions by 2020 established by the World Health Organization (WHO), as from May 2016 no patients are admitted to the Colonies and a gradual closing of them has been established.
4. Article 37 of the bill approved by the Chamber of Senators establishes the closure of asylum structures, with progressive deinstitutionalization of the resident population of the same, ensuring the attention of their health care needs and a dignified life.
5. Nevertheless, the INDDHH is especially concerned that a timetable for the progressive closure of nursing homes has not been established, nor has the participation of the different actors involved (including users) been included in the closure plan.
6. The lack of protection from human rights violations for people with severe mental suffering is one of the most important problems in the field of mental health in Uruguay, especially because of the persistence of the isolation model through prolonged hospitalizations in total institutions.
7. Because of the non-application of principles such as seeking contexts less restrictive of freedom, minimal intervention and protections of the right to live in community, hospitalization becomes an illegitimate deprivation of liberty, often in conditions of habitability, coexistence and hygiene which systematically violate human rights. The INDDHH is concerned about the slow course of the State as a whole in approving a new law that replaces the old paradigm on which the system was set up.

**Children and Adolescents[[7]](#footnote-7)**

1. As noted in Paragraph 28, the principle of non-discrimination requires recognizing specific characteristics of groups involved and focusing on the whole life cycle. Particular attention should be paid to groups affected by mental health policies, strategies and programs. When adopting measures, the guiding principles of international and national regulations should be applied and users' participation in the care process should be ensured according to their needs, particular characteristics and possibilities.
2. Any measure related to mental health of children and adolescents should be governed by the guiding principles of the Convention on the Rights of the Child: Comprehensive Protection, Superior Interest, Progressive Autonomy and Child Opinion, as well as the National Code on Children and Adolescents and other national and international regulations.
3. The importance of having a system of devices for educational inclusion with progressive levels of autonomy and higher levels of State coordination can be highlighted in the analysis of the devices available for mental health care of children and adolescents. Adolescence is not always identified as a specific stage and is often not considered in the organization of targeted mental health devices. This means that particular needs and characteristics are not taken into account and implies that the study of obstacles and difficulties for adolescents' access to them should be deepened. Specific strategies should also be implemented for children and adolescents with situations of high dependence because of severe mental and/or functional disabilities.
4. In the inspections carried out to mental health centres for children and adolescents (in agreement with the Institute for Childhood and Adolescence -INAU-), it was observed that children and adolescents who go through "acute episodes" related to mental health, waiting time for referral sites is longer than the suggested 30 or 40 days. So, this waiting time ends up as a prolonged stay where the child remains in a form of hospitalization that should be an exceptional therapeutic resource. In addition, the hospitalization approach does not respond to children needs and circumstances.
5. Another aspect of concern is that children and adolescents often come to the Centre without handling clear information about places, time and reasons.
6. Mental health interventions for children and adolescents must guarantee their right to a comprehensive care that promotes the enjoyment of a better quality of life, including the right to be informed and have their opinion heard and respected as set out in Article 12 of the Convention on the Rights of the Child. Also, informed consent is one of the guiding principles of the International Convention on the Rights of Persons with Disabilities.
7. The INDDHH is concerned about the violation of the right to information and participation in decisions that affect their lives, particularly in situations of relocation and treatment alternatives.
8. The INDDHH will continue to work in order to achieve that both institutional norms and practices respect the inherent dignity of every human being and to ensure that the right to mental health is effectively established as part of the human right to health.
9. Likewise, the INDDHH will continue to make efforts in all other matters that are of concern in order to achieve recognition and enjoyment of economic, social and cultural rights for all people.

1. (See <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/URY/INT_CEDAW_IFN_URY_24262_S.pdf>

   <http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/URY/INT_CERD_IFN_URY_25780_S.pdf> http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/URY/INT\_CAT\_IFN\_URY\_17066\_S.pdf) [↑](#footnote-ref-1)
2. Data indicate a sustained increase in the cases attended by the INDDHH. Work was carried out on 380 cases in 2013, 449 in 2014, 568 in 2015 and 584 in 2016. The increase is mainly due to the increase in consultation and advice. Consultations include a wide range of interventions such as requesting information and referrals. They are framed in the competencies of the INDDHH defined by Law 18.446 in its 4th article O: To inform and disseminate in the widest possible way public opinion, human rights, *National and international standards that regulate them and the mechanisms of national and* international. It should be noted that the evidence shows that all Ombudsmen in the region devote a significant part of their resources and efforts to this task of disseminating and protecting human rights through counseling individuals and groups who so request. [↑](#footnote-ref-2)
3. Based on Complaints Registration System (*APIA expediente electrónico*). [↑](#footnote-ref-3)
4. For further information see INDDHH Annual Report 2016. [↑](#footnote-ref-4)
5. For further information see INDDHH Annual Report 2016. Chapter III. [↑](#footnote-ref-5)
6. For the purpose of this Report, psychiatric institutions are those public or private health institutions specialized in treatments for persons with mental (or psychosocial) disabilities such as psychiatric hospitals, psychiatric units in hospitals and closed treatment units for persons in conflict with the law as defined by APT. [↑](#footnote-ref-6)
7. For further information see Annual Report 2016 of the INDDHH. [↑](#footnote-ref-7)