



Report by civil society organizations on the Human Rights situation in Uruguay

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With the support of:



Introduction

The following report was coordinated by the SERPAJ Uruguay¹ team, and prepared in collaboration with MYSU, Ovejas Negras, Memoria en Libertad, Madres y Familiares de Uruguayos Detenidos-Desaparecidos and CaInfo. It is supported by the Center for Civil and Political Rights (CCPR-Centre).

Over the past decade, Uruguay has made significant progress in regulatory matters. Highlights include: the creation of a new Criminal Procedure Code (Law No. 19293), and the passing of the following bills: Comprehensive Law for Transgender People (No. 19684), Gender-Based Violence Against Women Law (No. 19580), Equal Marriage Law (No. 19075), Cannabis Regulation and Control Law (No. 19172), Law on Responsible Possession of Weapons (No. 19247)², Law on Corporate Criminal Responsibility (No. 19196).

However, we warn about the historical regression that the approval of the Urgent Consideration Bill (n.º 19.889, hereinafter LUC) represents in rights and guarantees enshrined in our legislation such as: right to life; right to freedom of expression; right to assembly and demonstration; rights at the moment of detention; right to fair trial; rights of people deprived of their liberty.

There is still inequality in access to rights, discrimination, aggressions and murders of people because of their gender identity, sexual orientation or socioeconomic status, which makes it impossible to fully exercise their rights and further deepens exclusion.

Sexual orientation and gender identity

Non-compliance with the normative framework for the recognition of and respect for trans and non-binary identities (articles 2, 3, 9, 16 and 26)

Both physical and psychological violence against trans and non-binary people continues to be commonplace in Uruguay. Despite the fact that since 2009 the legislation recognizes the right to identity, there is still institutional resistance that hinders the change of name and/or registered sex. This not only contravenes the provisions of national regulations on the free development of trans and non-binary people according to their own identity, but also enables situations of police abuse and violation of rights within the framework of identity controls contemplated in the LUC (see section on Police Violence).

¹ Servicio Paz y Justicia Uruguay (SERPAJ UY) is a non-governmental organization for the education, promotion and defense of human rights and peace, which began working in 1981, during the civil-military dictatorship (1973-1985). It is the first organization devoted to the promotion and defense of fundamental rights to be created in Uruguay. SERPAJ-Uruguay is a member of the continental network SERPAJ-Latin America. SERPAJ is also a member of the SOS Torture Network of the World Organization Against Torture (OMCT), and the Committee on the Rights of the Child of Uruguay (CDNU).

² Regressively modified by the LUC (No. 19889) approved in 2020.

Violation of the right to family identity of children of lesbian and/or bisexual mothers (articles 2, 3, 5, 23, 24 and 26)

Decree No. 250/007 forces parents to recognize children born in the national territory within the first 10 working days after birth, thus ensuring the right to identity and to be registered with their name and surname from the beginning of their extrauterine life, in accordance with the CNA.

At the time that lesbian and/or bisexual mothers accede to recognize children born within a conjugal relationship between them, the Civil Registry Office demands through an administrative obstacle that they must be married in order for children to be recognized by both mothers, despite the fact that the cohabitation union grants the same rights. The child then bears only the surname of the pregnant woman and is registered as the child of a single mother. This procedure differs in the case of heterosexual couples who register their children at these offices, regardless of whether they have a legal relationship that recognizes their union (either cohabitation or marriage). The will of the person (male) is enough to declare himself as a parent and for the child to be registered as his/her child, immediately adopting his/her surname, without questioning the genetic relationship with the newborn.

"Normalization" surgeries performed on intersex persons

The Law on Gender-Based Violence against Women (No. 19580) includes in the health articles a section to protocolize "normalization" surgeries performed on intersex persons. However, more than four years after its enactment, the Ministry of Public Health has not carried out the protocol provided for by the law. In addition, there is no data on births of intersex persons or interventions performed on this population.

RECOMMENDATIONS

The Uruguayan State should:

- Ensure that both lesbian and bisexual women and their children are not victims of discrimination based on their family status.
- Guarantee non-discrimination by public officials when determining the identity of children of lesbian and/or bisexual mothers.
- Eliminate the requirement of marriage for the recognition in the civil registry of children born in conjugal relationships of two women, in accordance with national regulations.
- Modify and monitor instruments for the registration of persons, enabling in all cases the possibility of including in the kinship of newborns two progenitor mothers, taking into account the pregnant mother with data on pregnancy and childbirth, and the other party as the non-pregnant mother.
- To comply with article 22, section J of law no. 19580, which provides for the protocolization of interventions on intersex persons, prohibiting unnecessary medical procedures.

Voluntary Interruption of Pregnancy and Reproductive Rights

Voluntary termination of pregnancy

Since the installation of VTP services in 2013, 75,117 abortions have been performed. In 2020, a decrease of 2.9 percent is observed, since the approval of law no. 18987, this is the second consecutive year in which abortion figures have decreased. These figures raise questions as to whether all women who require legal abortion services are being reached.

The vast majority of VTPs during the period were within 12 weeks of gestation. The cause of rape is limited to 14 weeks and requires proof of a previously filed judicial complaint³. Only 21 such cases have been recorded in eight years, which is surprising given the high incidence of sexual and gender-based violence in the country⁴. In addition, the 14-week period would also be insufficient, especially in adolescents, because pregnancies resulting from forced sex are often confirmed late due to the trauma that caused the pregnancy or the lack of family or environmental support.

In turn, migrant women and persons with the capacity to bear children are only authorized to have an abortion when they have been resident⁵ for one year or the pregnancy is the result of rape⁶, and/or they face trafficking and sexual exploitation⁷.

Conscientious objection

There continues to be a high percentage of professionals who refuse to provide abortion care due to personal beliefs. The ASSE departmental hospitals in Cerro Largo, Colonia and Soriano have 100% conscientious objectors. Moreover, conscientious objectors have been designated as professionals in charge of coordinating the services they refuse to provide, which opens the discussion regarding the scope of conscientious objection as such and jeopardizes the proper functioning of the services.

Maternal mortality

Although abortion mortality has decreased during the period 2013-2020 compared to what happened before the VTP law was passed, 5 women have died from abortions in this period, 3 of them outside of legal abortion services. In December 2020, the death of a teenager from the interior of the country occurred, becoming the second death in the context of a process of voluntary termination of pregnancy. The first one happened in 2018 and was not public knowledge. It is unacceptable that women continue to die from preventable causes, service failures or negligence of health professionals.

³ Law 18987, article 6, section C).

⁴ <https://www.gub.uy/comunicacion/publicaciones/resultados-finales-de-la-segunda-encuesta-nacional-de-prevalencia-sobre>

⁵ Law 18876, article 13.

⁶ Law 18580, article 7, section I), and article 22, section F)

⁷ Law 19643, article 5, section E).

RECOMMENDATIONS

In order to guarantee better access to sexual and reproductive health services, including abortion, it is essential:

- Improving mechanisms to inform the population about the functioning of sexual and reproductive health services.
- Guarantee a duly labeled budget that ensures supplies for contraception, abortion medication, STI/HIV treatment, comprehensive care for adolescents and sexual diversity, as well as other necessary supplies for sexual and reproductive health requirements, avoiding shortages.
- Review the VTP law with the purpose of improving the conditions for access and universal coverage of these services (control the abusive use of conscientious objection, enable the prescription of abortion medication to other duly trained professionals and eradicate the restriction to migrant women to access legal abortion, at the very least).
- Strengthen the oversight and supervision capacities of health authorities to guarantee effective compliance with SRH guidelines and protocols and the functioning of the services stipulated by law, with adequate sanction mechanisms for providers and professionals who do not comply with the provisions of the law. In addition, improve the information system and follow the periodicity and requirements stipulated in the law to ensure transparency and accountability mechanisms.
- Conduct communication campaigns to combat the stigma surrounding abortion, given that voluntary termination of pregnancy is another health requirement that should be covered by the health system. This would also contribute to the existence of complaints when care is deficient or when rights are violated.
- Reinstalling spaces for dialogue where the social organizations that have promoted this agenda can participate in defining the contents, priorities and results of these public policies.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatments and punishments

Typification of torture

Uruguay still does not have a definition and typification of torture in its Criminal Code, as stated in the recommendation made by this Committee in 2013, paragraph 14. Law No. 18026, in force since 2006, limits the crime of torture to war crimes, genocide and crimes against humanity, without application to current cases by the Judiciary.

RECOMMENDATION

- Typify the crime of torture in our Penal Code, as established in article 7 of the Covenant and the recommendation made by this Committee in paragraph 14.

Torture practices in mental health care centers for children and adolescents

Care practices in mental health care centers are based on an asylum and monovalent model, where practices of deprivation of liberty, restriction or elimination of community education, limitation of leisure, attacks on privacy are developed; which severely affect the development and mental health of children and adolescents. In 2020, the NPM identified situations of physical violence, cruel, inhuman and degrading treatment, psychological violence, threats, excessive sanctions and high levels of control.

In addition, children and adolescents remain in these centers beyond their medical discharge, which constitutes a practice of undue deprivation of liberty.

RECOMMENDATIONS

- Eliminate asylum and monovalent centers such as acute care clinics and halfway houses for children and adolescents.
- To guarantee respect for fundamental rights in mental health care facilities.
- Respect established hospitalization deadlines and offer immediate responses to the medical discharge of hospitalized or committed children and adolescents.
- To have effective mechanisms for reporting and protection against situations of torture, cruel, inhuman and degrading treatment of children and adolescents in mental health care facilities.

Homicides against children and adolescents

A total of 186 intentional homicides were recorded between 2012 and 2019. Out of every 10 homicides, 7 had a boy or adolescent male victim and 3 had a girl or adolescent female victim. Lack of trust in the justice administration system exists, given that between 2012 and 2016, 56% of the homicides were not clarified.

Most child and adolescent victims of homicides and disappearances live in poverty and reside in contexts traversed by multiple forms of violence.

In Montevideo alone, the total number of adolescents (aged 13 to 17) who went through the juvenile penal system and were victims of homicides between 2015 and 2019 was 52.

These homicides are trivialized, by institutionalizing the idea that there are deaths of greater and lesser importance, imposing a logic of collateral damage justified by the "war between criminal gangs" or as a result of police action for the "war on drugs".

RECOMMENDATIONS

- Guarantee the protection of children and adolescents in contexts where their physical integrity is at risk, and promote inter-institutional state intervention mechanisms for mediation in situations of territorial conflict.
- Investigate all cases of adolescent homicides respecting the principles of access to justice, due diligence and participation of the victim's family.
- Avoid the use of the term settling of scores as a residual category.
- Implement policies for greater control over the acquisition, possession and carrying of firearms and ammunition, and discourage their acquisition and use.

Police Abuse and Institutional Violence

We observe an increase in punitive power, and violation of guarantees and rights: the LUC modifies some aspects of the Police Procedure Law through a series of articles that increase the discretion of police authority in the use of force and in the detention of persons and creates new criminal figures in this same sense. These regressions were noted with concern in paragraph 12 of the 1909th session of the CAT, held on May 12, 2022.

On the other hand, in the last decade there has been an increase in police presence in the territory, through new bodies and militarized police programs. There have been mega-operations of police saturation⁸ that hyper-focus repression in places catalogued as red zones, which favors their stigmatization and results in the policing of the daily life of these communities. As a consequence of the aforementioned, we have received complaints from people who have been violated in police procedures in neighborhoods and educational centers they attend.

RECOMMENDATIONS

- Derogate the articles that install an excessive and discretionary power towards the police, contrary to what is established in the Code of Conduct for Law Enforcement Officials, and align police action with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Eliminate patrolling by militarized police forces specialized in repression.
- Decrease the participation of security forces in crime prevention, and promote their elimination in the medium term.
- Remove from the Ministry of the Interior the area in charge of receiving, recording, systematizing and divulging complaints of irregular and/or illegal police procedures.
- Ensure the physical, psychological and sexual integrity of LGBTINB persons in police procedures.

⁸ This consists of a deployment of police vehicles and patrols with the collaboration, in several cases, of the Air Force.

- Review the action protocols for detentions and how they are applied, mainly in terms of non-violation based on gender expression and identity and/or sexual orientation.
- Respect the compliance with the regulation (no. 19684) that recognizes the validity of the documentation that identifies the person in accordance with their gender identity, whether or not issued by state institutions.
- Establish independent and autonomous investigation and complaint mechanisms that are agile and guarantee the rights of victims of torture, cruel, inhuman and/or degrading treatment by the police.
- Professionalize police work in the prohibition and prevention of torture.

People deprived of their liberty and conditions of detention

Legislative regressions

The Uruguayan penal system has undergone important modifications in recent years, incorporating norms that promote rights and guarantees, but the approval of the LUC seriously damaged procedures and guarantees established in the CPP, reintroducing inquisitorial elements in the process.

RECOMMENDATIONS

- Derogate Article 34 of the LUC that eliminates the conditional suspension of proceedings and reduces restorative justice mechanisms.
- Eliminate the simplified process as a procedure that limits the procedural guarantees of the accused.
- Comply with the procedural and procedimental guarantees related to abbreviated processes, guaranteeing legal assistance to the accused.
- Derogate article n.1 of the LUC which incorporates a specific reference to the legitimate defense of any right of patrimonial content, equating legal assets to the life and physical integrity of people.

Situation of people deprived of liberty

In the first quarter of this year, the number of people deprived of liberty exceeded 14,200, placing Uruguay at number 12 among the countries with the highest number of prisoners in the world.

RECOMMENDATIONS

- Ensure that the NPM has the resources and infrastructure to identify and prevent torture, cruel, inhumane and degrading treatment in total confinement institutions, particularly adult detention centers.
- Provide for investigations of allegations of torture or ill-treatment to be conducted by an independent body with the necessary resources.

- Allow civil society organizations to monitor prison facilities.

Conditions of deprivation of liberty

The situation of the prison system is critical, it is practically a national emergency and the population deprived of liberty in Uruguay continues to be subject to systemic violation of human rights. There are establishments in terrible building conditions, without water or sanitation; and with total predominance of confinement, lack of education and training.

RECOMMENDATIONS

- Align national regulations with international conventions and treaties, promoting alternative measures to incarceration and a system of incarceration based on small units under public management.
- Separate the prison management system from the Ministry of the Interior.
- Eliminate the permanence of police operators in direct contact with the population deprived of liberty, promoting the entry of civilian operators. Eradicate the presence of members of the Armed Forces in the perimeter security of prisons.
- Guarantee minimum prison conditions, ensuring medical care, mental health, access to drinking water, food and sanitation, and adequate ventilation of facilities, in accordance with the provisions of the Convention and the Standard Minimum Rules for the Treatment of Persons Deprived of their Liberty.
- Promptly and impartially investigate deaths occurring inside prisons, applying the corresponding sanctions to those responsible for the deaths.
- Promote hiring specialized civilian personnel, who can mediate in conflict situations, work on the basis of respect and promotion of fundamental human rights, and are trained on the prohibition of torture, cruel, inhuman and/or degrading treatment.
- Review building conditions of the facilities and guarantee minimum conditions as established by national and international regulations in force.
- Avoid compulsive confinement, and implement educational and work activities inside and outside prisons.

Deaths in prisons

In 2021, 86 deaths were recorded in prisons; it was the year with the highest number of violent deaths: **45** (21 were homicides, 18 suicides and 6 accidental deaths or deaths from unclear violent causes) and **41** deaths from pathologies, diseases and other natural or undetermined causes. Muertes en cárceles

RECOMMENDATIONS

- Align national regulations with international conventions and treaties, promoting alternative measures to incarceration and a system of incarceration based on small units whose management is public, avoiding the privatization of the prison system.

- Separate the prison management system from the Ministry of the Interior.
- Eliminate the permanence of police operators in direct contact with the population deprived of liberty, promoting the entry of civilian operators trained in human rights.
- Guarantee adequate health care for persons deprived of liberty. Provide them with adequate comprehensive mental health care through an increase in State health services (ASSE).
- Promptly and impartially investigate deaths occurring inside prisons, applying the corresponding sanctions to those responsible for the deaths.

Women deprived of their liberty: violated before and during deprivation of liberty

In 2020 there was an average of 709 women deprived of liberty, in 2021 an average of 906 and in mid-April 2022 more than 1020, which implies an increase of 28%. Despite the fact that the type of crimes committed are not usually violent, long prison sentences are observed, reaching an average of almost four years.

The incarceration of women has very different and notorious consequences from that of men due to the caring role that women traditionally have in society.

RECOMMENDATIONS

- Avoid the application of custodial sentences for women, when their socio-criminal vulnerability and the nature of the crime committed warrant it, and apply an effective system of house arrest, guaranteeing access to fundamental rights, and contemplating the special needs of women mothers with children.
- Guarantee minimum prison conditions, as established in conventions and treaties to which Uruguay adheres.
- Derogate Article 77 of the LUC that establishes as an aggravating circumstance when the crime of drug sale takes place in the home.

Setbacks in juvenile criminal justice: legislative regressions, confinement conditions, access to a socio-educational proposal

In juvenile criminal justice, there are extremely regressive and punitive normative modifications that contravene international standards and the various recommendations regarding the deprivation of adolescent liberty. They imply major setbacks in terms of human rights.

A wide range of educational, recreational and employment opportunities should be guaranteed. Likewise, the absence of a general project for the implementation of socio-educational measures, with common institutional criteria and guidelines, and of internal mechanisms for monitoring and control over the management of the centers, continues to generate discretionary practices in the management of each center.

RECOMMENDATIONS

- Adjust national regulations in relation to adolescent criminal offenses to the conventions, treaties and international human rights standards -which Uruguay has signed and confirmed- that tend to reduce the time of deprivation of liberty. Eliminate laws: n°18777, n°18778, n°19055; the abbreviated process (Article 28 of law n.°19889), and derogation of articles 75, 76, 77, 78, 79 and 80 of the LUC.
- Prohibit beatings, isolation and threats against children and adolescents deprived of their liberty, creating safe and independent mechanisms for filing complaints and removing from office those officials who have been subjected to summary proceedings.
- To comply with the application of a socio-educational measure, based on educational, recreational, cultural and social activities, and on the inclusion and linkage of the adolescent with his or her environment.
- Implement alternative measures to the deprivation of liberty for children and adolescents in conflict with criminal law (Art. 90 CNA).
- Definitive closure of the MD1 center, where isolation practices, beatings and mistreatment take place.
- Closure of the ETTI due to the fact that its building conditions, with a strong prison-like character, are not suitable for adolescents serving a socio-educational measure depriving them of their liberty.
- To have specifically trained personnel and prohibit the training of officials by the Republican Guard.
- Guarantee adequate health care. In particular, we urge to improve mental health care and reduce the medicalization of adolescents.
- Prohibit forced and unpaid labor by adolescents in the centers.

Right to a fair trial

Non-compliance with fundamental safeguards at the time of arrest (Articles 9 and 14)

The changes introduced by the LUC (especially in articles n°21 and n°43) weaken guarantees at the moment of detention. In addition, there is non-compliance with fundamental safeguards for detained persons, such as:

- The right to adequate medical assistance, considering that there are situations where medical assistance is not provided, and there are inadequate spaces, without privacy or protocols for action in the event of injuries.
- Reading of rights and immediate access to counsel.

Excessive use of violence by the police and non-compliance with established legal procedures are reported.

In the event of any of these violations, there are no safe spaces for victims to file complaints.

RECOMMENDATIONS

- Repeal the articles of the LUC that weaken guarantees at the time of arrest: n°21 and n°43.
- Comply with the guarantees of reading of rights and immediate access to a lawyer (Articles 7 and 65 paragraphs a, b, c and h CPP).
- Guarantee the right to prompt and confidential medical care.

Fight against impunity and reparation measures in relation to serious human rights violations that occurred during the dictatorship

The Uruguayan State has yet to fully comply with its obligations to investigate and punish those responsible for the crimes committed during the last civil-military dictatorship.

Although the creation of the Specialized Prosecutor's Office for Crimes against Humanity in March 2018 is a step forward, only 5% of the cases filed have been sentenced to date. Most of the crimes against humanity committed between 1968 and 1985 remain unpunished.

The Uruguayan State has not yet fully complied with the State's obligation to prevent torture and other forms of cruel, inhuman or degrading treatment. Among other elements, it has yet to adapt its domestic legislation in order to classify torture as an autonomous crime in the Penal Code.

Existing reparation laws in the country do not include children and adolescents as direct victims whose human rights were affected during the illegitimate actions of the State during the dictatorship, except for Law No. 18596 Art. 11. This exceptionally considers the following situations: i) Victims who as children have been missing for more than thirty days; ii) Victims who were born during the deprivation of liberty of their mother, or who iii) as children have been detained with their mother or father for a period longer than 180 days (...).

RECOMMENDATIONS

- Implement Law No. 18026 on the right and duty of the Uruguayan State to prosecute acts classified as torture under international law.
- Recognition that crimes committed during the dictatorship constitute crimes against humanity by the Supreme Court of Justice.
- To recognize the people who, as children and adolescents, were direct victims of the illegitimate actions and State terrorism during the period 1968-1985.
- To implement the necessary administrative measures to guarantee the effective provision of comprehensive health coverage provided for in the legal regulations (Law 19859 and Decree 297/010) and regulations in force, which are not being complied with, for the members of the Colectivo Memoria en Libertad, and for all persons who as children and adolescents were victims of State terrorism.

- Create reparation policies that have an economic, symbolic and construction element of trans memory. It is essential to take public action on the need for recognition, as established by state regulations.
- Use the information obtained in the Reparatory Commission to create memory sites, as enabled by Law no. 19641 Declaration and Creation of Historical Memory Sites of the Recent Past (2018). At the moment, there is only one site of historical memory of sexual dissidence in reference to gay and lesbian victims during the Holocaust, but none has been implemented in terms of local memory.

Freedom of expression, association and violence against human rights defenders and journalists

Use of the Justice System to attack journalists and media: lawsuits, restrictions on access to public information and stigmatizing discourse. There are 69 confirmed cases of threats and restrictions to the exercise of rights by journalists and media in the last year.

At regulatory level, there is a setback due to the approval of legal frameworks contrary to international human rights standards. The right of access to public information is limited by exempting public agencies from their obligation to respond to requests. Community radio stations were also affected.

Threats of legal initiatives in order to control the "impartiality" of "political information", through the application of sanctions and fines.

In the 2022 press freedom report of the organization Reporters Without Borders (RSF), Uruguay fell 26 places, from 18th to 44th place in the world ranking.

RECOMMENDATIONS

- Refrain from adopting restrictive measures to the freedom of expression and independence of journalists through harassment campaigns in public spheres or social networks, resolutions, administrative acts or the filing of lawsuits.
- Urge the highest national authorities to make a public statement against attacks, threats and restrictions to freedom of expression of journalists and media outlets.
- Not to advance on legal frameworks contrary to international human rights standards. To desist from the projected derogation of the Audiovisual Communication Services Law.
- Promote areas of dialogue to overcome the deterioration of the environment of freedom of expression in the country. Adopt a security protocol for journalists that foresees serious situations of threats to freedom of expression.
- Strengthen anti-corruption processes and transparency in the dissemination of public information, through improvements to the Law on Access to Public Information.