



GLOBAL INITIATIVES
FOR HUMAN RIGHTS
A HEARTLAND ALLIANCE PROGRAM

Human Rights Situation of LGBTI Persons in Uruguay September 2017

Suggestions for the List of Issues submitted to the Working Group on
the Uruguay Report
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This Report is submitted by:

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El Colectivo Ovejas Negras, Heartland Alliance for Human Needs & Human Rights and Akahatá – equipo de trabajo en sexualidades y géneros, are honoured to submit the following suggested issues to the Human Rights Committee with the goal of assisting it in

developing the List of Issues to review the implementation of the International Covenant on Civil and Political Rights by the State of Uruguay.

I. Legal framework

1. In 2003, Uruguay amended its Penal Code to include a disposition penalizing acts of hatred, contempt and other forms of physical or moral (psychological) violence based on sexual orientation or gender identity.¹ A year later, Uruguay passed Law 17,817 declaring that the fight against all forms of discrimination including that based on sexual orientation or gender identity was a matter of national interest.²
2. Law 17,817 created an Honorary Commission against Racism, Xenophobia and all Forms of Discrimination (*Comisión Honoraria contra el Racismo, la Xenofobia y todas las formas de Discriminación*) whose responsibilities include (1) following-up and reporting on implementation of anti-discriminatory laws, (2) drafting proposals to achieve greater implementation of those laws, (3) designing and implementing educational campaigns to combat discriminatory attitudes and (4) providing free-of-charge advice to victims of discrimination.³
3. In 2009, Uruguay amended Law 18,590, the Children and Adolescents Code, to allow adoptions by LGBTI persons.⁴ In the same year, Uruguay passed Law 18,620, on the Right to Gender Identity and to the Change of Name and Sex in Identity Documents (*Derecho a la Identidad de Género y el Cambio de Nombre y Sexo en los Documentos Identificatorios*).⁵
4. More recently, on May 3, 2013, Uruguay passed the Equality in Marriage Law (*Matrimonio Igualitario*), Law 19,075, amending the Civil Code to define marriage as "a permanent union according to the law, between two individuals of different or the same sex".⁶ Each of these legal changes deserves to be praised and it is only fair to give recognition to Uruguay for them. In 2015, Decree 321/015 created the National Coordinating Council for Public Policies on Sexual Diversity (*Consejo Nacional Coordinador de Políticas Públicas de Diversidad Sexual, CNCPPDS*) that

¹ LAW 17,677 on Incitement to Hatred, Contempt or Violence or the Commission of these Acts against Particular Individuals (*Incitación al Odio, Desprecio o Violencia o Comisión de estos Actos contra Determinadas Personas*, 2003), amended Article 149 of the Penal Code.

² LAW 17,817, Fight against Racism, Xenophobia and Discrimination (*Lucha Contra el Racismo, la Xenofobia y la Discriminación*, 2004).

³ Op. Cit.

⁴ LAW 18,590, Amendments to the Children and Adolescents Code (*Modificaciones al Código de la Niñez y la Adolescencia*, 2009).

⁵ LAW 18,620, Right to Gender Identity and to the Change of Name and Sex in Identity Documents (*Derecho a la Identidad de Género y al Cambio de Nombre y Sexo en Documentos Identificatorios*, 2009).

⁶ LAW 19,075, Equality in Marriage (*Matrimonio Igualitario*, 2013).

includes representation from civil society organizations.⁷ The Council drafted a Comprehensive Bill for Trans Persons (*Ley Integral para Personas Trans*, LIPT).⁸

II. Suggested issues and questions for the Committee

Discrimination based on gender identity and sexual orientation. Violations to the right to identity

Right to non-discrimination (Article 2)

Right to equality in the enjoyment of civil and political rights (Article 3)

5. In spite of the passing of Law 18,620,⁹ trans persons continue being discriminated against. Most of them live in a situation of marginality, face obstacles in accessing their fundamental rights and are often murdered because of their gender identity.¹⁰
6. Social exclusion, resulting from the deep and daily discrimination that trans persons - and particularly trans women - endure manifests itself in early expulsion from their homes, early disengagement from the educational system, facing barriers in the health system and the formal labour market. This perverse circle exposes them to an ongoing violation of their rights and forces the majority of trans women to engage in sex work for survival, leading to a greater exposure to violence, exploitation and trafficking.¹¹
7. The current process for changing the name and sex in identity documents is still carried out through the judiciary, hindering trans persons' access and full enjoyment of their right to gender identity. Data from the first and latest Trans Census (2016) reveal that only 19% of trans persons have been able to complete this process.¹²
8. The Comprehensive Bill for Trans Persons (LIPT in Spanish)¹³ drafted by the National Coordinating Council for Public Policies on Sexual Diversity (CNCPPDS in Spanish)¹⁴ is intended to provide a comprehensive response to some of the issues currently faced by trans persons. But the State has not made progress in circulating and promoting

⁷ DECRETO No. 321/015 (2015).

⁸ DECRETO SUPREMO No. 189/017 (2017).

⁹ LAW 18,620, Right to Gender Identity and to the Change of Name and Sex in Identity Documents (2009).

¹⁰ See statements: "Ante declaraciones de Enrique Espert" by Colectivo Ovejas Negras, November 26, 2015; "Transfobia en DAECPU" by Unión Trans del Uruguay, November 26, 2015; "Ante declaraciones de E. Espert" by Coordinadora de la Marcha por la Diversidad, November 26, 2015; "Sobre las expresiones del periodista Rudy Silva" by Unión Trans del Uruguay, December 7, 2015; "Ante la columna de opinión del diario El Telégrafo" by Unión Trans del Uruguay, February 14, 2016; "Ante el artículo de prensa del diario 'El País' del 30/07/2016" by Unión Trans del Uruguay, July 30, 2016.

¹¹ Data taken from Documento Base Preliminar de Resultados del Primer Censo Trans 2016. "Visibilizando realidades: Avances a partir del Primer Censo de personas trans". División de Derechos Humanos - Dirección Nacional de Promoción Sociocultural (DNPSC), División de Evaluación y Monitoreo (DINEM), Ministerio de Desarrollo Social

¹² Op. Cit.

¹³ SUPREME DECREE. 189 (2017)

¹⁴ The Council was instituted by Decree 321/015 (2015)

this Bill that would significantly improve the situation of trans people and the exercise of their rights.¹⁵ The Bill includes an administrative procedure for changing the name and sex in identity documents, scholarships to access the educational system, employment quotas in State institutions and a reparatory pension for those trans persons who were victims of human rights violations during the 1973-1985 military dictatorship.¹⁶

Questions for the State of Uruguay

9. Which measures is the State of Uruguay planning to adopt to fully guarantee the right to identity in all dimensions of their lives and without any kind of obstacles for trans persons?
10. When is the State planning to discuss and approve the Comprehensive Bill for Trans Persons (Ley Integral para Personas Trans, LIPT)?
11. How will the State grant effective implementation of all articles in the Comprehensive Bill for Trans Persons once it is passed?

Violence against and murders of LGBTI persons and particularly trans persons Right to life (Article 6)

12. Impunity in cases of violence against and murders of LGBT persons, and particularly trans women,¹⁷ continues in spite of Recommendation No. 12 formulated by the Human Rights Committee in its Concluding Observations during the 2013 review.

Questions for the State of Uruguay

13. What specific measures will the State of Uruguay take to prevent violence against and murders of trans women across the country?

¹⁵ See statements: “Ley Integral para Personas Trans” by Colectivo Ovejas Negras endorsed by Asociación Trans del Uruguay, Unión Trans del Uruguay, DISEF Fray Bentos, Campesinas Rebeldes, Trans Boys Uruguay, PIT-CNT, Secretaría de Género del PIT-CNT, Cámara de Comercio y Negocios LGBT de Uruguay, Mujeres en el Horno, Mizangas Mujeres Afrodescendientes, MásVIHdas, La Poderosa Uruguay, Departamento de Jóvenes PIT-CNT, Llamale H Uruguay, Red Uruguaya de Jóvenes y Adolescentes Positivos, Colectivo Catalejo, Proderechos, Área Académica Queer, Coordinadora de la Marcha por la Diversidad, Cotidiano Mujer, Colectivo Multimostros, Federación de Estudiantes Universitarios del Uruguay, Colectivo Diverso Las Piedras, Diverisdad Canariou and NODO Diverso, released on May 15, 2017.

¹⁶ Statement “Ante la detestable situación de que hoy en las redes sociales circula un formulario con logos oficiales ‘Solicitud de Subsidio Trans’” by Unión Trans del Uruguay, issued on June 2, 2017.

¹⁷ See statements: “Ante nueva agresión a una mujer trans” by Colectivo Ovejas Negras, April 20, 2015; “Terminar con la indiferencia” by Colectivo Ovejas Negras, July 17, 2015; Comunicado de Prensa de la Unión Trans del Uruguay, November 12, 2015; “Violencia en Durazno” by Unión Trans del Uruguay, October 10, 2016; “Frente a un caso de violencia policial transfóbica” by Colectivo Ovejas Negras, November 13, 2015; Ante feminicidio de Verónica Pecoí” by Coordinadora de la Marcha por la Diversidad, September 12, 2017

14. What measures will be taken against perpetrators of transphobic crimes that have not yet been punished?
15. Which measures will the State of Uruguay implement to ensure thorough investigation of those murders of trans persons that remain unpunished and the enforcement of the corresponding punishment for perpetrators of transphobic hate crimes?
16. What legal reforms is the State of Uruguay planning to introduce to include transphobic hate crimes in the Penal Code along with the corresponding punishments for the perpetrators of such crimes?
17. Which measures will the State of Uruguay implement to ensure that cases of violence and discrimination based on sexual orientation and gender identity will be thoroughly investigated; to guarantee that perpetrators are brought to justice and, if found guilty, adequately punished specifically on the grounds of their discriminatory acts; and to provide sufficient compensation to victims?

Discrimination against LGBTI persons and against any non-heterosexual expression of love, particularly in public spaces and media

Right to non-discrimination (Article 2)

Right to life (Article 6)

Right to freedom of expression (Article 19)

18. In spite of current norms on discrimination,¹⁸ LGBTI persons continue to be discriminated against by different actors in Uruguayan society on the basis of their gender identity, sexual orientation, gender expression and/or any public expression that differs from heteronormative parameters. This discrimination has serious implications as it leads to human rights violations against these persons at most levels and even compromises their physical integrity.¹⁹
19. Homo-lesbo-transphobic contents are freely circulated by the media, in violation of Law 17,817,²⁰ violating the rights of LGBTI persons.²¹

¹⁸ LAW 17,817, Fight against Racism, Xenophobia and Discrimination (2004).

¹⁹ See statements: "Ante acoso homofóbico a funcionario policial" by Colectivo Ovejas Negras, January 14, 2015; "Ante agresión homofóbica en Rivera" by Colectivo Ovejas Negras, September 18, 2016; "Comunicado: ante episodio lesbofóbico" by Colectivo Ovejas Negras, October 7, 2016; "Ante agresión homofóbica" by Colectivo Ovejas Negras and endorsed by Colectivo Diverso Las Piedras, July 19, 2017.

²⁰ LAW 17,817, Fight against Racism, Xenophobia and Discrimination (2004).

²¹ Statement "Frente a las declaraciones del pastor Márquez" by Colectivo Ovejas Negras and endorsed by Unión Trans del Uruguay, Área Académica Queer, Mizangas Mujeres Afrodescendientes, Llamale H Uruguay, Proderechos, Colectivo Multimostros, Mujeres en el Horno, SEXUR - Instituto de Formación Sexológica Integral, Red Uruguaya de Jóvenes y Adolescentes Positivos, Hermanas de la Perpetua Indulgencia del Uruguay, Colectivo Man Flowers - Cerro Largo, Feredación de Estudiantes Universitarios del Uruguay, DISEF Fray Bentos, Trans Boys Uruguay, Sociedad de Psicología del Uruguay, Asoiación Trans del Uruguay, Durazno Diverso, Colectivo Riversidad, Colectivo Diverso Las Piedras, Comisión

20. Decisions by the Honorary Commission created by the above mentioned law are non-binding which compromises its effectiveness in promoting a non-discriminatory society and leave those suffering violence and discrimination based on their sexual orientation or gender identity in a disadvantaged and unequal position.
21. It is also worth mentioning that Uruguay lacks comprehensive legislation covering all grounds for discrimination recognized in Article 2 of the Covenant, as well as an effective mechanism to oversee its implementation.

Question for the State of Uruguay

22. What measures will the State of Uruguay implement to strengthen the Honorary Commission against Racism, Xenophobia and all Forms of Discrimination, particularly with regard to (a) broadening its mandate to impose sanctions and conduct administrative mediation processes; and (b) endowing it with enough human and financial resources so it can effectively carry out its mandate according to Law 17,817?
23. What measures is the State of Uruguay planning to take to draft, publish and implement a comprehensive National Plan against Racism and Discrimination that includes public sensitization campaigns to combat hate crimes and discrimination based on sexual orientation or gender identity as well as the homophobic and transphobic attitudes leading to them?

Rights of LGBTI children and adolescents to non-discrimination and personal integrity; the right to freely express their gender identity and sexual orientation in every dimension of their personal lives

Right to freedom of expression (Article 19)

Right of children to non discrimination and comprehensive protection (Article 24)

24. The current educational system and also religious fundamentalists²² directly or indirectly promote discrimination and hatred against LGBTI persons and perpetuate gender-based inequalities.
25. The failure to circulate scientific, updated and relevant knowledge in the classroom along with the lack of respect towards LGBTI persons in educational settings leads to discriminatory and violent situations including strong harassment - also known as bullying - in most school settings in Uruguay.

Nacional por una Ley de Salud Mental en clave de Derechos Humanos, Diversidad Canaria, Colectivo Manos Púrpura Paysandú, Programa Género, Cuerpo y Sexualidad - Facultad de Humanidades y Ciencias de la Educación de la Universidad de la República, Colectiva Frida - Cerro Largo and the Minister of Education and Culture, Ms. María Julia Muñoz, issued on February 3, 2017.

²² See statements: "Ante declaraciones del consejo Daniel Corbo" by Colectivo Ovejas, November 6, 2014; "Sobre la Guía 'Educación y Diversidad Sexual'" by Colectivo Ovejas Negras, November 16, 2014

26. These practices are replicated in the form of social, verbal, physical and emotional violence towards LGBTI children and adolescents leading to 8 out of 10 of those children feeling unsafe in their schools on the basis of their gender identity, sexual orientation and gender expression.²³
27. Violent reactions on the part of school authorities and peers have a deep impact on LGBTI children and adolescents and play a significant role in their dropping out of school.²⁴
28. Due to lack of recognition of their identities, the educational future of trans students is particularly serious as 75% of them drop out of formal education spaces and 55% do so before turning 18. This has an impact on their work and social integration opportunities on an equal basis with others.²⁵

Questions for the State of Uruguay

29. How is the State of Uruguay planning to ensure education that is free from discrimination, incorporates international standards on comprehensive sexuality education in order to reduce arbitrary divisions based on sex and gender, and establishes policies to combat harassment based on sexual orientation and gender identity?
30. What public policies is the State of Uruguay willing to adopt in order to promote and ensure an inclusive environment that recognizes the dignity and equal rights of all students, teachers and other school staff, and particularly those who are LGBTI in all educational establishments?
31. What measures will the State of Uruguay implement to ensure that all public and private schools circulate and adopt anti-discriminatory policies condemning and forbidding all forms of harassment and intimidation, be they verbal, physical or of any other kind and aimed at LGBTI students, teachers or staff?

²³ "Encuesta Nacional de Clima Escolar en Uruguay 2016: experiencias de niñas, niños y adolescentes lesbianas, gays, bisexuales y trans en establecimientos educativos" (2016) produced by Colectivo Ovejas Negras, Gay, Lesbian, & Straight Education Network (Glsen, USA) and Todo Mejora (Chile)

²⁴ Op. Cit.

²⁵ See Documento Base Preliminar de Resultados del Primer Censo Trans 2016. op. cit.