



NATIONAL HUMAN RIGHTS INSTITUTION AND OMBUDSMAN

**REPORT BY THE NATIONAL HUMAN RIGHTS INSTITUTION – OMBUDSMAN OF
URUGUAY**

(INDDHH)

UNIVERSAL PERIODIC REVIEW

SECOND ROUND

The National Human Rights Institution and Ombudsman (*Institución Nacional de Derechos Humanos y Defensoría del Pueblo* - INDHH) 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.

It was created by Law No. 18.446 of December 24th 2008, in compliance with the guidelines of the Paris Principles, adopted by the United Nations General Assembly, through Resolution 48/134 of 1993, as well as with commitments undertaken through the Vienna Declaration and Program of Action, arising from the World Conference on Human Rights of year 1993.

It is a complementary mechanism to those already existing, aimed at providing stronger guarantees to secure the effective exercise of rights and at ensuring that laws, administrative practices and public policies comply with international regulations on human rights protection.

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I. BACKGROUND AND CONTEXT

The National Human Rights Institution and Ombudsman of Uruguay (INDDHH) hereby submits the present report to the second round of the Universal Periodic Review within the framework of its institutional mandate, to contribute to strengthening the Rule of Law and the protection of fundamental rights.

The report includes some recommendations and refers to some of the areas where the INDDHH has detected delays, gaps or lack of consistency with international standards and commitments on human rights in the legislation, or institutional practices that restrict or go against rights protected by regulations in force. The INDDHH recognizes progress in various areas, including Uruguay's ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, that will allow for its entry into force.

During the preparation of this report, reports submitted for the first round by the State, civil society and the United Nations High Commissioner for Human Rights were taken into consideration. The report also takes into account information collected by the INDDHH during both National Human Rights Assemblies, during consultation rounds of both State and civil society, and all inputs related to the fulfillment of its broad institutional mandate.

II. FOLLOW-UP ON RECOMMENDATIONS MADE TO THE COUNTRY IN THE CONTEXT OF THE FIRST ROUND OF THE UPR (2004 – 2008)

II.1 – Creation and Current Situation of the National Human Rights Institution and Ombudsman

RECOMMENDATIONS 78.39, 78.8 and 78.9

1. The National Human Rights Institution and Ombudsman (hereinafter referred to as INDDHH) was created by Law N° 18.446 of December 24th, 2008 (drafted by Law N° 18.806 of September 14th, 2011) as an autonomous institution within the Legislative Power, aimed at promoting and protecting human rights, and was actually established on June 22nd 2012, when the Board of Directors took office.
2. During the process of its establishment, the INDDHH has faced some difficulties resulting from the lack of precision in the Law creating said body regarding the Institution's legal nature and institutional position, which prevented it from being able to appoint staff essential for the fulfillment of its tasks. The State needs to solve these difficulties by passing a new wording for said Law, in order to provide the Institution with an appropriate legal-administrative framework and more budgetary and organizational autonomy to effectively guarantee its independence and efficiency.
3. The Board of Directors of the INDDHH submitted its first Annual Report before the General Assembly of Parliament on May 9th, 2013. In addition, it organized two National Human Rights Assemblies, with broad participation by civil society organizations. The INDDHH began to perform as NPM with its first visit to a juvenile detention facility. In order to properly carry out the tasks of this mandate, as well as others appointed by the Law, the INDDHH needs to have adequate human, technical and economic resources.

4. The INDDHH participated as a guest institution in the 11th International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. After its first year of mandate, it will formally request certification by the ICC.

II.2 – Justice Administration System, Fight against Impunity and Rule of Law

RECOMMENDATIONS 78.61, 78.62, 78.64, 78.65, 78.66 and 78.70

5. The INDDHH believes it is essential to develop an agenda towards finding consensus for the modernization of the judicial system, which must include the implementation of actions such as: a) the creation of a Supreme Judicial Council; b) the creation of a Supreme Constitutional Court; c) the reform of the Public Ministry and Prosecutor's Office; d) the final approval of the new Criminal Procedure Code.

6. The justice administration needs to establish clear and transparent rules, as well as adopt justified resolutions for its administrative functioning, especially regarding the system of appointment, promotion and transfer of judges. For such purpose, the Judiciary and Court Organization Organic Law (Law N° 15.750) must be adjusted to comply with international standards on the matter. On the other hand, the State must provide for the allocation of human and material resources required for the proper fulfillment of tasks corresponding to the justice administration system.

7. Mandatory training courses on international law on human rights must be continuously provided to judges, prosecutors and other judicial operators.

8. The INDDHH recommended the State to adopt measures to comply with its international obligations relative to the fight against impunity. For such purpose, in addition to the allocation of technical and material resources required, it suggested launching a specialized unit within the Ministry of Interior for the investigation of accusations of human rights violations during the dictatorship, and it also evaluated the creation of such unit within the Judicial Power and the Public Ministry. It must be pointed out that the Follow-up Secretary of the Peace Commission of the Presidency of the Republic has made progress in terms of centralization, systematization of relevant information, cooperation agreements with inter-state bodies and information required by courts.

9. Law N° 18.831 (October 2011) established full exercise of the State's punitive claims regarding crimes committed by State agents during the dictatorship, declaring them crimes against humanity, and it stated that procedural time limits of the statute of limitations between December 22nd 1986 and October 27th 2011 would not be counted. The Supreme Court of Justice (February 2012) declared said Law as unconstitutional in terms of the prescription terms and the characterization of crimes as crimes against humanity. Although the judgment only applies to specific cases, the Supreme Court's position has a significant impact on the progress of cases brought before Justice. In addition, it constitutes a judicial political orientation that goes against commitments undertaken by the State before the international community.

10. The INDDHH points out the urgent need to reform the inquisitorial criminal procedure in force and replace it for an accusatorial, democratic, transparent and efficient criminal procedure, in compliance

with international standards, which provides stronger guarantees to the parties while ensuring autonomous participation of the victims in criminal actions.

11. Even though Laws N° 18.033 and N° 18.596 recognize human rights violations committed by the State during the dictatorship and grant special reparations, the INDDHH believes the State should establish a comprehensive reparation policy. For such purpose, on December 6th 2012, it recommended the submission by the Executive Power before Parliament of a bill for the modification of said regulations, so that Special Reparations are granted to all those detained and/or accused during the dictatorship, regardless of the date of release and income received, and even providing that said reparation payments may be accumulated with other social security benefits.

II.3 – Equality and Non-discrimination

RECOMMENDATIONS 78.22, 78.23 and 78.24

12. On July 2011 the Uruguayan State adhered to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Law N° 18.776); on April 2012, ILO Convention N° 189 on Domestic Work was approved (Law N° 18.889) and in 2013 (Law N° 19.075) same-sex marriage was approved.

13. The INDDHH is responsible for investigating alleged human rights violations upon request by the party or ex officio. Since its establishment in December 2012, it received 144 accusations. Sixty percent (60%) of said accusations were admitted, of which 20% correspond to some sort of discrimination (race, sexual orientation, disabilities, among others)¹.

14. The INDDHH believes the State should increase affirmative actions regarding the various groups of disabled people, especially children, who many times are denied their right to education; furthermore, the Institution is concerned about the situation of abandonment suffered by the mentally ill.

15. On October 10th, 2012, the INDDHH submitted its “Report on Migrant Workers, Trafficking in Persons and Labor Exploitation: Obligations of the Uruguayan State”. According to said report, the State is responsible for respecting and guaranteeing the rights of all migrant workers and their families, without distinction, and for ensuring, through the implementation of administrative, legal and other types of measures, that no migrant worker or migrant workers’ relatives are subject to slavery or servitude, or carry out forced or compulsory labor.

16. The INDDHH understands it is essential to devise and implement, in a participative manner, a public policy on labor migration, as a fundamental tool to comply with national and international human rights obligations.

¹ First Annual Report by the National Human Rights Institution and Ombudsman, submitted to the General Assembly. Montevideo, April 30th, 2013.

Available at:

<http://www.parlamento.gub.uy/htmlstat/PL/OtrosDocumentos/Asamblea/InsNacDerechosHumanos/Informe2012.pdf>

17. On April 2013, the INDHH submitted its report “Vote of Uruguayans Abroad”, where it recommends the State to promote the consensus required to pass a law that guarantees voting rights of all citizens living abroad. Said law complies with what is provided in the Constitution of the Republic and is aimed at eliminating the unfair discrimination suffered by those citizens who are forced to travel to the Country in order to exercise their voting rights.

18. The INDDHH acknowledges the progress represented by the regulation issued by the Executive Power establishing procedures to grant authorization for the provision of free and open access services, associated to the allocation of radio-electric spectrum for said provision. The institution also acknowledges the relevance of the current process of allocation of Digital TV frequencies and the process of adjustment of the legal framework in relation to Audiovisual Communication Services. However, the INDDHH believes that the application of the principle of “positive discrimination” to grant privileges to the current private TV networks in the tender for the allocation of digital TV frequencies is unsustainable. In addition, requirements demanded prevent access by community organizations; therefore, the procedure mentioned does not guarantee equal treatment for all applicants.

II.4 Children and Adolescents in Conflict with Criminal Law

RECOMMENDATIONS 78.59, 78.67, 78.68, 78.69 and 78.70

19. The INDDHH understands that the institutional reform carried out (creation of the Juvenile Criminal Responsibility System – SIRPA) for the application of social-educational measures for minors in conflict with criminal law should be complemented with a reform of the juvenile justice system, focused on crime prevention and rehabilitation, using deprivation of liberty as a last resort and replacing it by alternative measures.

20. During its visit to the “SER” juvenile detention center at Colonia Berro, the INDDHH was able to confirm that minors remain locked up between 20 to 23 hours a day, without access to any type of activity. They are allowed out of their cells for their daily shower for approximately 15 minutes, they go outside to the patio twice a week for approximately an hour and a half and they receive visits on Saturdays and Sundays in the morning and in the afternoon. Access to schooling is occasional, discontinuous and exceptional. In addition, it was verified that a high percentage of the minors detained in said center use mood-altering drugs under prescription and that there are no regular medical controls (general or psychiatric). The code of conduct in force is unknown; therefore, sanctions are imposed discretionally and without adequate grounds.

21. During 2011, some reforms to the Childhood and Adolescence Code were passed (penalization for attempted theft and complicity in theft, extension - from 60 to 90 days - of the deadline for judges to enter final judgment in cases where adolescents are deprived of their liberty as a precautionary measure), representing a set-back and resulting in an increase in the number of juvenile detainees.

II.5 Women

RECOMMENDATIONS 78.26, 78.27, 78.30, 78.31, 78.32, 78.33, 78.37, 78.38, 78.40, 78.41, 78.72, 78.73, 78.74, 78.75

22. The INDDHH considers it is essential to include gender perspective in the judicial reform (women offices, gender offices) as well as in the training of judges.

23. The INDDHH has verified that even though there have been efforts by the State, there are still

obstacles in the response system to situations of violence against women, especially in the interior of the country, as well as the existence of institutional practices that tend to make this problem invisible and re-victimize women. Therefore, Uruguay has not been able to reduce the rate of women killed in domestic violence situations (this year already 17 women have been killed), statistically placing the Country as second in Latin America.

24. In order to cope with the under-representation of women in political decision-making environments, Law N° 18.476 was passed in 2009, declaring as general interest the equal participation of both genders in national and departmental elective bodies and management bodies of political parties, and providing for the inclusion of people from both sexes in lists, in each shortlist of candidates, permanent and substitutes, in the total list submitted. The Electoral Court must verify effective compliance with said provisions in the next elections, to guarantee women's political participation.

25. The INDDHH considers that although the State has taken a great step to guarantee women's sexual and reproductive rights by passing Laws N° 18.426 and N° 18.987, it is still necessary to permanently monitor the implementation of said regulations, as well as complement them with training of health staff and awareness-raising campaigns for the population.