



Institución Nacional de  
Derechos Humanos y Defensoría del Pueblo

**International Convention on the Protection of the Rights of all Migrant Workers  
and Members of their Families**

**Twentieth Session of the Committee on the Protection of the Rights of all Migrant Workers and  
Members of their Families**

**Report by the National Institution of Human Rights and  
Ombudsman of Uruguay**

1. The National Institution of Human Rights and Ombudsman of Uruguay (hereinafter INDDHH) was created under Law N° 18.446<sup>1</sup> of December 24<sup>th</sup>, 2008, in compliance with the guidelines of the Paris Principles, adopted by the United Nations General Assembly, by resolution 48/134 of 1993, as well as commitments under the Vienna Declaration and Programme of Action, resulting from the World Conference on Human Rights of 1993.

2. It is an autonomous body within the Legislative Power aimed at defending, promoting and protecting human rights acknowledged by the Constitution and International Law.

3. 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.

4. The INDDHH began its functions on June 22<sup>nd</sup> 2012; therefore, this report accounts for actions carried out by the Institution as from said date and in accordance with its powers, established by article 4 of Law No. 18.446.

5. The INDDHH was consulted during the process of preparation of the Member State Report and it provided the required information.

6. This report by the INDDHH is based on the significance of international migration in the demographic constitution of Uruguay, as well as the importance of Uruguayan migration processes towards other countries of the region and the world, especially during the period between 1960-1985 (pre-dictatorship period and civic-military dictatorship 1973-1985) and after 2002, as a result of the serious economic crisis affecting the country.

7. As from 2008, within the framework of a sustained economic growth and a low unemployment rate, Uruguay began to show a trend towards an increase in immigration, as well as an accelerated return of Uruguayan migrants.

8. According to recent figures from the latest population census (2011) carried out by the National Statistics Institute (INE), there are 77,033 people living in Uruguay who were born abroad<sup>2</sup>. Most numerous groups are from neighboring countries, Argentina and Brazil (26,782 and 12,882 respectively) followed by Spain (12,676).

9. The most numerous group of foreigners in the Country comes from the Americas region (51,675 inhabitants), followed by Europeans (23,439 inhabitants).

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<sup>1</sup> Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/07/Ley-N%C2%BA-18.446-Decreaci%C3%B3n-de-la-INDDHH.pdf>

<sup>22</sup> National Statistics Institute (National Statistics Institute) (INE) | Migration | Chart 1. Population per place of birth, according to age and usual department of residence. .

Available at: <http://www.ine.gub.uy/censos2011/resultadosfinales/pais%20poblacion.html>

10. Data from the 2011 census also show that 57% of foreigners live in Montevideo, the capital of the country, and that 55% of the total foreign population are women<sup>3</sup>.

11. From the total foreign population, 30.5% are between 35 and 64 years old; 29% between 15 and 34 years old; 29% are 64 years old and over and 11% between 0 and 14 years old.

12. The same census determined that there were 17,280 Uruguayans living abroad in 2006 (49% consisting of people between 35 and 64 years old; 34% between 15 and 34 years old; 9% between 5 and 14 years old and 8% 64 years old and over)<sup>4</sup>.

13. From the total of people 12 years old and over, born in Uruguay and who were living abroad in 2006, 64% were employed, 28% were inactive and 9% were unemployed.

14. As from recent years, Uruguay began to show a positive migration balance, according to the latest report<sup>5</sup> of the International Organization for Migration (IOM) and the United Nations Population Fund (UNFPA). The main reason for this phenomenon is the number of returnees, while immigration trends have remained the same.

15. It is worth mentioning that according to said report, intraregional migration has gained importance, while Uruguay was historically characterized by European migration. “One of the most significant issues shown by the census [INE, 2011] is that the population of Peruvian citizens trebled from the 1996 census to the 2011 census”<sup>6</sup>.

16. In addition, in the Uruguayan demographic structure, age groups with the greatest proportion of immigrants are “young people from 20 to 39 years old, which is associated with the existence of a considerable flow of recent immigrants, as well as with the presence of the sons and daughters of returnees who arrived as children during the period after the restoration of democracy”<sup>7</sup>.

17. During its 18-month term of office, the INNDDHH has carried out actions related to the migration issue.

18. On July 27<sup>th</sup>, 2012, the Civil Society Organization *Centro de Comunicaciones Virginia Woolf* (commonly known as NGO *Cotidiano Mujer*) filed a written accusation, about alleged human rights violations testified by six Bolivian women, referred to the

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<sup>3</sup> National Statistics Institute (INE) | Migration | Chart 5. Population born abroad, per region of residence and sex, according to country of birth.

Available at: <http://www.ine.gub.uy/censos2011/resultadosfinales/pais%20poblacion.html>

<sup>4</sup> National Statistics Institute (INE) | Migration | Chart 7. Population born in Uruguay that was living abroad in 2006, per sex and age group, according to country of residence in 2006.

Available at: <http://www.ine.gub.uy/censos2011/resultadosfinales/pais%20poblacion.html>

<sup>5</sup> International Organization for Migration (IOM) y United Nations Population Fund (UNFPA); Report “International immigrants and returnees in Uruguay: magnitude and characteristics”.

Available at:

<http://www.uruguay.iom.int/attachments/article/82/informe%20migraci%C3%B3n%20internacional%20013-web.pdf>

<sup>6</sup> Ibidem.

<sup>7</sup> Ibidem.

hiring of workers entering the country with Bolivian IDs and tourist visas, who were employed in family homes where they worked for long working hours without time limits, who were not allowed to rest during working hours and whose weekly rest was restricted to a few hours (an average of half a day). In addition, they were restricted on food and cleaning devices (in both cases they were provided different products than the rest of the family). The workers also claimed they were victims of psychological ill-treatment and they referred to situations of restriction of physical freedom (“*libertad ambulatoria*”) which in some cases included not being allowed to go out during daylight or to carry out necessary proceedings.

19. Apparently, some workers were victims of an abrupt return to their country of origin without prior notice, the travel costs of which were deducted from the workers’ salary.

20. The NGO *Cotidiano Mujer* submitted the testimonial evidence without revealing the victims’ identity, in accordance with article 12 of Law No. 18.446 and requested the INDDHH to file the accusation and to take measures to protect the rights of those affected and to put an end to the alleged human rights violations.

21. According to what is provided by articles 11 *et. seq.* of Law No. 18.446, referring to the procedure for accusations, the INDDHH initiated the customary investigation proceedings.

22. Among measures carried out, in order for the accusation to follow the proper course of action and taking into consideration that it was made public through various means of communication<sup>8</sup>, the INDDHH requested information about the case, the investigation proceedings and the status thereof from the Supreme Court of Justice, the Criminal Court of First Instance specialized in Organized Crime, the National Attorney General’s Office, Ministry of Interior and Ministry of Labor and Social Security.

23. The Supreme Court of Justice replied that a pre-trial investigation was opened before the Criminal Court of First Instance specialized in Organized Crime, initiated on June 18<sup>th</sup>, 2012.

24. The National Attorney General’s Office replied that the Second Prosecutor’s Office specialized in Organized Crime intervened and that proper measures were being taken.

25. The Ministry of Interior, through the National Secretary’s Office (*Dirección Nacional de Secretaría*), replied that police procedures were carried out by the General Directorate for the Fight against Organized Crime (*Dirección General de Lucha Contra el Crimen Organizado*) and INTERPOL.

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<sup>8</sup> See: <http://www.lr21.com.uy/comunidad/1054518-uruguay-alarma-por-explotacion-feudal-a-sirvientas-bolivianas-en-mansiones-lujosas>  
<http://eldiario.com.uy/2012/08/16/solo-infraccion-administrativa-en-caso-de-las-trabajadoras-bolivianas/>  
[http://www.montevideo.com.uy/ucmovil\\_175220\\_1.html](http://www.montevideo.com.uy/ucmovil_175220_1.html)  
<http://brecha.com.uy/index.php/sociedad/355-unas-palabras-tan-bruscas-que-te-duelen-y-te-llegan-al-alma>  
<http://www.elobservador.com.uy/noticia/230441/familia-de-carrasco-admite-falta-administrativa-pero-niega-delito/>  
<http://www.espectador.com/sociedad/264101/que-paso-con-el-caso-de-las-domesticas-bolivianas>

26. The Ministry of Labor and Social Security, through the General Inspectorate of Labor, reported that the investigated employer had been penalized with three fines in Re-adjustable Units<sup>9</sup> (UR) and that said resolution had been appealed by said employer.

27. After the accusation, the women were taken care of and assisted by the Ministry of Social Development (MIDES), through the Assistance Service for Female Victims of Trafficking, and by the diplomatic representation of the Republic of Bolivia in Uruguay.

28. In compliance with articles 19<sup>10</sup> and 31<sup>11</sup> of Law No. 18.446, the INDDHH stopped all its investigations regarding this specific case. However, and based on the abovementioned article 19, it issued and made public a special report<sup>12</sup> on the general issues stated in the accusation. The INDDHH is currently following up on the situation of the criminal accusation in progress.

29. On October 12<sup>th</sup>, 2012, the INDDHH published its “Report on Migrant Workers, Human Trafficking and Labor Exploitation: The Uruguayan State’s Obligations”<sup>13</sup>. The Report summarizes national and international regulations on the subject and presents definitions and characteristics of trafficking for labor exploitation, domestic servitude and the main regulatory background related to migrant workers. The report ends by issuing a number of recommendations and includes an annex with a compilation of regulations and institutions related to the subject.

30. In said report, the INDDHH recommended implementing a permanent surveillance of institutional practices to ensure that the condition of migrant does not imply any kind of limitation or restriction to the enjoyment and exercise of human rights by any individual; promoting activities to raise awareness about and promote the rights of immigrants among the general population and government officials; adequate and permanent training of public officials to ensure the protection of human rights of individuals, regardless of their condition as migrants or their political citizenship; monitoring compliance with regulations in force on the subject of migration and constantly assessing public institutions’ practices and procedures that may affect the right to guarantees of due process and access to justice for migrants and members of their families, so as to guarantee the existence of effective remedies and a proper

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<sup>9</sup> The Re-adjustable Unit is a measure or pattern to express the value of something. It was created by Law No. 13.728 of December 17<sup>th</sup>, 1968 which states that the Executive Power shall annually readjust said value according to variations in the average wage index.

<sup>10</sup> “Article 19 (cases in process).- When the accusation refers to facts that are in process of judicial resolution before competent bodies or before the Contentious-Administrative Court, the INDDHH shall not intervene in the specific case; however, this shall not prevent the Institution from investigating about the general issues stated in the accusation. The INDDHH shall make sure that judicial bodies, the Contentious-Administrative Court or the Administration, as applicable, expressly resolve, in due time, suits, accusations or appeals filed.”

<sup>11</sup> “Article 31. (Suspension of intervention).- When, during the investigation of an accusation, the case is subject to judicial resolution before competent bodies or before the Contentious-Administrative Court, the Board of Directors of the INDDHH shall suspend its intervention in the matter, notifying the complainant, the body or entity accused or involved if they were contacted by the INDDHH or if they were present during interventions. Notwithstanding the above, the Board of Directors of the INDDHH shall continue the investigation, in application of article 19 of the present Law.”

<sup>12</sup> See reference below.

<sup>13</sup> Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Informe-Trabajadores-Migrantes-Trata-de-Personas-y-Explotaci%C3%B3n-Laboral.pdf>

reparation; that decisions by competent authorities related to labor rights of migrants should take into account, in addition to applicable regulations, the stance of the Inter-American Court of Human Rights, which states that the rights arising from a labor relation must be acknowledged, regardless of the condition of migrant; that the State ensures that migrant workers may effectively claim before the Justice System any impairment of their labor rights, guaranteeing efficient remedies and an adequate reparation; that any situation presenting evidence of a potential case of human trafficking should be duly investigated by staff trained for this type of interventions; the implementation of informative campaigns about formalities required for the employment of migrant workers; compliance with obligations undertaken by the State under international treaties on human rights in general and migrants rights in particular; strengthening cooperation between States of origin, of transit and employment to regulate and control hiring and placement processes, as well as periodic reporting and articulation and cooperation in terms of justice; the creation of a tri-partite mechanism where the State, workers organizations and employers can analyze and implement sustainable plans and programs for labor migrations, preventing conducts that may eventually constitute violations of human rights of migrant workers and, finally, the design and implementation of a public policy on labor migration, as a tool to achieve compliance with national and international obligations in terms of human rights.

31. The Report was submitted before the Board of Directors of the INDDHH in a public event carried out at the House of Congress (*Palacio Legislativo*), which was attended by the representative of the International Organization for Migration (IOM) in charge of the Uruguay Mission<sup>14</sup>.

32. On May 9<sup>th</sup> and 10<sup>th</sup> 2013, the INDDHH took part in the South American Workshop on interventions by National Human Rights Institutions in the protection of migrants, organized by the Ombudsman of Peru and the South America Regional Office of the International Organization for Migration. As a result of said workshop, the IOM published the report “National Human Rights Institutions in the Protection of Migrants”<sup>15</sup>, which includes inputs provided by the INDDHH of Uruguay.

33. On August 21<sup>st</sup> 2013, within the framework of its functions and powers as per articles 1 and 4 (sections C, H and I) of Law No. 18.446, the INDDHH submitted a report with its opinion on the *Bill on Stateless Persons, their Acknowledgment and Protection*<sup>16</sup>. The INDDHH considered that the bill would constitute a further step towards compliance by the national legal system with obligations under International Human Rights Law and it expressed its satisfaction with the national authorities’ interest in adjusting internal regulations and procedures to the framework established by International Human Rights Law.

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<sup>14</sup> See: <http://www.uruguay.iom.int/index.php/2-uncategorised/53-inddh-presentara-su-primer-informe-el-proximo-miercoles-10-trabajadores-migrantes-trata-de-personas-y-explotacion-laboral> y <http://www.uruguay.iom.int/index.php/prensa/56-inddh-presento-primer-informe-tematico>

<sup>15</sup> Available at: <http://csm-osumi.org/Archivos/Norma/2-%20LAS%20INSTITUCIONES%20NACIONALES...Morlachetti.pdf>

<sup>16</sup> Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Informe-INDDHH-proyecto-Ley-Ap%C3%A1tridas.pdf>

34. On October 20<sup>th</sup>, 2013, the INDDHH received an accusation about a possible violation of the right to work, suffered by a group of migrant workers in the fisheries sector, residing in Uruguay.

35. Law No. 18.498<sup>17</sup> on National Vessels Crew, of June 12<sup>th</sup>, 2009, amended article 27 of Law No. 13.833<sup>18</sup> of December 29<sup>th</sup>, 1969. This amendment implies that the crew of national flag fishing boats must consist of at least 90% of Uruguayan legal or natural citizens<sup>19</sup>.

36. The amendment Law, which is not regulated, does not establish who is in charge of monitoring compliance thereof.

37. At the time of the accusation, there were at least thirty foreign workers (mainly Peruvian) who were banned from boarding, on the basis of the abovementioned amendment.

38. According to article 24<sup>20</sup> of Law No. 18.446, the INDDHH proposed that the Ministries of National Defense (MDN) and of Labor and Social Security (MTSS) take the following provisional measures: the implementation by the MTSS, as soon as possible, of tripartite negotiation mechanisms, calling other State bodies involved (mainly the MDN), to avoid changing the *de facto* situation that was taking place since Law No. 18.498 was passed, which lasted until September 2013, and immediately find a solution to allow workers whose rights were being impaired to continue working. For such purpose, the INDDHH suggested, as a provisional measure to prevent workers from losing their source of income, the establishment of a reasonable term for them to carry out the necessary proceedings to obtain their legal Uruguayan citizenship.

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<sup>17</sup> Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=18498&Anchor=>

<sup>18</sup> Available at: <http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=13833&Anchor=>

<sup>19</sup> Law N° 18.498. Article 1°.- Article 27 of Law N° 13.833, of December 29<sup>th</sup>, 1969, is replaced by the following:

“ARTICLE 27.- National fishing vessels shall be commanded by captains or chiefs who are Uruguayan legal or natural citizens, and the crew must consist of at least 90% (ninety per cent) of Uruguayan legal or natural citizens. This percentage may be changed in compliance with international agreements.

Notwithstanding the above, the crew of national fishing vessels operating exclusively in international waters shall consist of at least 70% (seventy per cent) of Uruguayan legal or natural citizens.

In case of new or exploratory fisheries, or fisheries using technologies that have not been previously used in traditional Uruguayan fisheries, or seasonal fisheries, the Executive Power may change said percentages, previously consulting operators, businessmen, captains and workers organizations.”

<sup>20</sup> “Article 24. (Urgent provisional measures).- At any stage of the proceedings, the Board of Directors of the INDDHH may suggest the bodies or entities involved in the accusation to adopt urgent provisional measures aimed at putting an end to the alleged human rights violation being investigated, to prevent any further damages or to contain those already caused or to stop said damages. If the corresponding authority fails to adopt said recommended urgent measures, the Board of Directors of the INDDHH may, at any time, appeal to the Judiciary in order to request the implementation of the corresponding precautionary measures, file an appeal for protection or an habeas corpus petition.”

39. On November 22<sup>nd</sup>, 2013, the Ministry of Labor and Social Security informed that on November 7<sup>th</sup>, it had called for a tripartite negotiation board, which allowed finding a favorable provisional solution.

40. On November 11<sup>th</sup>, 2013, the INDDHH sent the Commission on Labor Legislation of the House of Representatives a formal proposal, in accordance with Article 4 (sections C and I) of Law No. 18.446. The proposal stated that, based on the background of the accusation filed before the INDDHH relative to the situation of migrant workers with legal residence in the Country working in the fisheries industry, and based on the facts arising from the application of Law No. 18.498 that resulted in the impairment of the right to work of said workers, “The INDDHH suggests that Parliament considers the derogation of Law No. 18.498, since it believes said Law constitutes a flagrant violation of provisions included in the national Constitutional Block on the matter. In addition, it believes that “...until said law is derogated, Uruguay will be in breach of its obligations under the Constitution of the Republic (Articles 7, 8, 53, 54 and 72); the Universal Declaration of Human Rights (Art. 2); the Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador (Articles 2, 3, 4, 6 and 7); the American Declaration of Rights and Duties of Man (Art. II and XIV); the American Convention on Human Rights (Articles 1, 2 and 26); the International Covenant on Civil and Political Rights (Art. 2); the International Covenant on Economic, Social and Cultural Rights (Articles 2, 3, 4, 6 and 7); the International Convention on the Protection of All Rights of Migrant Workers and Members of their Families (Law No. 17.101 of May 31<sup>st</sup>, 1999); Law No. 18.250 (Migration) of January 17<sup>th</sup>, 2008; ILO Convention No. 97 relative to Migrant Workers (Law No. 12.030 January 27<sup>th</sup>, 1954) and the ILO Declaration on Fundamental Principles and Rights at Work of June 1998, as well as express regulations passed within the framework of MERCOSUR on the subject.”.

42. In addition to the two accusations mentioned above, the INDDHH received another five accusations related to migrants.

43. Three of them are related to their criminal procedure, irregularities in judicial procedures and police brutality. These accusations were transferred to the Parliamentary Commissioner for the Penitentiary System (*Comisionado Parlamentario para el Sistema Penitenciario*), body with which the INDDHH coordinates actions, according to what is provided by article 10<sup>21</sup> of Law No. 18.446. In spite of having referred the case to said body, the INDDHH continues to follow-up on the situation of the proceedings.

44. The remaining two accusations referred to problems of identity certification, since the individuals involved did not possess the documentation from their countries of origin required by Uruguay to grant the nationality. The INDDHH contacted the corresponding state bodies, and found out about at least twenty people in the same situation, who may be categorized as “stateless persons”.

45. The INDDHH submits this first report to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, in the understanding that

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<sup>21</sup> “Article 10. (Coordination).- The INDDHH shall coordinate its functions with the Parliamentary Commissioner for the Penitentiary System, local ombudsmen (*Defensores del Vecino*) and similar institutions to be established in the future.”



due to its recent establishment it requires support, guidance and follow-up by all international control bodies, in order to strengthen its capacities and contribute to our Country's culture of promotion, protection and defense of human rights.