



Institución Nacional de
Derechos Humanos y Defensoría del Pueblo

Convention on the Rights of the Child

**Committee on the Rights of the Child
68th Session**

Report of the National Human Rights Institution and Ombudsman of Uruguay

[May 12th, 2014]

I. Introduction

1. The National Human Rights Institute and Ombudsman of Uruguay submits the following report for the 68th Session of the Committee on the Rights of the Child, where Uruguay's consolidated Third to Fifth Periodic Reports will be considered, in order to contribute to strengthening the Rule of Law and for the effective protection of children and adolescents in the country.

2. The present report is submitted pursuant to the request of the Committee as set forth in article 45 (a) of the Convention on the Rights of the Child.

3. The National Human Rights Institute and Ombudsman of Uruguay is pleased with the progress achieved in several areas regarding the protection of the rights of children and adolescents, which although not mentioned in the following report, are included in the report of the Uruguayan State.

4. The present report refers only to some of the areas where the INDDHH has, in exercise of its powers, identified a lack of harmonization between existing legislation and the Convention on the rights of the Child or where institutional practices restrict or violate the rights there set forth. The report also addresses the recommendations made and their implementation.

II. About the National Human Rights Institution and Ombudsman

5. The National Human Rights Institution and Ombudsman (INDDHH) is an autonomous state body within the Legislative Power, aimed at the defense, promotion and protection of the human rights acknowledged by the Constitution and International Law.

6. It was created by Law N° 18446 of December 24th, 2008 (amended in articles 1, 36, 75 and 76 by Law N° 18806 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 the commitments undertaken under the Vienna Declaration and Program of Action adopted at the 1993 World Conference on Human Rights.

7. The INDDHH is an additional mechanism that complements already existing ones and it is aimed at providing individuals with further guarantees for the effective enjoyment of their rights and at monitoring that laws, administrative practices and public policies comply with international standards protecting human rights.

8. The INDDHH was formally established on June 22nd, 2012, when the first Board of Directors elected by the General Assembly took office in a public ceremony celebrated at the Parliament Building.

9. The Board of Directors of the INDDHH is a collegiate body of five members: Juan Raúl Ferreira Sienra (Chairman 05/22/2013-06/22/2014), Juan Faroppa Fontana, Mariana González

Guyer (First Chair 06/22/2012 -06/22/2013), Mirtha Guianze Rodríguez and Ariela Peralta Distefano, who serve for five years and can be reelected. Chairmanship of the Board rotates annually among its members.

10. The INDDHH has faced some difficulties, resulting from legal gaps in the Law creating the Institution, referring to its legal nature and institutional position. This has forced it to carry out its functions with minimum infrastructure, mainly in terms of human resource, since there has been a delay in the call for bids to hire staff. There are currently 10 technical staff members on secondment whose remuneration is budgeted by the state bodies they come from and they have also had the support of four consultants, financed by International Cooperation: three by AECID (Press, Communications and Strategic Planning) and one by the Office of the United Nations High Commissioner for Refugees (Institutional Development)

11. The INDDHH believes that these gaps must be overcome by providing it with an adequate legal-administrative framework so as to ensure their budgetary and operational autonomy.

12. Also due to the administrative and budget-related difficulties mentioned above, and since the building allocated to the institution needs significant repairs, the INDDHH is currently working in temporary rented premises. Repairs of the Institution's headquarters are about to begin, within the framework of an agreement between the INDDHH and the National Housing Agency (*Agencia Nacional de Vivienda- ANV*)¹.

13. The INDDHH is preparing its accreditation before the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). It hopes the Subcommittee on Accreditation will agree to assess its application this year, 2014.

14. In accordance with the Law creating the Institution, during its first year of mandate the INDDHH carried out the first two extraordinary sessions of their Board of Directors called "National Human Rights Assemblies" and the third one will be held on June 9th, 2014. Civil society organizations that are qualified and registered with the corresponding registry, government bodies and other entities may take part in these meetings without voting rights. These meetings are a very important opportunity to exchange views and allow for the collection of input for the preparation and follow-up of the institutional agenda.

15. The annual budget allocated for the operation of the INDDHH amounts to \$ 51,023,059 corresponding to personal payments (salaries of the Board of Directors); \$6,384,133 to expenses; \$ 3,224,309 to the purchase and maintenance of equipment; \$ 2,149,540 to various repairs and \$ 27,600,000 to building infrastructure (single allocation corresponding to the repair works of the headquarters).

16. Article 83 of Law N° 18446 states that the INDDHH "shall fulfill 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

¹ See: <http://inddhh.gub.uy/contrato-entre-la-inddhh-y-la-anv-para-el-programa-de-refaccion-de-la-sede/>

Article, coordination with the Ministry of Foreign Affairs (MRREE) shall be established to fulfill the functions of such Mechanism.

17. In order to comply with the aforementioned legislation and establish the specific competencies of the INDDHH and the Ministry, several meetings were held in 2013 which led to a Protocol for Action² for the implementation of the NPM, signed on December 6th at the MRREE, to outline the scope of actions of each one of the institutions, to make sure that in their compliance to existing legislation they do not incur in a violation to the principle of independence the Optional Protocol states an NPM shall have.

18. Notwithstanding the obligations of collaboration undertaken by both parties under the provisions of clauses 1, 2 and 3 of the document, clause number 4 states that “in compliance with existing legislation both parties shall submit independent reports before the above mentioned control bodies. These reports may totally or partially differ from one another”.

19. In particular, regarding the NPM, clause 5 provides that “the INDDHH shall be in charge of fulfilling the functions appointed by the OPCAT to the National Preventive Mechanism, and it shall act in accordance with the Paris Principles, approved by Resolution 48/134 of the United Nations General Assembly of December 20th, 1993, developing all actions it deems relevant for the adequate compliance thereof. Tasks will be carried out under the sole responsibility of the INDDHH; nevertheless, the INDDHH may require a call for bids for the people and/or institutions it deems necessary”.

20. The OPCAT states that the National Preventive Mechanism shall visit places of detention with the purpose of preventing torture or other cruel, inhuman or degrading treatment or punishments.

21. The Board of Directors considered that the implementation of the NPM was to be a process fitted to the human resources and materials available to the INDDHH. Since the issues regarding adolescents under the juvenile criminal liability system were particularly relevant due to the multiple accusations received, reports by the international control bodies and observations issued by specialized NGOs, the Board decided to initiate a process to address these issues, due to the fact that up until that point in time there was no monitoring system – with periodic visits - of the situation in place.

22. On October 2nd, 2013, the INDDHH and The United Nations Children’s Fund (UNICEF) signed a framework agreement³ by which they have agreed to collaboratively set up a permanent, broad multidisciplinary team under the scope of the INDDHH, to monitor the conditions of adolescents serving custodial or non-custodial criminal sentences. In agreement with the provisions thereof, UNICEF will provide part of the human resources and materials to fulfill the objectives set forth.

² Protocol for Action between the MRRE and the INDDHH regarding the NPM against Torture; available at: <http://inddhh.gub.uy/protocolo-de-actuacion-mnp-mrree-e-inddhh/>

³ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/10/Convenio-Marco-INDDHH-UNICEF.pdf>

23. The abovementioned multidisciplinary team under exclusive supervision of the INDDHH was therefore set up on November 22nd, 2013 and began activities by requesting information to all detention facilities to compile a database, draw up a schedule and protocols for action to conduct the visits, which are the basis for the corresponding reports and recommendations.

24. The team is also supported by the Chair of Legal Medicine of the University of the Republic, whose experts will take part in the visits if so requested.

25. In order to fulfill the objectives set forth in their Strategic Plan, the NPM has planned to take part in further specific agreements both to formalize existing collaborations and to implement new ones that will allow them to receive additional resources to reach all detention facilities nationwide, in accordance with the provisions of the Optional Protocol.

26. Due to the fact that the INDDHH was only recently created, this is the first report submitted to the Committee on the Rights of the Child, and the information thereof corresponds mainly to the activities conducted in 2013.

III. Institutional Actions for the Protection of the Rights of Children and Adolescents

General Institutional Statements on the Rights of Children and Adolescents

27. The INDDHH has repeatedly issued statements on the citizen insecurity problems the population is facing and the difficulties to consolidate a way of coexistence that meets the standards of a democratic society. It has especially expressed its opinion regarding the different forms of violence children and adolescents suffer, both in the public and private environments. In their Statement of November 22nd, 2013⁴ issued on occasion of the celebration of the adoption of the International Convention on the Rights of the Child within the United Nations framework, the INDDHH: “(...) wishes to express its deep concern particularly about the situation of adolescents deprived of their liberty. The many accusations received together with the information collected during the visits to detention facilities under the scope of the Juvenile Criminal Liability System (SIRPA) reveal the great number of human rights violations they are subjected to. In particular, the INDDHH believes that, as several International Human Rights Mechanisms have pointed out after conducting visits to *Colonia Berro*, the sum of inhuman institutionalization conditions observed, such as compulsory confinement, the lack of socio-educational activities that trample, among others, the right to education and the ill treatment by custodial staff, shall be considered as Cruel, Inhuman or Degrading Treatments”.

28. Regarding other forms of institutional violence the INDDHH also stated that: “the INDDHH has initiated a dialogue process with the authorities of the Uruguayan Institute for

⁴ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/11/Declaraci%C3%B3n-INDDHH-D%C3%ADa-Intal.-de-los-Derechos-del-Ni%C3%B1o.pdf>

Children and Adolescents (INAU) and the Juvenile Criminal Liability System (SIRPA), so as to contribute to a faster implementation of the fundamental changes the system needs. In this process, and within the framework of its powers and legal obligations, the INDDHH has pointed out to the authorities that the system of children and adolescent detention centers must undergo a comprehensive reform, from a public policy designed, implemented and evaluated from a human rights standpoint and in their full recognition as legal persons. This means that not only a comprehensive plan must be drafted but also that the custodial model must undergo a thorough reevaluation to transition into a system of institutionalization with socio-educational purposes, with sufficient and professionally qualified technical resources, able to educate and promote the rehabilitation of adolescents. The INDDHH calls upon the authorities of INAU and SIRPA to continue working towards achieving such changes and at the same time, continue strengthening the internal prevention and investigation mechanisms, and if necessary, the internal administrative sanction measures, for those responsible for Cruel, Inhuman or Degrading Treatment towards adolescents within the Juvenile Criminal Liability System (SIRPA)".

29. In a statement issued on March 8th, 2013 on occasion of the International Women's Day⁵, the INDDHH emphasized the need to move towards a National Care System, that will establish a system of joint responsibility between the State and the individuals, which is a fundamental component of the protection matrix and social wellbeing of families, and in particular of women and children.

30. Upon request of the Commission on Population and Development of the Senate⁶, to give their opinion on a draft bill to modify the adoption process, the INDDHH stated that when passing legislation regarding such institution, the focus should be made on the best interest on the child as the guiding principle, on the basis of human dignity, the child's own characteristics and the need to promote their development to the fullest of their capacities. Adoption itself should not be objective an objective in itself, but rather the child's or adolescent's wellbeing. Therefore, the proposal should establish that the State will first and foremost exhaust all available resources to try to maintain and promote the bond of the child with his/her family and should also clearly state that the opinion of the child must be listened to throughout all the stages of the process, and without their consent such process shall be revoked.

31. On July 19th, 2013 the INDDHH issued a resolution⁷ to the Parliament, recommending the ratification of Optional Protocol No 3 to the Convention on the Rights of the Child, regarding an individual communications procedure. Such instruments allow children and adolescents to file complaints regarding any violations of their rights, before the Committee on the Rights of the Child, whenever national mechanisms have not protected them in the full enjoyment thereof. This recommendation has not yet been implemented and the

⁵ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/09/Declaracion-INDDHH-Dia-Internacional-de-la-mujer-08.03.2013.pdf>

⁶ Available at: <http://inddhh.gub.uy/wp-content/uploads/2013/10/Informe-de-la-INDDHH-sobre-Disposiciones-Relativas-a-la-Adopci%C3%B3n1.pdf>

⁷ Available: <http://inddhh.gub.uy/wp-content/uploads/2014/03/Resoluci%C3%B3n-INDDHH-N%C2%B0103-19.7.2013.pdf>

abovementioned draft bill is still under study by the Commission of Foreign Affairs of the House of Representatives.

The Rights of Children and Adolescents and the Educational System

32. The INDDHH has received accusations⁸ of disability discrimination in primary schools, both in the public and private sector. This jeopardizes the fulfillment of children's right to education on the basis of equal opportunity, protected both by national regulations and the Convention on the Rights of the Child.

33. In May 2013, the mother of a child that suffers from neonatal hypotonia with a positive evolution delayed motor skills, tracheotomy and gastrostomy, reported facing difficulties in school, since the child requires the help of a feeding assistant during meals, which should also take place in a hygienic environment. The INDDHH recommended the multidisciplinary team of professionals at the child's public school to follow up on her to evaluate and take the necessary actions to ensure an adequate integration at school, contemplate the specific situation of her caregivers so as to allow the child to have the assistance needed during mealtimes and, within a period of one year, to conduct a study, implement and provide the assistance needed to boys and girls suffering from any disability so as to ensure the best integration possible to the school system.

34. Another discrimination case is that of a 4-year old disabled child, whose enrollment was rejected by two private schools, although his mother had made several appointments at the Early Childhood and Primary Education Council (CEIP) looking for answers. The INDDHH requested information to the CEIP, which was provided by the Technical Inspectorate and the National Inspectorate on Special Education.

35. For both cases the INDDHH pointed out the role of the State to ensure the fulfillment of the right to education of children with disabilities and to set up mechanisms that will allow their integration within all Educational Institutions. In addition, it highlighted the need to regulate Article 8 of Law No 18437 of December 12th, 2008, which sets forth the obligation of the State to "ensure minority groups, or those especially vulnerable, the full enjoyment of their right to education and their effective social inclusion".

36. The INDDHH considers the protocol for action set up by the agencies involved, "Roadmap for situations of ill treatment and sexual abuse of children and adolescents within the school system", to be an improvement towards a comprehensive approach of the issue of violence against children and adolescents in the school system. However, complaints have been filed regarding its implementation. In one of the cases submitted, it was found that the procedures established thereof had not been followed and the measures taken were not sufficient to protect the children, therefore, several recommendations were issued to the Council of Primary Education.

The rights of children and adolescents and the State Protection System

⁸ Complaints 118/2012 and 269/2013, led to Resolutions 70/2013 and 109/2013, respectively.

37. In 2013 the INDDHH received several accusations of alleged violations to the rights of children and adolescents institutionalized within the protection system.

38. These accusations⁹ referred to 2 of the 5 shelters run by INAU for boys, girls and adolescents with their significant female adults over 18 years of age, who live in a situation of domestic violence, and stated that there are no initiatives to provide an adequate support or address the situations of domestic violence and this is why there are also acts of re-victimization. For the purpose of the substantiation of the accusations, the INDDHH requested INAU to provide information regarding the supervision of shelters of this sort. Management of these shelters is appointed through service agreements with private organizations.

39. Regarding the first of the accusations, the information provided by the Agreements Division of INAU, as a result of two audits conducted, confirmed that the agreement had been ill managed. Therefore one of the recommendations, among others, was to terminate the Agreement with the responsible party “in order to stop perpetuating situations that jeopardize the full enjoyment of the rights of children and their mothers”. By Resolution No 1304/012 the Board of INAU ordered to terminate the existing agreement. However, on a subsequent Resolution N° 3821/2012 of November 21st, 2012, the same Board decided to put the previous resolution on hold and keep the agreement in place. The INDDHH, in turn, based upon the investigation conducted, issued a resolution¹⁰ in which they recommended strengthening the Agreements Division of INAU in order to be more efficient in the supervision of the shelters managed under the scope of agreements with third parties. In addition, it requested that an action plan be developed to maintain current coverage while initiating the administrative procedures required for the termination of the Agreement between INAU and the civil association running the shelter subject of the accusation.

40. With reference to the second case, the INDDHH thought it was convenient to conduct a visit, as stipulated under Articles 35 (sections A, B, C and F) of Law No 18446, to collect information regarding the conditions under which the Agreement was being complied with and the observance of the obligations thereof. In particular, to verify the integrity of the assistance and support strategies in place to find escape routes to these situations of domestic violence. The INDDHH conducted meetings with the authorities, staff members and several of the young mothers living there. Based on the observations, the INDDHH issued a resolution¹¹ under which they recommend the implementation of training courses for staff members within 90 business day, strengthening the articulation with other institution to achieve a wider educational coverage as well as the reintegration into the labor market of the young mothers once they leave. In addition, for the Agreements Division of INAU to implement a follow-up plan of the technical approaches within 30 business days and the refurbishment of the furniture for the people living there.

41. Since the sample is not representative and there are still some ongoing investigations, the INDDHH cannot conclude that there is in fact a repeated and systematic violation of rights within the system for the protection children and adolescents. However, in the

⁹ Accusations 113/2012 and 281/2013.

¹⁰ INDDHH Resolution 62/2013.

¹¹ INDDHH Resolution 281/2013.

abovementioned cases the INDDHH has verified that the organizations providing the service stipulated by the agreement with the Uruguayan Institute for Children and Adolescents (INAU) have in fact, incurred in violations of the rights of these children and adolescents. Such findings shed light on the weaknesses in the management control conducted by the governing body regarding the implementation of public policies on childhood and adolescence (article 68 of the Code for Children and Adolescents (CAN)).

The Rights of Children and Adolescents and the Justice System

42. On September 16th, 2013 the father of a minor filed accusations before the INDDHH due to the fact that, having separated the child's mother in 2008 he had filed a petition before the competent judicial authorities to establish a visitation regime that would allow him to maintain a close relationship with his son but to that date there had not been a resolution on the matter yet. In compliance with Article 19 of the Law No 18446 - which although prevents the INDDHH from intervening in matters pending before the courts, sets the obligation to make sure that the lawsuits filed are duly resolved- the INDDHH issued a recommendation to the Court by Resolution¹² dated January 9th, 2014 to keep in mind the negative effects the delay in the decision has on the child and the need to effectively guarantee their rights under both national and international law.

43. In addition, due to an accusation received by the INDDHH of an alleged situation of domestic violence and child abuse, pending before court, the INDDHH¹³ addressed the Court national existing legislation on the matter (Law 17514 and Articles 117, 118 and 119 of the CNA) has "attempted to provide the judicial system with a judicial remedy that is simple, fast and accessible, so as to prevent and detect situations of violence against women, children and adolescents". The INDDHH expressed their concerns to the Court regarding "the information provided in the latest report on Cases Processed under Law No 17514 (2011), where it states that on average, 30 days go by from the moment the case is filed to the first hearing, and 58 days from the first to the second hearing". It concluded by stating that "As a consequence the INDDHH considers that when dealing with such processes we must work towards a quick, simple and accessible resolution of the problem that provides guarantees to the parties involved and fulfills the objective of preventing and detecting situations of violence against women, children and adolescents".

44. Within the framework of the monitoring visits carried out by the NPM to juvenile detention centers and through their corresponding reports it has been observed that in most cases judges do comply with the periodic visits stipulated in Article 100 of the Code for Children and Adolescents (CNA).

45. Considering a complaint filed¹⁴ regarding a visitation regime pending before the Family Court of First Instance of 19th term, that had been delayed in time, the INDDHH filed on May 16th, 2013 an "amicus curiae" brief (setting a precedent in the matter since such instrument is not specifically established under our legislation) requesting a prompt resolution of the case

¹²Resolution157/2014 on Complaint 339/2013

¹³ Resolution 156/2013 on Complaint 277/2013

¹⁴ Complaint 143/2012

and providing arguments so as to protect the best interest of the child, his right to be heard and to protect the relationship among members of the family.

The Rights of Adolescents Deprived of their Liberty

46. This chapter provides the information collected through three sources: consultations and complaints received by the Ombudsman Office, the information collected and recommendations issued by the NPM against Torture and the contributions of the social organizations and government agencies that took part in the I and II National Assembly on Human Rights, where two thematic sessions were held on “Citizen Security and Prison System” and “Institutionalization, deprivation of liberty, alternative measures and post-imprisonment measures for adults, children and adolescents”¹⁵.

47. Law No 18771 of July 1st, 2001 urged the Uruguayan Institute for Children and Adolescents (INAU) to create a temporary deconcentrated body: the Juvenile Criminal Liability System (SIRPA), in charge of everything related to the execution of the socio-educational measures under Articles 77 and onwards of the CNA, as an initial step before the creation by Law, hopefully under the current administration and in the near future, of the Juvenile Criminal Liability Institute (IRPA) as a decentralized service to fulfill the aforementioned obligations. Even though there are only a few months left for the end of the last parliamentary term of the current administration, up to the date of this report the IRPA has not yet been implemented.

48. Uruguay is undergoing a multi-sectorial debate regarding the measures that need to be taken to address issues of juvenile offenders and the security concerns of the population expressed in recent opinion polls. Within this framework, recent legislative reforms involved a considerable increase of the measures of deprivation of liberty for adolescents.

49. On July 15th, 2011 Law No 18777 was passed (Juvenile Criminal Offenders) modifying Articles 69 and 76 of the Code for Children and Adolescents (Law N° 17823 of September 7th, 2004). This Law created a criminal records registry for adolescents who commit certain crimes, it increased the term to issue a ruling in certain situations, it created the new criminal offence “attempt of theft” and it changed the time range for the application of precautionary measures – especially pre-trial detention – from 60 to 90 days.

50. Also on July 15th, 2011 Law N° 18.778 was passed (Adolescents in conflict with the Law, Keeping of criminal records in certain situations), modifying article 116 of the Code for Children and Adolescents, stating that the Supreme Court of Justice will create and regulate a

¹⁵ Minutes of the sessions available at:

<http://inddhh.gub.uy/wp-content/uploads/2013/09/Anexos-I-Asamblea-Nacional-de-Derechos-Humanos.pdf> y <http://inddhh.gub.uy/wp-content/uploads/2013/09/Memoria-II-Asamblea-Nacional-de-Derechos-Humanos.pdf>

Contributions of Social Organizations can also be consulted, available at:

<http://inddhh.gub.uy/wp-content/uploads/2013/09/Aldeas-infantiles-Inequidad-de-g%C3%A9nero-y-P%C3%A9rdida-del-cuidado-parental.pdf>

National Registry of Criminal Records of Adolescents in Conflict with Criminal Law, organized in two sections. The first section shall correspond to criminal records of crimes of rape, robbery, robbery with deprivation of victims' liberty (*copamiento*), kidnapping, willful and ultra-intentional homicide and the second section to all other violations of the criminal Law provided in the CNA. In addition, this law modifies Article 222 of the CNA, stating that information relative to children and adolescents may not be used as a database to track them, once they are of age and the judicial and administrative records of children and adolescents in conflict with the Law are to be immediately destroyed once they turn eighteen or by the end of the term of the measure they were imposed. This limitation allows for exceptions, when the adolescent in conflict with the Law has been convicted for rape, robbery, robbery with deprivation of victims' liberty (*copamiento*), kidnapping or any of the various forms of intentional homicide. In the aforementioned cases, "the Judge, at the moment of ruling, may impose – as an additional punishment – the preservation of criminal records so that, once said adolescent turns eighteen, if he or she commits another willful or ultra-intentional crime, he or she is not considered a first-time offender". In addition, it provides that adolescents' criminal records will be eliminated in all cases: A) Two years after they turn eighteen and B) two years after the sentence has been completed, when said sentence goes beyond their eighteen years of age.

51. On August 14th, 2012, upon request of the Commission on Constitution and Legislation of the Senate the INDDHH issued an opinion on the Bill introducing changes to Articles 72 and 76 of the CAN. Against the opinion and evidence presented by the INDDHH before the Commission, on January 4th, 2013, Law N° 19055 was passed modifying the abovementioned articles. It classifies offences as serious and very serious and provides for a special system in case of very serious offences committed by adolescents between fifteen and eighteen years of age, which among other measures, includes mandatory precautionary deprivation of liberty until judgment is issued and minimum sentences of 12 months for certain violations. The implementation of this law has resulted in a significant increase in the juvenile detainee population, affecting overcrowding and the risk of situations of ill-treatment within the institutions.

52. The INDDHH has expressed its concern regarding the passing of regressive legislative measures that worsen the shortcomings of the system. It is particularly concerned about the effects of an approval of the initiative to lower the age of criminal responsibility that will be submitted to plebiscite together with the national elections in October 2014. The proposed reform is against the *corpus juris* of the rights of children to which Uruguay is a party, and may have serious consequences in terms of citizen security, since by introducing these adolescents to adult detention facilities and holding them equally responsible, the institutional violence of the national prison system may be increased.

53. The Observers Committee in charge of monitoring the process of compliance of the system of execution of juvenile criminal justice measures with the Convention on the Rights of the Child and the Code for Children and Adolescents, created by resolution 2923bis/2007, of November 23rd, 2007, has ceased to function.

The Justice System

54. The INDDHH has been in communication with the Juvenile Criminal Judges in Montevideo regarding several accusations received about possible irregularities at certain detention facilities (in particular, accusations of cruel, inhuman or degrading treatment at *Centro SER of Colonia Berro*). On July 19th, 2013¹⁶ the INDDHH informed the authorities of INAU and SIRPA about their decision to “Bring the situation to the attention of the four Judges, due to their powers under the CNA to monitor compliance with the socio-educational measure”.

55. The INDDHH believes that in addition to the necessary institutional reform, a reform of the juvenile justice system is essential for the execution of socio-educational measures, focusing on the prevention of crime and rehabilitation, where judges use deprivation of liberty truly as a last resort and substitute it whenever possible with the use of alternative measures and whenever detention is decided, to make it the shortest time possible.

Accusations received

56. In July 2012, the INDDHH received an accusation of a potential violation of the rights of a young man in Cottolengo Don Orione, Institution under the scope of INAU. For substantiation purposes, the INDDHH initiated several actions, among which is worth mentioning a meeting that brought together the parents, the Agreements Division of INAU and the authorities of the Cottolengo Don Orione, where it was resolved to remove the young man from the institution in September 2013. On September 26th, 2013, the INDDHH issued a Resolution¹⁷ recommending INAU to conduct bimonthly follow-ups (for one year) of the situation of the young man and to inform the INDDHH about all the Working Projects with disabled children and adolescents of the institution, as well as the specific inclusion and accessibility policies implemented by the agency on these issues. Although the institution has taken actions to ensure the young man’s integration to his environment, the requested Projects have not been submitted.

57. In June 2013, the authorities of Centro SER (maximum security facility) were changed. As from July 2013, the INDDHH received accusations by current and former staff members - who requested for their identities to remain confidential – regarding possible irregularities in the appointment of senior positions, which were appointed to officials undergoing administrative and criminal investigations on account of alleged ill treatments, who are currently performing tasks that require direct contact with adolescents. Accusations make reference to retaliation, threats and intimidation against staff members who expressed their disagreement with ill treatments suffered by adolescents. A similar situation has been reported regarding adolescents and their relatives.

58. The INDDHH has received various accusations about possible violations of rights in the execution of measures of deprivation of liberty imposed by competent courts.

59. On November 7th, 2012, the INDDHH received information submitted by the Human Rights Commission of the House of Representatives and the Human Rights Commission of the

¹⁶ Resolution 104/2013 on Complaint 308/2013

¹⁷ Resolution 130/2013 on Complaint 92/2012.

Local Council of the Department of Maldonado with reference to the possible disappearance of a 17 year old after he escaped from an establishment under the INAU, where he was serving time as a result of a measure of deprivation of liberty imposed by the Fourth Juvenile Criminal Court of First Instance of Maldonado. The boy disappeared from *Centro Cerrito* in *Colonia Berro* on October 4th, 2012 at night during a riot situation. Events were reported to the corresponding Police District and competent court. However, the boy's mother was never informed about her son's escape. During the INDDHH's investigation, no information was found about any action by INAU to determine possible administrative liability of acting staff members, or to follow up on police and/or court actions leading to find the boy's whereabouts. Therefore, on January 21st, 2013, the Institution issued a resolution¹⁸ exhorting an administrative investigation to determine functional responsibilities and requesting information relative to regulations, instructions and protocols issued by the Body in order to avoid recurrence of similar cases. In addition, it recommended reparation for damages caused to those directly linked to the case, as well as wide dissemination of the decision through mass media. Furthermore, it recommended continuing with investigations to find the boy's whereabouts or to determine the causes for his possible death, with the support of the corresponding section of the Ministry of Interior. This recommendation was not followed by INAU, which implies responsibility for the disappearance of an adolescent boy under State custody.

60. In February 2013, the INDDHH received the testimony in file IUE 2-9438/2008, proceedings "*Fiscalía Letrada Nacional de 3º Turno c/ INAU. Acción de amparo*" (Third National Prosecutor's Office against INAU. Remedy for the protection of constitutional rights), filed with Nº 300/2013. After looking into the case, in exercise of its powers as National Preventive Mechanism according to what is provided by the OPCAT, the INDDHH resolved to carry out a visit to *Centro Ser* in *Colonia Berro*, institution under the scope of the SIRPA (Juvenile Criminal Responsibility System), to investigate possible violations of rights of adolescents deprived of their liberty.

Actions Taken as National Preventive Mechanism as per OPCAT Definition

61. The visit was carried out by team experts on May 14th, with two main objectives: a) monitoring living conditions of detained adolescents, especially conditions of infrastructure, number of detainees, detainees' physical conditions and situation, medications received, health services and staff taking care of them; b) monitoring the degree of compliance with the resolution of *amparo* (remedy for the protection of constitutional rights) of the abovementioned proceedings (in the Institution's capacity as Ombudsman). All the Center's facilities were inspected, interviews were held with detainees in private, as well as with authorities and technical staff. Situations of violation of rights of adolescents were found, both in terms of material conditions of detention as in terms of hygiene, health and access to education and recreation. In addition, the inspection team found that detainees were not familiar with the applicable co-existence regulations and punishment system. As a result of the visit, on June 12th, the INDDHH team in charge of the accusation submitted a report informing the competent court about aspects found in relation with the resolution of *amparo* (remedy

¹⁸ INDDHH Resolution 40bis/2013.

for protection of constitutional rights) and on June 25th, 2013 the INDDHH issued Resolution 78/2013 addressed to INAU and SIRPA authorities. Said resolution provides detailed information about the visit and includes 12 recommendations with terms between 15 and 120 days for the implementation thereof. On September 10th, the Institution received a communication by the INAU Board of Directors including information about the degree of compliance with some of said recommendations.

62. In the report of the visit, the INDDHH stated that “The existing living conditions at Centro SER, pose a violation of the right to dignity, integrity, health, education, recreation, culture and participation (art. 9, art. 89 and 92 of the Code for Children and Adolescents, arts. 2 and 40.1 of the Convention on the Rights of the Child ratified by Law no. 16137, art. 10 of the International Covenant on Civil and Political Rights ratified by Law no. 13751, art. 5 of the American Convention on Human Rights (San Jose Pact) ratified by Law no. 15737. The rights under art. 102 of the Code for Children and Adolescents are especially violated, aimed at counteracting the negative effects of institutional confinement and to promote social integration.”

63. On July 19th, 2013, the situation described above was informed to the four juvenile courts with jurisdiction in the control of the execution of measures of deprivation of liberty in *Centro Ser*.

64. Once the new team was set up, the National Preventive Mechanism (NPM) began a cycle of preventive monitoring visits to juvenile detention centers. Based on said visits, reports are prepared including results of the visit and recommendations, which are communicated to authorities of INAU, SIRPA and the corresponding Center.

65. With regard to the proactive prevention of torture and other cruel, inhuman or degrading treatment, the NPM decided to carry out the analysis and follow up of the application and execution of alternative measures to institutional confinement, which should be the last resort.

66. In addition, the NPM has planned a process of discussion for the verification of the implementation of recommendations made, in order to ensure the effective compliance therewith.

67. To this date, the NPM has carried out 29¹⁹ visits to detention centers under the Juvenile Criminal Responsibility System (SIRPA). Based on said inspection visits, special inspection visits and follow-up visits, 12 recommendations were issued to *Centro SER (Colonia Berro)*; 8 recommendations to *Centro de Ingreso Adolescente Femenino (CIAF)*; 12 recommendations to *Centro de Ingreso Transitorio (CIT)*; 12 recommendations to *Centro Desafío*; 10 recommendations to *Centro de Privación de Libertad (CEPRILI)*; 11 recommendations to *Centro de Medidas de Contención (CMC)*; 14 recommendations to *Centro de Diagnóstico y Derivación (CEDD – Burgues)*; 7 recommendations to *Centro Sarandí (Colonia Berro)*; 8 recommendations to *Centro Paso a Paso*; 5 recommendations to *Centro Cimarrones*

¹⁹ Reports of every visit are available at: <http://inddhh.gub.uy/informes>

(*Colonia Berro*); 9 recommendations regarding *Centro El Hornero (Colonia Berro)*; 8 recommendations regarding *Centro Ariel (Colonia Berro)* and 7 recommendations regarding *Centro de Medidas Cautelares (CEMEC)*. It is worth mentioning that the first three visits were carried out by Directors and technical staff of the INDDHH, before the NPM team had been constituted.

68. Within its schedule of periodic visits to detention centers, the NPM carried out a total of six visits - inspection and follow-up - to Centro SER: May 14th, November 22nd, and 25th, 2013; December 27th, 2013; February 4th and 25th, 2014.

69. The INDDHH, within the scope of competence established in arts. 4 sections J) and K) of Law no. 18446 and taking into account the scope of action of the National Institute for Children and Adolescents (INAU) as the governing administrative body in terms of childhood and adolescence policies appointed by art. 68 of the Code for Children and Adolescents recommended: a) to repair the facilities of Centro SER and make the necessary improvements to protect adolescents' right to dignity within 120 days; b) to provide for an adequate space for permanent and appropriate medical care inside the premises of Centro SER within 90 days; c) to provide for an adequate space for visits within 60 days; d) to plan and implement government intervention in Centro SER so as to make sure that detention measures fulfill their ultimate social-educational goal, providing adolescents with the educational and recreational activities adequate for such purpose within 60 days; e) to allocate to Centro SER the technical and nontechnical staff required to adequately fulfill social-educational measures within 60 days; f) to significantly reduce the number of hours during which adolescents are locked-up within 30 days; g) to provide for the necessary measures to ensure hygiene conditions in Centro SER within 15 business days; h) to make sure every adolescent that arrives at the detention center is informed of the cohabitation rules and regulations in writing; a term of 15 working days is provided to implement this mechanism; i) to provide for the necessary mechanisms to make sure that every adolescent who receives a disciplinary sanction is duly informed in writing about the details and length of such disciplinary action and is given the possibility to appeal. This right should come into effect within 15 business days; j) to thoroughly monitor the performance of Grupo GEO (Special Operations Group) when conducting searches in Centro SER so as to prevent the violation of adolescents' rights and/or ill-treatment or degrading treatment. This control mechanism should be put in place within 15 business days; k) to implement proper telephone use regulations to protect adolescents' right to intimacy within 15 business days.

70. On November 22nd and 25th, 2013, the NPM conducted several visits to Centro SER. The aim of these visits was to control the infrastructure and material conditions of the facilities, hygiene conditions in common areas, bathrooms and cells, co-existence system, number of detainees as well as their distribution, educational, work and recreational activities, medical services, physical wellbeing, medication prescribed and staff taking care of the adolescents. The objective was mainly to verify whether the recommendations made in June 2013 had been complied with.

71. During these visits the INDDHH verified some improvements. The INDDHH stated in their visit report²⁰ that “the following was confirmed: a) the lack of written communication of the recommendations made by the INDDHH to the authorities of the institution; b) infrastructure improvements in the Center are still insufficient; c) the opening of level 4 with an adequate infrastructure; d) there is still a need for a place that is intended solely for the provision of adequate and permanent medical care; e) there is still need for a place that is intended solely for visits, especially on rainy days; f) improvements regarding educational activities are still insufficient. No institutional information or registries about these activities have been provided to this date; g) there are not enough technical and nontechnical staff to fully comply with social-educational measures; h) Detainees still remain locked-up for excessive periods of time. Educational and recreational activities are not properly recorded. The INDDHH is still waiting for written information by the institution; i) hygiene conditions within the institution have improved, although there are still some deficiencies; j) co-existence regulations have been drafted and adolescents are informed about them upon arrival; k) disciplinary measures are not properly recorded; l) although the GEO Group does not take part in searches anymore, there have been some occasions where the use of force did not correspond with the principles of exceptionality, proportionality and rationality.

72. Reports are presented to SIRPA authorities and have data and information that has been duly verified, processed and analyzed by the NPM. Recommendations made to each institution include recommendations specifically addressed to SIRPA authorities and others addressed to the Management of the corresponding institution.

73. On March 28th, 2014, upon request of the Commission on Population and Development of the Chamber of Representatives, the NPM submitted a report about visits carried out until then, as well as a compendium of all recommendations issued.

74. Even though some progress has been verified in the juvenile detention system, there are still a lot and very serious issues that need to be solved.

75. Work carried out so far has allowed the NPM to define situations that need to be addressed urgently, for the purpose of planning future actions. Said situations are those affecting the most vulnerable groups: female adolescents, boys between 13 and 15 and adolescents detained in maximum security facilities.

76. Overcrowding, excessive lock-up time, the lack of stable and sustained activities, the lack of permanent education, poor and incomplete record of activities, heterogeneity of criteria in the application of punishments and in health care, insufficient training of staff in direct contact with detainees, ill treatment by some staff members and the discretionary nature of procedures, are some of the most significant deficiencies detected and which need to be eradicated.

²⁰ Available at: <http://inddhh.gub.uy/wp-content/uploads/2014/04/02-Informe-preliminar-Centro-Ser-22-y-25-11-2013.pdf>

