

SHADOW REPORT TO THE CERD COMMITTEE. URUGUAY ¹

PRESENTATION

1. This Report focuses on relevant issues regarding the Uruguayan State's compliance with the recommendations made by this Committee in 2011, with a view to constructively enriching the Committee's dialogue with the State on the occasion of its examination (CERD/C/URY/CO/16-20), from the perspective of gender, religious diversity, sexual orientation and gender identity
2. This examination is part of the obligation assumed by the State to submit a Periodic Report, according to art. 9 of the Convention, on the legislative, judicial, administrative or other measures adopted to the ends of enforcing the Convention.
3. We believe that one of the main objectives of organized civil society is to monitor compliance with the human rights covenants, conventions and treaties that have been ratified by the State and are, therefore, binding.
4. We have made a broad call to civil society organizations, building a plural and diverse coalition that is committed to the defense of Human Rights.
5. Our Report is structured based on the provisions of arts. 1, 2, 2.2 ; 5 and 6, in chapters relating to: I) Compliance with Treaties; II) National Plan Against Racism and Discrimination; III) Afro-Descendant Population, IV) Religion; V) LGBTI Persons; VI) Indigenous Population; VII) Racial Equity Mechanisms; VIII) Access to Justice and IX) Persons Deprived of Liberty.

I. - COMPLIANCE OF THE URUGUAYAN STATE WITH HUMAN RIGHTS TREATIES

6. We acknowledge the progress made by the State in updating its periodic reporting to the various monitoring mechanisms, in particular that of the CERD Committee (2010-2014).
7. The State has also submitted two country reports in the context of the Universal Periodic Review and two progress reports to the Human Rights Council (between the first and second UPR 2012 review). However, the Uruguayan State has not "adequately, or effectively implemented" the monitoring of compliance with the recommendations of the monitoring committees.
8. The Interinstitutional Commission created by Presidential Decree 522/2011 (10/25/11) has not worked (paragraph 4 of the State Report), neither has it reported conclusions. As well, it has summoned civil society organizations in a single opportunity.
9. While the State has recognized the competence of the Committee to receive and examine communications from persons or groups of persons (Article 14), this has not been sufficiently disseminated for the enforceability of rights. Uruguayan society in general ignores the existence of this mechanism.
10. The National Human Rights Institution (Law 18.446) lacks the competence to examine and investigate complaints against individuals. Therefore, people who suffer racial discrimination are deprived of their right to equality before the law, personal security and protection of the State, in violation of art. 5 of the Convention.

¹ Presented by the coalition formed by: COLECTIVA MUJERES (feminist organization of Afro-Uruguayan women), CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights), COLECTIVO OVEJAS NEGRAS (organization that defends the rights of lesbian, gay, bisexual, trans and intersex persons in Uruguay), CLAN CHONIK (organization of indigenous descendants in Uruguay), UTRU (Trans Union of Uruguay), ATABAQUE (Afro-religious organization), AFROGAMA (Afro-Uruguayan cultural group).

Recommendation

11. That the State expedites the functioning of the Inter-Institutional Commission created with the task of monitoring the recommendations of treaty bodies, reaching out to organized civil society for their full participation.

II.- NATIONAL PLAN AGAINST RACISM AND DISCRIMINATION (Article 2 of the Convention)

12. On the occasion of its first Universal Periodic Review in 2009, the Uruguayan State voluntarily took the commitment to elaborate this public policy. Between 2010 and 2011, with the support of Spanish AECID and the UN OHCHR, the State completed a first diagnostic phase of the preparation of this Plan with the publication of a series of reports prepared by a technical team, in consultation with civil society (organized and not organized) of the whole country. This diagnosis constitutes an input for the elaboration of the action plan, stage that is pending since September 2011.
13. At its last Universal Periodic Review to the Human Rights Council in 2014, the Uruguayan State accepted recommendations 123.21, 123.22, 123.23, 123.24, and 123.25, concerning the implementation of a National Plan against Racism and Discrimination (A/HRC/26/7/Add.1). This Committee expressed concern in this regard in its Concluding Observations (CERD/C/URY/CO/16-20, para. 11).
14. However, in its follow-up to Recommendation 11 of this Committee, the State affirms that "for the time being, no specific plan is envisaged in the sense indicated". In fact, this implies a depart from this important commitment assumed and reiterated in different instances of the universal system, as well as a breach of Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination.
15. The Uruguayan State has extensive experience in the development and implementation of this type of policies, such as the 1st National Plan for Equal Opportunities and Rights, the National Youth Plan, the National Strategy for Children and Adolescents, or the recent 1st National Plan for Aging and Old Age, all in the 2005-2013 period.
16. Measures in the framework of the International Decade of Afro-descendants "Recognition of Justice and Development", which the State lists on its report, do not replace in any way an articulated macro policy for the prevention of racism and discrimination in the country, in the form of an action plan with objectives, actions, deadlines, indicators and responsible bodies.
17. The State, based on the existing diagnostic reports, must prepare the action plan of a National Plan against Racism and Discrimination, with objectives, actions, indicators and deadlines; as well as designated responsible bodies and specific budget for its implementation.

Recommendations.

18. That the State elaborates the plan of action corresponding to the National Plan against Racism and Discrimination and carries out the implementation in dialogue with organized civil society.
19. That the State reports on the progress of the Plan within a period of two years.

III. AFRODESCENDANT POPULATION

20. The 2011 Population Census registered 250,000 people with "Afro or Black" ancestry, representing 7.8% of the total population of 3,400,000 inhabitants, the largest ethnic minority in the country. The percentages of Afro-descendants obtained through the National Extended Household Survey (ENHA) and the Continuous Household Survey (ECH) show an Afrodescendent population of 9.1% and 10.6%, depending on the year under consideration. Data from ENHA 2006 indicated that 9.1% of the population reported having Afro or Black ancestry, while in the ECH it reached 10.6% in 2008, 9.9% in 2010 and 9.4% in 2011, to mention a few years.
21. Research based on the 2011 Census², as well as most of the studies that analyze the living conditions of Afro-descendants, coincide in pointing out the disproportionate poverty that characterizes this population. Poverty is directly related to levels and patterns of employment, as well as inequalities and processes of discrimination in society.
22. Regarding Afro-descendant women, ethnic and gender inequalities interact with each other and are strengthened by other social determinants, generating structures of social exclusion that strongly affect patterns of labor insertion and poverty³.
23. There is also a strong association between the variables Race-ethnicity, Territory and Unsatisfied Basic Needs, which places the Afro-descendant population, particularly women, in a particular condition of violation of their rights.

III.1 Education

24. The most visible and deep manifestation of inequality between Afro-descendants and non-Afro-descendants is related to participation and educational performance. Studies to date indicate that although successive generations of Uruguayans accumulate more years of study, the gaps between the Afro and non-Afro populations remain steady or experience very small improvements⁴. As well, the average number of years spent in the education system for people of African or Black descent is below that observed among people of white descent in all ages over 15 years. Moreover, the difference by descent is greater than the difference by gender⁵.
25. This inequality perpetuates discrimination and has an impact on access to quality jobs, housing, wage gaps, among others, to the detriment of the Afro-descendant population.
26. One out of every two non-Afro youngsters aged 18 years have dropped out of formal education, but among young Afro-descendants this proportion is two out of three⁶. For every Afro-descendant child attending a private primary school setting, there are 13 non-Afro-descendant children who do⁷.
27. Uruguay has not complied with the recommendation of the CEDAW Committee of 2008 (CEDAW/C/URY/CO/7, para. 33) regarding the implementation of special temporary measures to reduce and eliminate school drop-out among Afro-young women.
28. The absence of public policies for the access and permanence of the Afro-descendant population, especially the young people, to quality educational establishments

² Cabella, W., Nathan, M., y Tenenbaum, M. (2013). *Atlas Sociodemográfico y de la Desigualdad en Uruguay, Fascículo 2*. Universidad de la República (UDELAR).

³ Ibidem

⁴ Bucheli, M. y Cabella, W. (2007), *El perfil demográfico y socioeconómico de la población uruguaya según su ascendencia racial*, Instituto Nacional de Estadística, Montevideo.

⁵ Cabella, Nathan y Tennbaum, *op. cit.*

⁶ Ibidem.

⁷ Ibidem.

negatively affects school performance and encourages the abandonment of the education system.

29. This situation is particularly complex for women in education. Specialization studies and careers are chosen with a clearly identifiable gender bias. Women focus on activities linked to their stereotyped roles of care giving, for which they are perceived to show greater natural abilities. However, this is not useful when entering the job market, even for the most educated women. The weight of family life, domestic workload and care giving increases discrimination and difference in wages.

Recommendation.

30. That the State urgently adopts special measures to reduce school and student dropout, encouraging other careers in addition to those in the social sciences.
31. That the State adopts temporary special measures to reverse student dropout by training teachers to adequately address racism and racial discrimination, sexual orientation and gender identity.

III.2. Cultural Stereotypes

32. There have been no sustained public campaigns to modify the structural patterns of discrimination against women in general and particularly women of African descent.
33. The State does not demonstrate a firm response to public demonstrations of denial of racism and racial discrimination in the country. For example, upon the firm denial, in a column on the newspaper with the highest print-run in the country, of the racial factor in work inequality of Afro-descendant women⁸, the state's response⁹ by the Honorary Commission Against Racism, Xenophobia and all other forms of discrimination merely mentioned international existing commitments, overlooking strong available data on discrimination against people of African descent that the state owns.
34. Even though the national and international social imaginary does not relate racism and racial discrimination to Uruguayan society, the cultural reality and daily life experience of Afro-descendants in Uruguay shows that both are deeply rooted.

Recommendation

35. That the State implements sustained campaigns to modify discriminatory social cultural patterns about Afro-descendants, considering General Recommendation No. 25 of the Committee.

III.3 Employment

36. Regarding employment, Afro-descendant population is underrepresented in managerial, decision-making or senior positions. According to research conducted in 2013 in a sample of 6,787 people in high positions at political institutions, private companies and civil society organizations, 51 people self-identified as Afro-descendants, which represents 0.8% of the total. Of these, 42% work at civil society organizations, trade unions, political parties; 35% in the public sector and 22% in private companies. The study revealed that the participation of Afro-descendant is clearly marginal in private companies (0.2%), the media (0.3%) and the State (1%)¹⁰
37. The education gap is not a sufficient explanation for inequality in employment, thus it has been pointed out that the unexplained factors are racial discrimination and racism.
38. Consistent with the indications of the IACHR in its report, it can be said that in Uruguay "employers routinely discriminate against Afro-descendant people in sales

⁸ Faig, F. (August 21, 2016). Cosas de negros. El País. Available at <http://www.elpais.com.uy/opinion/cosas-negros.html>

⁹ CHRXD (2016). Cosas de la Sociedad uruguaya. Available at <http://www.comnodiscriminacion.uy/2016/08/cosas-de-la-sociedad-uruguaya.html>

¹⁰ Factum Survey 2013. "Cargos de Alta Jerarquía". Recovered from www.afrodescendientes-undp.org/FCKeditor_files/File/Uruguay3.pdf

and managerial positions, using terms like 'good presence' to express their preference for white candidates"¹¹

39. Black women work low skill and low pay jobs. 12.6% of employed Afro-descendants work in domestic service compared to 7.0% for the overall population¹². In this sector, 99.4% of workers are women, with high informality.
40. The salary gap between women and men is 26.3% less for women in general, but this gap increases for Afro-descendant women and men.
41. In turn, the gap between unemployment rates of Afro-descendant and non-Afro-descendant women escalates by 4% for the former (12% of Afro-Uruguayan women and 8% of non-Afro-Uruguayan women are unemployed). These data indicate that black women experience significant inequalities as a result of being subject to both racial and gender discrimination¹³
42. Uruguay shows a sustained rate of 16/1000 of pregnant teenagers in the age group of 14 to 18 years. Child pregnancy occurs in the range of 10 to 14 years, as a result of sexual abuse and incest, which reaches 165 pregnant girls in 2015¹⁴.
43. Afro-Uruguayan adolescents have a higher level of childbearing than non-Afro-Uruguayan adolescents, which adversely affects their educational and life projects, further decreasing their chances of obtaining better qualified employment.
44. No focused policies have been adopted to stop educational dropout and teenage pregnancy in order to promote better employment prospects.
45. Afro-descendant Women Unit of the Ministry of Social Development has not implemented public policies aimed at addressing the reality of exclusion and poverty of these women.

Recommendation

46. That the State allocates human and financial resources to the Afro-descendant Women Unit of the Ministry of Social Development for the implementation of targeted policies to reverse the conditions of inequality described in this report.
47. Special temporary measures adopted by Law No 19.12, of 2013 and its Regulatory Decree 144/14, which provides for a mandatory quota of 8% for Afro-descendant population in public employment as well as student scholarships, do not appear to have favorably impacted the employment and educational inequalities suffered by the Afro-descendant population.
48. In 2014, from a total of 13,186 people who obtained public jobs (at national or provincial bodies), only 140 were Afro-descendants, of which 65% are male¹⁵. The jobs are low skilled, mainly in the Ministry of Defense. Only two provincial governments have complied with the employment quota of 8%¹⁶.
49. The National Institute of Employment and Professional Training (INEFOP) is required to allocate and 8% quota for Afro-descendant population in its various training and qualification programs. INEFOP has not complied with this obligation.

¹¹ IACHR (2011). *The situation of people of African descent in the Americas* (OEA/Ser.L/V/III.Doc.62. para. 48).

¹² Ministerio de Trabajo y Seguridad Social (2013). Trabajo Doméstico e impacto de las políticas públicas en Uruguay. Recuperado de <http://www.mtss.gub.uy/documents/11515/034a0653-5549-468a-9bc5-81ca99fbbdc1>

¹³ Cabella, W., Nathan, M., y Tenenbaum, M. (2013). *Atlas Sociodemográfico y de la Desigualdad en Uruguay, Fascículo 2*. Universidad de la República (UDELAR).

¹⁴ Embarazo infantil: 169 niñas embarazadas por año en Uruguay (declaraciones de la Subsecretaria de Ministerio de Salud) (4/4/2016). Subrayado. Recuperado de <http://subrayado.com.uy/Site/noticia/54769/embarazo-infantil-169-ninas-embarazadas-en-uruguay-porano>

¹⁵ Observatorio de Gestión Humana del Estado (2015). Ingreso de personas afrodescendientes en el estado 2015 (Ley 19.122). Recuperado de https://www.onsc.gub.uy/onsc1/images/observatorio/documentos/2015/INFORME_AFRO_2015.pdf

¹⁶ Ibidem.

50. While all agencies included in Law No. 19122 are required to submit a report to the Honorary Commission against Racism, Xenophobia and Other Forms of Discrimination about their adopted measures, two years after adoption of the law reports have not been submitted.

Recommendations.

51. That the State implements the monitoring and accountability reporting for compliance with law No 19122.
52. That the State assesses the impact of the implementation of these regulations on eliminating or reducing the employment and salary gap to the disadvantage of the Afro-descendant population.

IV. RELIGION

53. While Uruguay is a secular state, this does not justify the absence of the state in regulating the different religious practices and ignoring existing religious discrimination in the country, in particular the persistent prejudices against religious manifestations of most of the population of African descent.
54. Public disqualification of the religious practices of African origin by leaders of other religious expressions, such as new evangelical churches, is common. Similarly, it is common for the public to associate the African religions with antisocial practices (witchcraft, illegal slaughter of animals, abuse of good faith, etc.)
55. In September 2016, a provincial prosecutor was denounced by her colleagues and personnel because they felt threatened by her threats to harm them with "macumba", a term popularly associated with the rites of the Umbanda religion. Several media informed of her removal from office for that reason, assuming that these threats were suitable to cause fear of harm¹⁷.

Recommendation

56. That the State implements sustained campaigns to modify discriminatory socio-cultural patterns towards religions of African origin and its practitioners, taking into account General Recommendation No. 25 of the Committee

V.- LGBTI Persons

57. The Uruguayan state lacks regular demographic studies that record the sexual orientation and gender identity of persons and that allow to know their population characteristics and access to rights. However, in the light of section III of this report, we can assume that Uruguay is not alien to "the high levels of discrimination and violence against lesbian, gay, bisexual and transgender (LGBT) people of African descent in America"¹⁸.
58. The first Census of Trans Persons¹⁹ conducted by the Ministry of Social Development of Uruguay in 2015 showed that only 17.6% of trans people are older than 50 years, compared to 30% for the total population (Census 2011, INE), which confirms a substantially lower life expectancy for this population group. 58% of those surveyed reported having been discriminated against by a member of their family and the average age of abandonment of the family home is 18 years²⁰. 67.6% performed or had performed sex work at some point in their life²¹.

¹⁷ "Recomiendan degradar a fiscal que amenazó con hacer macumba a ayudantes" (27/09/2016). El Observador. <http://www.elobservador.com.uy/recomiendan-degradar-fiscal-que-amenazo-hacer-macumbaayudantes-n976949>

¹⁸ IACHR (2015). Violence Against LGBTI Persons in the Americas (OAS/Ser.L/V/II. Doc. 36)

¹⁹ Ministerio de Desarrollo Social (2016). Transforma 2016. "Visibilizando realidades: Avances a partir del Primer Censo de personas trans". Documento base. Disponible en: http://www.mides.gub.uy/innovaportal/file/66572/1/doc_transforma_2016-nap01.pdf

²⁰ Ibidem.

²¹ Ibidem.

59. As for the exercise of the right to gender identity regulated by Law No. 18620, only 37% of people have actually changed or are in the process of changing their name or registry sex and in their identification documents²².
60. Likewise, the persons surveyed have a high level of discrimination in the educational system consisting of various forms of verbal, physical and segregation attitudes. In particular, discrimination from educators and teachers, in the case of primary school is 19% and in secondary school exceeds 20%²³.
61. Given these worrying indicators, and in light of the statistics of the Afro-descendant population in general, we can affirm that Afro-descendant trans people are located in an intersection of conditions that results in a very significant violation of their rights.

Recommendations.

62. That the state compiles statistical information disaggregated by sexual orientation and gender identity, in addition to ethnicity and race, in order to know the living conditions of groups crossed by multiple mechanisms of discrimination and, consequently, to formulate public policies to transform those conditions.
63. That *Ley Integral Trans* (Comprehensive Trans Law), which is currently being constructed by the National Coordinating Council for Public Policies of Sexual Diversity of the Executive Branch, incorporates the ethnic-racial perspective.

VI. INDIGENOUS POPULATION

64. According to the Household Surveys performed by the Uruguayan National Institute of Statistics and Census (INE), the population who self-identified as having indigenous ancestry raised from 0.4% in 1996 to 3.8% in 2006. Moreover, according to preliminary data produced by the 2011 National Census, 4.9% of the Uruguayan population (159.324 people) claims to have indigenous ancestry. Although Uruguay has voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples, and has subscribed and ratified the international human rights treaties, the State has not adopted, neither on the facts, nor on the law, any administrative or any other kind of action to ensure the compliance and enforceability of the indigenous people's rights.
65. This population remains invisibilized, through the persistence of prejudice and stereotypes, with a prevailing denial of its existence. This is evidenced by the State's assertion on its report to this same Committee, stating that historically, population with indigenous ancestry has not been recognized.
66. Out of the 159,324 people who self-identified as having indigenous ancestry on the 2011 National Census, 87,162 are women. Nevertheless, the State does not include these women's perspective on their plans, programs and gender equality spaces (e.g., the National Institute of Women).
67. The Honorary Committee against Racism, Xenophobia and Any Other Kind of Discrimination (CHRXD), created by law N°17.817, is competent to receive complaints or allegations, file reports and proposals for public policies which promote the indigenous population's rights. Currently, out of the 3 people who represent the civil society in this Committee, there is no indigenous representative.

Recommendations.

68. That the State includes women with indigenous ancestry on the Institutional Mechanisms
69. That the State implements, within the CHRXD, a permanent space for direct communication with the indigenous organizations, and other discriminated

²² Ministerio de Desarrollo Social (2016). Transforma 2016. "Visibilizando realidades: Avances a partir del Primer Censo de personas trans". Documento base. Disponible en: http://www.mides.gub.uy/innovaportal/file/66572/1/doc_transforma_2016-nap01.pdf

²³ Ibidem.

groups, to fulfill its duty of fighting against racism, xenophobia and all kinds of discrimination.

70. Education Law No 18437 establishes on its purposes to promote the development of a national identity based on the contributions of Afro-descendants, indigenous, "criollos" and Europeans, as well as the plurality of cultural expressions. Law No 18.589 declares April 11th as the commemoration "Day of the *Charrúa* Nation and Uruguayan Indigenous Identity". The State has committed to disseminate the Salsipuedes events, as well as the Indigenous Culture of Uruguay.
71. However, the previously exposed norms have only taken care of telling the historical facts, the indigenous population "legacy", leaving aside the existence of the current population, their needs and specificities.
72. Moreover, the historical events that took place in Salsipuedes, which meant the elimination of the indigenous population, either by physical suppression or their relocation to other countries as servants, remain invisibilized.

Recommendations.

73. That the State harmonizes the teaching of the historical indigenous legacy with the teaching of the current existence of indigenous descendants.
74. That the State disaggregates in its records the indigenous women on rural areas, specifying and recognizing their condition of head of the household, as well as their prominent role in the Food sovereignty in the production scenarios.
75. We reiterate to the Uruguayan State the urge to ratify the International Human Rights Treaties that contribute to decrease inequality, as well as economic and social disadvantage of minorities (such as O.I.T.'s Agreement N°169).

VII.- RACIAL EQUITY MECHANISMS

76. In her report on mechanisms of racial equity in Uruguay 2004-2014²⁴, expert Diana Prado points out that "The vast majority of mechanisms of ethnic-racial equity are spaces that civil society pushed for and advocated for its implementation and where the government offered limited support. This was reflected in the lack of capacity to implement plans and projects due to lack of budget, sometimes the impossibility of having an own space for the mechanism within a state office and even activists providing a public service, but without being officially public servants, or persons who performed work ad honorem".
77. Fragmentation in multiple equity mechanisms without coordination shows a lack of political will to advance concertedly on racial equity across the state in its policies.

Recommendations.

78. That the state adopts a public policy of racial equity on the basis of which it is possible to articulate and coordinate the various mechanisms of racial equity, both existing and future, to guarantee the enforceability of the rights protected by the Convention.
79. That the State allocates the necessary financial, human and infrastructure resources to these mechanisms so that they can fully carry out their functions.

²⁴ Prado, D. (2015). *Sistematización de mecanismos que promueven la incorporación de la dimensión étnico-racial en las políticas públicas en Uruguay (2004-2014)*. PNUD y Embajada de Suiza en Uruguay. No disponible en línea.

VIII. ACCESS TO JUSTICE

80. Uruguay recorded no convictions for acts of racial discrimination and racial violence, fact that by itself does not imply the absence of racism. Of particular concern is the lack of training of justice system operators to detect and investigate racism and discrimination according to the Convention and the General Recommendations of the Committee.
81. In the context described of exclusion of Afro-descendant and indigenous population, it is evident that access to justice as available justice is far from being achieved.
82. The Judiciary branch has not included the ethnic-racial dimension in its Strategic Plan against Violence 2014 -2019. Nor does it include its study as mandatory or as merit for promotions and performance evaluation in different subjects of its officials.

Recommendation

83. That the State trains and sensitizes justice system operators and police personnel in the manifestations of racial discrimination, including compulsory study in the curriculum.
84. That urgent action is taken to reverse the reality experienced by the black population using, for example, national radio and television to condemn these practices.
85. In notorious cases of alleged physical violence with a strong component of racial hatred, judicial and prosecutorial acting magistrates have criminally prosecuted those responsible under charges of injury, without giving the reasons why they consider that these were not racial discrimination offenses. This would allow to visibilize when we face a criminal conduct of racial discrimination or incitement to racial violence.
86. The structural conditions of poverty and racial exclusion represent a state of violence, visible but ignored.
87. The Criminal Code in force and the draft new Code being studied by Parliament, lack a perspective of human rights and international standards of protection of rights, with strong patriarchal, sexist and discriminatory roots.
88. While the Penal Code sanctions in art. 149a the "incitement to hatred, contempt or violence against persons because of their skin color, race, religion or national or ethnic origin, sexual orientation or gender identity" and art. 149 ter punishes the commission of "acts of moral or physical violence or contempt against people because of their skin color, race, religion or national or ethnic origin", the spread of theories of racial superiority or inferiority is not penalized (Recommendation 12 of the Committee).

Recommendations

89. That the State harmonizes its penal legislation with the Convention and international human rights standards.
90. That the State penalizes the dissemination of theories of racial superiority or inferiority, in compliance with the recommendation of the Committee in 2011.

IX.- PERSONS DEPRIVED OF LIBERTY

91. There are no statistics of black women in prison, nor of the sexual orientation or gender identity of imprisoned persons. The high number of persons deprived of liberty -10,416 people, of which 617 are women with 59 children- is a source of concern. Judicial culture includes a misuse of preventive detention, for which Uruguay has received observations from international organizations. In 2011, the Inter-American Commission on Human Rights urged Uruguay to "promote a change in culture and established judicial practice, to establish a true paradigm shift in the understanding of the origin and necessity of preventive detention". It is clear that this practice will not be reversed if other state agencies do not ensure responsiveness to support and monitor people under provisional or early release.
92. Uruguay has one of the highest rates of prisonization, with 279 people per 100,000, behind the United States and Chile.

93. Discrimination arises long before deprivation of liberty, is aggravated during it and perpetuated in the stage of social reintegration. The bias of the police and criminal systems "label" the most vulnerable populations as "criminals"²⁵
94. The First National Census of Inmates of Ministry of the Interior (MI) and the University of the Republic (UDELAR) did not appraise black population, though it did showed inmate population is mostly composed of young men, with low educational level, and poor employment histories.²⁶
95. Meanwhile, research conducted in 2010 by Servicio de Paz y Justicia (SERPAJ) and Observatorio del Sistema Judicial of Fundación Justicia y Derecho (OSJ) found that within the prison system, the same discriminatory mechanisms are reproduced and deepened, of which racism is a very important component.
96. This research did include the question of racial ethnic perception, finding a percentage of 27,3% inmates that self-identify as having African or black ancestry, 13.6% consider it their primary ancestry. Contrasted to the analyzed data from the 2011 Census, this figure shows a worrisome rate. If the data of low education, poverty and territory are added, the existing conditions of structural racial discrimination are evident²⁷.

Recommendation

97. That the State collects sufficient, reliable and public statistical data for the variables Ethnicity / Race / Gender in prisons.
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98. The high level of prison violence is a source of concert. Until October 2016, 30 prisoners have died, 4 have committed suicide, 4 have died of "natural causes", 2 "by accident", and there is no information on the cause of one of the deaths.
99. The Parliamentary Commissioner for the Penitentiary System said that the measures taken by the state to combat overcrowding and leisure of the prison population, "are on the right track" but is necessary to speed up these processes to create change. Also, the Commissioner said that it is a problem of a "structural deficiency of the penitentiary system" and that while "it was much improved in recent years" is still "far from the minimum levels that can be expected"²⁸.
100. In September 2016, contrary to the recommendation of the CEDAW Committee²⁹ and modifying a good practice, the State moved 30 women who were with their children in an open prison regime, to Detention Unit No 5, which holds more than 300 women inmates, ignoring if among them are Afro-descendant women. The infrastructure and sanitary conditions are deficient, with a high level of violence against and among women deprived of liberty.³⁰

Recommendation

101. That the State, as guarantor of persons deprived of liberty, speeds up the measures to achieve humane conditions in prisons, to allow progressive rehabilitation.
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²⁵ Vigna, A. (2011). "Hacia un Plan Nacional contra el Racismo y la Discriminación. Área temática: Discriminación hacia personas privadas de libertad y liberados". Available at

http://www.lnae.gub.uy/innovaportal/file/10904/1/informe_privados_de_libertad.pdf

²⁶ Ibidem.

²⁷ Project "Hacia una política de estado en privación de libertad: Diálogo, recomendaciones y propuestas" SERPAJ/OSJ, pp. 103, 104, Available at www.serpaj.uy

²⁸ "Cárceles: 30 muertos en lo que va del año" (08/09/2016). Telenocheonline. Available at www.telenocheonline.com/sociedad/carceles-30-muertos-en-lo-que-va-del-ano.html

²⁹ CEDAW/C/URY/CO/8-9 Recommendation 44

³⁰ Informe 049/MNP/2015, Institución Nacional de Derechos Humanos y Defensoría del Pueblo, www.indh.gub.uy

ANNEX

Links to relevant journalistic pieces

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