



# URUGUAY: STEADY PROGRESS, PERSISTENT DEBTS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC  
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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Uruguay in January-February 2019. In it, Amnesty International evaluates the implementation of recommendations made to Uruguay in its previous UPR, assesses the human rights situation on the ground, and makes a number of recommendations to the government of Uruguay to address the human rights challenges mentioned in this report.

Amnesty International is concerned that Uruguay has not abolished Law 15,848 (1986) on the Expiration of Punitive Claims of the State, which has led to impunity for crimes under international law and serious human rights violations committed in the recent past. In addition, prison conditions in Uruguay still fail to meet minimum international standards, with a high rate of inmates waiting for sentence.

With regard to gender-based violence, Amnesty International welcomes the adoption of Law 19,580 as an important step towards ending violence against women and girls. However, its implementation requires strong government commitments.

Amnesty International also raises concerns about the challenges faced by Uruguay in the implementation and effective protection of human rights, as recognized in the various legislative reforms carried out in recent years.

## FOLLOW UP TO THE PREVIOUS REVIEW

At its previous UPR in 2014, Uruguay accepted all but one of the 188 recommendations it received from other states.<sup>1</sup> Amnesty International considers, however, that some of these recommendations have been only partially implemented, in particular those related to impunity for past human rights violations.

### IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Uruguay accepted two recommendations to continue to cooperate with the investigations into crimes under international law and serious human rights violations committed under the civil-military government in power between 1973 and 1985.<sup>2</sup> However, despite a few positive actions, truth, justice and reparation for victims of such crimes have not yet been achieved.

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<sup>1</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, 26<sup>th</sup> period of sessions, A/HRC/26/7, 4 April 2014, paragraph 123.

<sup>2</sup> A/HRC/26/7, recommendations 123.71 and 123.143 (Argentina and Ghana).

Moreover, in 2017, the Supreme Court of Justice, in contravention of international law, issued Judgments 680/2017 and 1925/2017 establishing once again a statute of limitations for crimes against humanity committed by state officials during the period of the civil-military government.<sup>3</sup>

## PRISON CONDITIONS

Uruguay has complied with recommendations to establish the National Preventive Mechanism, as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>4</sup> Uruguay also accepted a number of recommendations to improve conditions in prisons;<sup>5</sup> however, despite some measures adopted by the authorities in recent years to increase prison capacity, the prison system still fails to comply with Uruguay's international human rights obligations. Overcrowding continues to be cause of concern in some prisons,<sup>6</sup> and, according to an official report, in 30% of prisons the levels of violence and non-compliance with minimum standards may constitute cruel, inhuman or degrading treatment.<sup>7</sup>

## GENDER-BASED VIOLENCE

In line with recommendations Uruguay accepted during its second UPR,<sup>8</sup> Parliament approved the draft Law on Gender-Based Violence against Women (*Ley de Violencia hacia las Mujeres Basada en Género*, No 19,580) on 13 December 2017. Although the law is an important step and complies with various recommendations made by international bodies,<sup>9</sup> there are structural shortcomings, such as lack of budget, lack of training of justice officials, and poor victim support services. These deficiencies are not addressed by current policies and require further measures by the government beyond the legislative efforts.

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<sup>3</sup> See Amnesty International Uruguay, “*Una vez más Uruguay viola sus obligaciones de derecho internacional*”, 21 November 2017, available in Spanish at: [www.amnistia.org.uy/uruguay-una-vez-mas-uruguay-viola-obligaciones-derecho-internacional/](http://www.amnistia.org.uy/uruguay-una-vez-mas-uruguay-viola-obligaciones-derecho-internacional/)

<sup>4</sup> A/HRC/26/7, recommendations 123.16 (Burkina Faso), 123.17 (Serbia) and 123.18 (Spain)

<sup>5</sup> A/HRC/26/7, recommendations 123.72 (France), 123.73 (Greece), 123.74 (Maldives), 123.76 (Portugal), 123.77 (Russian Federation), 123.79 (Sweden), 123.80 (Turkey), 123.81 (United States), 123.82 (Uzbekistan), 123.83 (Australia), and 123.87 (Iran)

<sup>6</sup> See Amnesty International, Annual Report 2017/2018, Uruguay. Available at: [www.amnesty.org/en/countries/americas/uruguay/report-uruguay/](http://www.amnesty.org/en/countries/americas/uruguay/report-uruguay/)

<sup>7</sup> Parliamentary Commissioner for the Penitentiary System, “*Annual Report 2017*”, page 26

<sup>8</sup> A/HRC/26/7, recommendations 123.96 (Ireland), 123.102 (Senegal) and 123.105 (Sri Lanka)

<sup>9</sup> Economic, Social and Cultural Rights Committee, Draft Final Observations for the Fifth Periodic Review for Uruguay, E/C.12/URY/CO/5, 20 July 2017, Paragraph 16 (c); and Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Uruguay, CEDAW/C/URY/CO/8-9, 25 July 2016, Paragraphs 20(a) and 23

# HUMAN RIGHTS SITUATION ON THE GROUND

## IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

On 16 February 2017, a group calling itself “*Comando Barneix*”<sup>10</sup> used an anonymous e-mail platform to threaten to kill 13 individuals involved in the investigation of past crimes, including state officials, academics, researchers, human rights defenders, and the Prosecutor General of the Nation; the latter received further threats on 18 November 2017.<sup>11</sup> In both instances, the police investigation did not identify those responsible.

During the 162<sup>nd</sup> Extraordinary Period of Sessions of the Inter-American Commission on Human Rights (IACHR) in May 2017, the Uruguayan state was absent from two of the three hearings to which it was summoned, including the hearing on the role of the judiciary and human rights defenders in the context of transitional justice, and the hearing on transparency in the election of judges to the Supreme Court of Justice.

On 25 September and 4 December 2017, the Supreme Court of Justice issued Rulings 680/2017 and 1921/2017 on the unconstitutionality of Articles 2 and 3 of the Law of Restoration of the Punitive Claims of the State for crimes committed in application of State terrorism until 1 March 1985 (Law No. 18,831).<sup>12</sup> The rulings, based on appeals filed by persons initially found guilty of torture and enforced disappearance, respectively, re-enacted statutory limitations for crimes against humanity committed by state officials during the civil-military government between 1973 and 1985, invoking Uruguayan domestic law to justify the breach of the international obligations of the state.

During its 165<sup>th</sup> Period of Sessions, on 23-27 October 2017 in Montevideo, the IACHR expressed its regret that the Supreme Court of Justice had “issued a decision declaring unconstitutional the inapplicability of the statute of limitations for crimes against humanity perpetrated during the dictatorship; this runs counter to Uruguay’s international human rights obligations and to inter-American standards”.<sup>13</sup>

At the close of his visit to Uruguay in October 2017, the UN High Commissioner for Human Rights stated that “the country must address a series of challenges, such as [...] the continuing impunity for violations committed during military rule”, using human rights-based strategies and

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<sup>10</sup> The “command” is named after General (R) Pedro Barneix who was convicted in 2015 for a politically motivated murder committed during the military dictatorship.

<sup>11</sup> Diario El País, “Autoridades recibieron amenazas por procesamientos a militares”, 17 February 2017, available in Spanish at: [www.elpais.com.uy/informacion/autoridades-recibieron-amenazas-procesamientos-militares.html](http://www.elpais.com.uy/informacion/autoridades-recibieron-amenazas-procesamientos-militares.html)

<sup>12</sup> See Amnesty International Uruguay, “*Nuevo fallo de la Suprema Corte viola el derecho internacional*”, 16 February 2018, available in Spanish at: [www.amnistia.org.uy/uruguay-nuevo-fallo-la-suprema-corte-viola-derecho-internacional-2/](http://www.amnistia.org.uy/uruguay-nuevo-fallo-la-suprema-corte-viola-derecho-internacional-2/)

<sup>13</sup> Inter-American Commission on Human Rights, *IACHR Wraps Up 165th Regular Session in Uruguay*, 27 October 2017, available at: [www.oas.org/en/iachr/media\\_center/PReleases/2017/168.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/168.asp)

ensuring that “the Government, Congress and, very importantly, the judiciary, uphold and implement the country’s obligations under international human rights law”.<sup>14</sup>

## PRISON CONDITIONS

In recent years, the government has taken some positive measures to address prison overcrowding, such as the construction, in 2017, of a new prison complex in Punta Rieles, Montevideo, with a capacity for 1960 inmates. The prison population has fallen to 1.03 inmates per individual capacity, i.e. below the level of “overcrowding” which is set at 1.2.<sup>15</sup> However, because the technical criterion used to define “individual capacity” has not been defined, it is not possible to determine if it provides for a decent and habitable space, in line with international standards. Additionally, 69.2% of inmates are still awaiting sentencing,<sup>16</sup> which places Uruguay at the 13<sup>th</sup> highest rate in the world, and at the 3<sup>rd</sup> highest rate in Latin America.<sup>17</sup>

With regard to living conditions in prisons, according to the Parliamentary Commissioner for the Penitentiary System, 30% of prisons are Type 1, which means that their “living conditions are very bad, with high levels of violence, minimum standards set forth in the Mandela Rules and in the Constitution are not met” and “therefore it can be said that [...] there is cruel, inhuman or degrading treatment”.<sup>18</sup> Another 45% of prisons have “insufficient conditions for social integration”.<sup>19</sup>

After his visit to Uruguay in March 2018, the head of delegation of the Subcommittee for the Prevention of Torture urged Uruguay “to allocate the necessary financial and human resources to guarantee that prisoners are treated in accordance with international standards, in particular the Mandela and Bangkok Rules.”<sup>20</sup>

According to the National Preventive Mechanism, of the 621 people aged 13 to 17 years who were institutionalized in Uruguay as of December 2016, 76% were in institutional confinement.<sup>21</sup> This contradicts the principle of exceptionality set forth in the Convention on the Rights of the Child.<sup>22</sup>

## RESPONSE TO THE MIGRATION AND REFUGEE SITUATION

Since 2013, there has been a marked increase in applications for resident visas, especially by Venezuelan, Cuban and Dominican Republic nationals. Entry visa requirements for Dominican nationals were enacted in July 2014, after a peak of residence requests between 2013 and 2014. Local organizations working with Dominican and Cuban migrants in vulnerable situations report that unrealistic requirements for entry visa approval, such as certificates of employment and bank

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<sup>14</sup> Office of the UN High Commissioner for Human Rights, *Uruguay: Zeid recognises human rights record, urges more efforts to tackle violations*, 27 October 2017, available at: [www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22318&LangID=S](http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22318&LangID=S)

<sup>15</sup> Parliamentary Commissioner for the Penitentiary System, *Annual Report 2017*, page 29

<sup>16</sup> Parliamentary Commissioner for the Penitentiary System, *Annual Report 2017*, page 18

<sup>17</sup> Institute of Criminal Policy Research, *World Prison Brief*, available at [http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All)

<sup>18</sup> Parliamentary Commissioner for the Penitentiary System, *Annual Report 2017*, page 25

<sup>19</sup> Parliamentary Commissioner for the Penitentiary System, *Annual Report 2017*, page 26

<sup>20</sup> Office of the High Commissioner for Human Rights, *Uruguay must improve prison conditions, says UN torture prevention body*, 20 March 2018

<sup>21</sup> III Annual Report from the National Preventive Mechanism, Uruguay, 2016, page 31

<sup>22</sup> Convention on the Rights of the Child, Article 37(b) and 40(4)

statements, have hampered family reunification and contributed to the emergence of dangerous migratory routes from these countries.<sup>23</sup>

People recognized as refugees in Uruguay are not entitled to specific assistance from the State. From 2010 to 2016, the Uruguayan Refugee Commission processed an average of only 20% of refugee requests per year, reaching a historic low of 1% in 2017.<sup>24</sup>

After passing Migration Law No 18,250 in 2008, the government approved a Framework Document on Migration Policy in 2016, which devotes one of its five sections to immigration policy objectives and strategic guidelines. However, to date there are no public plans, protocols or processes to form an adequate migration and refugee policy and, as a result, the institutional response is not articulated or consistent, both with regard to regular and irregular migratory situations.<sup>25</sup>

## MENTAL HEALTH

On 24 August 2017, Law No. 19,529 on Mental Health was enacted. However, despite the efforts and the dialogue process facilitated by the National Commission for a Mental Health Law (*Comisión Nacional para la Ley de Salud Mental*, CNLSM), which consists of a group of civil society organizations, the text approved and currently in force does not reflect the contributions of the CNLSM or comply with the recommendations of UN treaty bodies<sup>26</sup> and the National Human Rights Institution.<sup>27</sup>

For example, the use of the term “mental disorder” maintains and reinforces a psychiatric view of mental health, along with its associated stigmas. References to a single “treating physician”, instead of a “treating team”, for decisions like patient hospitalization and discharge, contradict the social and interdisciplinary approach to disability included in the Convention on the Rights of Persons with Disabilities, ratified by Uruguay in 2008, and undermine the right to the best available mental healthcare and the right to full inclusion and participation in the community. Additionally, the law does not reflect the recommendation made by the Committee on Economic, Social and Cultural Rights to guarantee the independence of the National Commission for the Control of Mental Healthcare,<sup>28</sup> and thereby hinders its ability to monitor that the human rights of patients are respected at all levels and to impartially review involuntary admissions, and thus contradicts the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.<sup>29</sup>

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<sup>23</sup> See Amnesty International, *Amnesty International recommendations for the Global Compact on Migration*, section 4, IOR 40/7708/2018

<sup>24</sup> Request of access to public information by Centro de Promoción y Defensa de los Derechos Humanos to the Ministry of Foreign Affairs, March 2018

<sup>25</sup> See Amnesty International Uruguay, *Annual Report 2017/2018, Expanded Uruguay chapter*, 2018, page 5, available in Spanish here: [www.amnistia.org.uy/wp-content/uploads/2018/02/Cap\\_Uruguay\\_ampliado\\_2017.pdf](http://www.amnistia.org.uy/wp-content/uploads/2018/02/Cap_Uruguay_ampliado_2017.pdf)

<sup>26</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Uruguay*, CRPD/C/URY/CO/1, 30 September 2016, Paragraphs 33, 34, 43, and 44. Economic, Social and Cultural Rights Committee, *Draft Final Observations for the Fifth Periodic Review for Uruguay*, E/C.12/URY/CO/5, 20 July 2017

<sup>27</sup> National Human Rights Institution, *Informe de la INDDHH sobre Proyecto de Salud Mental 2017*, [www.inddhh.gub.uy/informe-de-la-inddhh-sobre-proyecto-de-salud-mental/](http://www.inddhh.gub.uy/informe-de-la-inddhh-sobre-proyecto-de-salud-mental/)

<sup>28</sup> Economic, Social and Cultural Rights Committee, *Draft Final Observations for the Fifth Periodic Review for Uruguay*, E/C.12/URY/CO/5, 20 July 2017

<sup>29</sup> General Assembly resolution A/RES/46/119, on the protection of persons with mental illness and the improvement of mental health care, 17 December 1991, Principle 17

Within the framework of Law 19,529, the deadline for closing “mental asylums” and psychiatric hospitals is set for 2025, but so far a calendar and a procedure for closing and substitution by new structures has not been established.

## **GENDER-BASED VIOLENCE**

Amnesty International is concerned about the lack of basic measures to prevent and combat gender-based violence, such as 24-hour telephone and in-person counseling services for victims, with national coverage and free access; provision of shelter services for emergency situations; and decentralized inter-institutional services to provide comprehensive specialized assistance, such as police complaint reception, legal counseling, or relocation assistance.

It is a source of concern that in 2017 31 women and girls were murdered by their partners, former partners or relatives,<sup>30</sup> and in the first six months of 2018, 16 feminicides have been committed.<sup>31</sup> The persistent prejudices in judicial sentencing,<sup>32</sup> such as sexism and classism, and the lack of follow up of victim reports by the police, continue to constitute a strong obstacle to the fight against all forms of gender-based violence.

## **LGBTI RIGHTS**

Since its last UPR, Uruguay has implemented measures to promote and protect the rights of LGBTI persons. These include the creation of a National Council on Public Policies on Sexual Diversity in December 2015<sup>33</sup> and the filing before Parliament of a draft Comprehensive Law for Trans Persons in May 2017. The draft law includes affirmative action policies in employment and education, and replaces the current judicial process to change the name and gender in identification documents with an administrative proceeding. The draft is still under review.

In its National Report for the 2014 UPR, Uruguay made a voluntary commitment to “collect data and indicators on acts of violence perpetrated against transgender women”.<sup>34</sup> However, to date there has been no progress in the investigation of the murders of four transgender women committed in 2012.<sup>35</sup>

Further, despite accepting a recommendation to take measures to “prevent and protect against all forms of discrimination, violence and harassment related to sexual and gender identity”,<sup>36</sup> no significant action has been taken on this since the last review. There has also been no progress on drawing up a National Plan against Racism and Discrimination, contained in Uruguay's National Report for its first UPR in 2009<sup>37</sup> and referred to in many recommendations received during its second review.<sup>38</sup>

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<sup>30</sup> Source: Consultation to Gender Policies Division, Ministry of the Interior.

<sup>31</sup> Source: Consultation to Gender Policies Division, Ministry of the Interior.

<sup>32</sup> Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined eighth and ninth periodic reports of Uruguay, CEDAW/C/URY/CO/8-9, 25 July 2016, Paragraph 13 (e)

<sup>33</sup> Decree N° 321/015, 2 December 2015.

<sup>34</sup> A/HRC/WG.6/18/URY/1, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21. Uruguay*, III. Voluntary pledges and commitments, paragraph i.

<sup>35</sup> A/HRC/WG.6/18/URY/3, paragraph 34

<sup>36</sup> A/HRC/26/7, recommendation 123.67 (United Kingdom of Great Britain and Northern Ireland).

<sup>37</sup> A/HRC/WG.6/5/URY/1, paragraph 93.

<sup>38</sup> A/HRC/26/7, recommendations 123.22 (Côte d'Ivoire), 123.23 (Kazakhstan), 123.24 (Peru) and 123.25 (Bolivia).

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF URUGUAYTO:

### IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

- Abolish the Amnesty Law of 1986 (Law 15,848 on the Expiration of Punitive Claims of the State) and ensure that all those suspected of criminal responsibility for crimes under international law, including crimes against humanity, are brought to justice in fair trials;
- Ensure that amnesties, statutory limitations, principles of non-retroactivity of criminal law and other similar measures are not applied to crimes under international law, including crimes against humanity, and human rights violations committed during the past civil-military government between 1973 and 1985;
- Fully and promptly comply with the judgment in the case *Gelman v. Uruguay*, handed down in 2011 by the Inter-American Court of Human Rights.

### PRISON CONDITIONS

- Adopt a definition of “individual capacity” that ensures a decent and habitable space, and strengthen efforts to reduce overcrowding in prisons;
- Address the poor living conditions of prison inmates and ensure that they have opportunities for rehabilitation and integration, in line with recommendations made by national and international organizations;
- Reduce the application of measures of deprivation of liberty in the juvenile penal system to a minimum, and maximize opportunities for rehabilitation and integration.

### RESPONSE TO THE MIGRATION AND REFUGEE SITUATION

- Prepare an action plan to comply with the objectives set forth in section 4.3.2 of the Framework Document on Migration Policy in Uruguay;
- Grant a specific budget to migration and refugee policies to ensure fair and efficient processing of asylum and residence requests, and provide orientation, protection and assistance to migrants and refugees;
- Review the requirements for entry visa approval for migrants and their families in order to prevent unsafe migration and to facilitate family reunification.

### MENTAL HEALTH

- Modify the Mental Health Law (Law 19,529) to guarantee interdisciplinary mental health teams at all levels, establish an autonomous Human Rights Review Body on Mental Health, and eliminate references to “persons with mental disorders”;
- Provide an adequate budget for the effective implementation of the Mental Health Law;
- Promptly establish a schedule for the permanent closure of “mental asylums and psychiatric hospitals”, as provided for under the Mental Health Law (Law 19,529).

## GENDER-BASED VIOLENCE

- Assign adequate resources for the effective implementation of measures contained in the Law 19,580 on Gender-Based Violence against Women, especially regarding the provision of counseling, shelters and assistance to victims;
- Convene the National Advisory Council for a Life Free of Gender Violence against Women and the Observatory for Monitoring and Evaluation created by Law 19,580;
- Fully investigate gender-based violence against women and girls, and bring those responsible to justice.

## LGBTI RIGHTS

- Approve and implement the Comprehensive Law for Trans Persons;
- Fully investigate the four homicides of trans women that have remained unresolved since 2012, and bring those responsible to justice;
- Establish a monitoring mechanism for acts of violence towards LGBTI persons, and in particular towards trans people, that may inform the design of future prevention and protection actions;
- Develop and implement a National Plan against Racism and Discrimination that includes actions for the prevention and protection against discrimination based on sexual orientation, gender identity, and sex characteristics.

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