



## Human rights violations against LGBTINB<sup>1</sup> persons in Uruguay

Alternative report submitted to the

Committee Against Torture

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### Report submitted by:

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<sup>1</sup> Lesbian, gay, bisexual, trans\*, intersex and no-binary persons. Trans will be understood as encompassing all dissident sex and gender identities and expressions not mentioned in the previous acronym, including the bodies of *travestis*, transsexuals, and transgender persons.

Colectivo Ovejas Negras; Akahatá – Equipo de trabajo en sexualidades y géneros; Synergia – Initiatives for Human Rights; and the SRI – Sexual Rights Initiative, present the following alternative report to the Committee Against Torture. This report is aimed at contributing to the reviewing of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the State of Uruguay.

## **Introduction**

1. During the last years, Uruguay has developed significant advances in legislation, public policies and institutional policies<sup>2</sup>, aimed at guaranteeing the human rights of LGBTINB persons, abiding by its Constitution, which recognizes equality for all people<sup>3</sup>.
2. Even though, there are still incidents of discrimination, threats, and/or attacks based on sexual orientation, gender identity and/or sex characteristics which strongly aggravate the pervading exclusion of LGBTINB persons and prevent them from the full exercise of their rights. In particular, the sanitary emergency caused by the SARS-CoV-2 (covid-19) pandemic has deeply affected this population<sup>4</sup>.
3. Uruguay is considered a progressive State regarding its commitment to international covenants, both within the United Nations System and within the Inter-American Human Rights System. All these covenants have been ratified, but in spite of this they are seldom used as a framework for public policies or to substantiate legislation. This becomes evident in the case of some laws, as the ones above-mentioned, which are generally passed before putting them in agreement with international treaties. In other words, there is no clear review allowing to translate the international normative framework into national legislation. A similar process takes place regarding national laws: once they are passed, their provisions are implemented with delay, and when they are finally implemented they operate in an inefficient way.
4. This report focuses on situations affecting particularly LGBTINB persons and the violations of their rights and give an account on: (i) politics of memory linked to the human rights violations against trans persons during State terrorism; (ii) the failure to abide by the normative framework regarding recognition and respect of trans\* and non-binary identities in the course of police procedures; (iii) the conditions of imprisonment of trans persons deprived of liberty; and (iv) the violation of the right to identity of children born to lesbian or bisexual mothers.

## **Failure to abide by the normative framework regarding recognition and respect of trans\* and non-binary identities during the course of police procedures**

### **Articles: 11 and 16**

5. Law N° 17.817 Against Racism, Xenophobia and Discrimination (2005) declares of national interest the fight against all forms of discrimination and among them, in particular, discrimination based on sexual orientation or gender identity. It also modifies article 149 bis and ter of the Penal Code to include a provision criminalizing acts of

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<sup>2</sup> Among them, the most noteworthy are: Law N° 17.817 (2004) Against racism, xenophobia and discrimination; Law N° 18.246 (2008) of Cohabitation Union, which legitimates same-sex couples; Law N° 18.590 (2009) Code for Children and Adolescents, which allows adoption by same-sex couples; Law N° 18.620 (2009) Right to Gender Identity and to Change Name and Sex in Identity Documentation; Law N° 19.075 (2013) Egalitarian Marriage; Law N° 19.167 (2013) Human Assisted Reproduction Technologies; Executive Order N° 321/015 (2015) Creation of the National Coordinating Council for Public Policies on Sexual Diversity; Supreme Executive Order N° 189/017 (2017); Law N° 19.684 Comprehensive for Trans Persons (2018), repealing previous Law N° 18.620 of Gender Identity (2009).

<sup>3</sup> Constitution of the Eastern Republic of Uruguay (1967) art. 7 and art. 8.

<sup>4</sup> Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz: "Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic". A/75/258.

hatred, deprecation and other forms of physical or moral violence based on sexual orientation or gender identity.

6. Law N° 19.684 Comprehensive for Trans Persons (2018) encompasses issues of education, employment, health, housing, among others. Its article 1 recognizes the right to free development of life for trans persons in accordance to their own identity. It also repealed earlier Law N° 18.620 of Gender Identity (2009). In that law, a legal proceeding was required for the recognition of gender identity; in the new law, the recognition requires only an administrative procedure in the Civil Registry Office of the Ministry of Education and Culture (MEC).
7. The change of the national administration taking place at the same time of the coronavirus pandemic, lead to the closing of the MEC offices in the ground in the interior of the country. The administrative procedure for changing the registered name and sex could be carried out in those offices, due to lack of branches of the civil registry. The closing of these offices has left the right to gender identity and its recognition by the State not guaranteed in some parts of the country. In that sense, if trans and non-binary persons have not still started or finished their name change, or if they were not able to do it because of the reasons previously mentioned, they will not have personal identity documentation matching their gender identity and expression.
8. Article 50 of the recent Law N° 19.889 of Urgent Treatment (2020) modifies article 43 of Law N° 18.315 of Police Procedures (2008), establishing that every person ought to identify themselves by exhibiting a personal identity card as proof whenever police considers it necessary, whether or not they are being suspected of being committing a crime or felony. In case the person does not have such identification card or refuses to exhibit it, they will be taken to a police headquarters and subjected to a procedure which should last no longer than two hours. This creates serious problems for trans and non-binary persons if they have not still started or finished their name change, or if they were not able to do it because of the reasons previously mentioned, because there is a violation to their right to free movement in the public space and to have their gender identities recognized in the public space.
9. Different pieces of recent academic research were able to collect a series of testimonies of trans memory during the civic-military dictatorship and how certain practices are ongoing even after the return to democracy<sup>5</sup>. These researches give an account of sexual abuses by police officers as a common practice in the cases of arbitrary detentions of trans women on the grounds of their gender identity, detentions that lasted for extended and excessive time periods. Additionally, they were subjected to forced labor as a coercive mechanism in exchange for a shortening of their time of deprivation of liberty. They were also forced to destroy documentation (usually file cards) which contain relevant information about the illegal detention and probable forced disappearance of other persons<sup>6</sup>.

## Recommendations to the State of Uruguay

The State of Uruguay should:

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<sup>5</sup> Gutiérrez Nicola, G. (2020). Hacer la calle en dictadura. Memorias trans del terrorismo de estado en Uruguay (1973-1985). RELIES: Revista Del Laboratorio Iberoamericano Para El Estudio Sociohistórico De Las Sexualidades, (3), 56–85. <https://doi.org/10.46661/relies.4906>; Sempol, D. (2019). Memorias trans y violencia estatal. La Ley Integral para Personas Trans y los debates sobre el pasado reciente en Uruguay. Páginas, 11(27). <https://doi.org/10.35305/rp.v11i27.367>;

<sup>6</sup> This information emerges from interviews to trans persons conducted by Colectivo Ovejas Negras during 2018, within the framework of the campaign for the Comprehensive Law for Trans Persons. This report will not go deeper into these situations because, as we say in paragraph 21, they are already being addressed by a Commission on Reparations belonging to the National Coordinating Council for Public Policies on Sexual Diversity.

10. Review the protocols of action for detentions and how they are applied to guarantee there is no violation of rights based on gender identity or expression and/or sexual orientation.
11. Conduct systematic internal inquiries inside security forces aimed at completely eradicating the abuses perpetrated by them.
12. Implement effective mechanisms guaranteeing that these situations are reported and subjected to due legal procedures.

### **Imprisonment conditions of trans persons deprived of their liberty**

#### **Articles:11 and 16**

13. Since 2014, civil society organizations are trying to get some “affirmative action” measures implemented within the Uruguayan prison system aimed at the trans population deprived of their liberty. The objective is to address and/or remedy social inequality, discrimination and violation of human rights suffered by that population. The main goal is to revert an inequality embedded in the prison system due to its heterocentric, binary and androcentric rules. However, the general conditions in which deprivation of liberty takes place, and especially for trans persons, do not allow the development of such affirmative actions<sup>7</sup>.
14. In Uruguayan prisons, people are assorted according to a heteronormative and cissexist regime and therefore a person assigned male at birth will be considered to be a man and sent to a National Rehabilitation Center for men, and a person assigned female at birth will be considered a woman and sent to a National Rehabilitation Center for women. To manifest or express a gender identity dissident to this rule impedes access to decent conditions to serve time of deprivation of liberty respectfully of the gender identity of each person. Therefore, a trans man<sup>8</sup> would be imprisoned in a women’s prison and a trans woman<sup>9</sup> would be imprisoned in a special separate facility for trans women inside a men’s prison<sup>10</sup>. Currently, the only special facility for trans women inside a men’s prison in the whole national territory is the Unit N°4 “Santiago Vázquez” in the National Institute for Rehabilitation.
15. Trans persons deprived of their liberty see their social interaction with other detainees restricted because they are more heavily guarded due to violence and hostility towards them that are pervasive even inside the detention center. They are allowed shorter times in the patio and to transit open spaces and they have fewer opportunities to take part in group activities as well as lesser communication with the outside world. They can’t effectively access to support programs and educational and labor trainings while in the prison system due to lack of mobility logistic capacity inside centers, particularly custody. As a side effect, the fact that their interaction occurs only with their peers (that is, other trans persons deprived of liberty) in a unique facility rises the problem of the impossibility to separate persons who are having conflict among them.
16. In their daily life in prison, trans persons deprived of liberty are subjected to a range of situations which constitute violations of their human dignity and attack the reaffirmation of their gender. They are forbidden from getting or wearing clothes culturally not assigned to their biological sex, they get their hair cut short and they are forbidden from getting certain items for personal care and hygiene, because they are not considered necessary for their bodies. The result is that trans people are systematically forbidden from inhabiting their own bodies in accordance to their identity. In turn, lack of access to health care implies the interruption of hormonal treatments, not being able to access sex

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<sup>7</sup> Colectivo Ovejas Negras. Institutional archives, unpublished, 2020.

<sup>8</sup> A person born with female genitalia who does not identify as a woman. It should be noted that having been born female and being trans\* not always means to identify as a man (as we mentioned in footnote number 2).

<sup>9</sup> A person born with male genitalia who does not identify as a man. It should be noted that having been born male and being trans\* not always means to identify as a woman (as we mentioned in footnote number 2).

<sup>10</sup> Until not many years ago, trans women shared detention facilities with persons convicted of sex crimes.

reassignment or gender affirmation surgeries, not being able to receive care from specialists such as speech therapists for voice education, etc. These are key issues, because they do not have resources to express their identity beyond their biological body, causing serious mental health damages in this population.

### **Recommendations to the State of Uruguay**

The State of Uruguay should:

17. Watch over the physical, psychic and sexual integrity of LGTBINB persons deprived of their liberty. To that purpose, it should guarantee that they would be imprisoned in a facility appropriate for their gender identity, and access to education, training and recreation.
18. Guarantee access to quality comprehensive health care for all persons deprived of their liberty, with an emphasis on sexual health. This is especially relevant for the access to hormone treatments and/or sex reassignment, as key resources in reaffirming identity and strictly based in the needs manifested by the concerned person.

### **Politics of memory related to the violations of the human rights of trans persons during State terrorism**

#### **Article 14**

19. The Comprehensive Law for Trans Persons in its article 10 establishes that trans persons born before December 1975<sup>11</sup> are granted the opportunity to receive a pension as reparation if, due to their gender identity, they have been deprived of their liberty and/or have been subjected to state violence during the dictatorship and the following years of democratic transition. Although this mechanism acknowledges violence against trans bodies during this period, it grants only one kind of reparation, linked to a money payment for life, which is incompatible with other mechanisms of economic reparation for human rights violations during the same period of time, that is, during State terrorism<sup>12</sup>.
20. Within the framework of the Comprehensive Law for Trans Persons, and through the National Coordinating Council for Public Policies on Sexual Diversity<sup>13</sup>, a Commission on Reparations was created, tasked with receiving, processing and giving response to the applications for the above-mentioned pension. Since it was created up to December 2020, the Commission has received 198 applications, of which 123 were granted and 71 are under review<sup>14</sup>.
21. Physical and psychological violence against trans persons is commonplace in Uruguay and all over the world, as has been marked by several UN Committees<sup>15</sup> and also, systematically, by the UN Independent Expert on Sexual Orientation and Gender Identity. During 2018, in particular, during the parliamentary debates of the

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<sup>11</sup> The man who was then the National Director for Social and Cultural Promotion in the Ministry for Social Development, who chairs the National Coordinating Council for Public Policies on Sexual Diversity, explained that they established 1975 as time limit crossing over two data: 1) (feminine) trans persons were expelled from their homes when they were around 14 years old and Executive Order n° 690/80 (repealed through article 1 of Executive Order N° 109/005 of March 14, 2005) authorizing police raids, felt gradually into disuse since 1989. The limit in year 1975 emerges from putting the two data together: "Trans persons were already in the streets when they were 14 years old, being sexually exploited, and that's why we took 1989 as starting point and counted 14 years back and that's how we agreed on year 1975"; and 2) the provisions contained in articles 1 and 10 of the Comprehensive Law for Trans Persons. In turn, the National Census of Trans Persons yielded that the population of trans elders above 65 years is just a 2%, whereas in the general population old persons above 65 years constitute a 14%.

<sup>12</sup> For example, that is the case of Law N° 18.596 for Reparation to the Victims of Illegitimate State Action (2009).

<sup>13</sup> Creation of the National Coordinating Council for Public Policies on Sexual Diversity, Supreme Executive Order N° 189/017.

<sup>14</sup> Main data from the Commission on Reparations for Trans Persons 2020, institutional website of the Ministry of Social Development. Available at: <https://www.gub.uy/ministerio-desarrollo-social/comunicacion/noticias/principales-datos-comision-reparatoria-para-personas-trans-2020>

<sup>15</sup> CAT/C/URY/CO/3; CEDAW/C/URY/QPR/10; CCPR/C/URY/CO/5; CERD/C/URY/CO/21-23.

Comprehensive Law for Trans Persons, some members of the legislative branch issued public declarations calling the constitutionality of the law into question, especially its article 10 which establishes the scheme for reparations. A few days after the law was passed, representative Carlos Lafigiola turned to the mechanism of signatures gathering to call to a pre-referendum to repeal the law. The pre-referendum took place on August 4, 2019, but with no success<sup>16</sup>.

22. Less than a month after the law was passed, in Salto department, a 40-year-old trans woman was assaulted by three men who shouted at her “now you’re going to get the pension indeed”<sup>17</sup>, which ended with the woman being hospitalized and surgically intervened. Besides, this woman does not meet the requisites to apply for the pension because she was born after 1975.

### **Recommendations to the State of Uruguay**

The State of Uruguay should:

23. To set up a politics of reparations which, along with providing an economic reparation, also takes actions for symbolic reparation and for the building of trans memory, especially for those trans persons who were not able to report the human rights violations they suffered during the authoritarian period because they died before they could do so, as a consequence and effect of the violence unleashed over their bodies. Its key that public action be taken towards satisfying the need for recognition, as is established in the state normative, taking into account the vulnerable situation of trans persons, in particular the very low life expectancy of that population, a fact acknowledged by the State itself<sup>18</sup>.
24. To use the information gathered by the Commission on Reparations to establish memorial sites, as it is allowed by Law N° 19.641 for Declaration and Creation of Historical Memorial Sites for the Recent Past (2018). Until now, there is only one historical memorial site for sexual dissidents, that for gay and lesbian victims of the Holocaust, but there is none devoted to local memory, in spite of having learned about this issue through the economic reparations already being granted.

### **Violation of the right to identity of children of lesbian and/or bisexual mothers**

Article 16

25. Executive order N° 250/007 Rules to guarantee the right of the child to identity and to identification since birth (2007) makes it mandatory for parents to recognize their children born across the national territory within 10 working days after birth, therefore guaranteeing the right to identity and to be registered with a first name and a surname since the beginning of extra-uterine life.
26. The procedure can be filed in any Civil Registry Office, belonging to the MEC, located in national territory. However, when it comes to lesbian and/or bisexual mothers to recognize children born to them within their couple relationship<sup>19</sup>, the Civil Registry Office imposes an administrative obstacle and requires them to be legally bonded in marriage<sup>20</sup> for the children to be registered with two mothers, in spite of both legislations granting the same rights to the union. If they are not married, the child will be considered born to a single mother, the one who carried the pregnancy, and will be giving her family name

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<sup>16</sup> The Support Acts to the interposition of a referendum (or pre-referendums for a repeal) should gather signatures of 2% of persons in capacity to vote after 150 days of the normative being approved and reach a 25% in the stance of a non-mandatory consultation for a repeal, which becomes mandatory if the percentage is surpassed. In this case, they were not successful because they reached only 9,91% of support.

<sup>17</sup> Press release of the Salto Coordinating Committee for Diversity, November 7, 2018; press release of the National Human Rights Institution and the Department of Protection of Citizen’s Rights on the murder of Marcelo Roldán and the assault against a trans woman, November 11, 2018.

<sup>18</sup> The National Census of Trans Persons yielded that life expectancy for trans persons in Uruguay is 35 years. Ministry of Social Development, 2017.

<sup>19</sup> Law N° 18.246 of Cohabitation Union (2008).

<sup>20</sup> Law N° 19.075 of Egalitarian Marriage (2013).

only. This is not required to heterosexual couples when they go to those same offices to register their children, disregarding whether or not they have they bond legally recognized (be it through marriage or cohabitation union). In these cases, the sole willingness of the person (man) to declare himself as parent is sufficient for the child to be registered as his own and to be given his surname immediately, not calling into question the existence of a genetic relationship with the newborn. In fact, if a heterosexual couple is not married, two people acting as witnesses for the parentage will suffice.

27. When couples formed by two women want to register their children and they are not married, once the child is registered with the surname of the mother who carried the pregnancy, the other mother can begin an adoption procedure to be allowed to legally recognize her own child, but only if they have previously declared to be living under a cohabitation union<sup>21</sup> or if they get married between them after the birth of their child.
28. In 2018, a lesbian couple, mothers of two daughters, filed a writ of protection because the civil registry did not allow them to register the girls with both surnames on the grounds that they were not married. In that case, the judge ruled in favor of the women, who achieved the legal recognition of both of them without the requirement to be married. This decision was a landmark in the issue, but that notwithstanding marriage is still a requisite for the recognition of children born to a couple formed by women<sup>22</sup>.
29. To make this kind of differences when it comes to lesbian or bisexual women, in addition to a violation of the right of both of them to recognize their children and to take legal responsibility, constitutes a violation to the right of children to identity as part of a family. Moreover, in the case of death of the mother who carried the pregnancy or if the relationship ends and the couple separates, the children are left defenseless because the lack of legal recognition of one of the mothers leaves her exempted from any legal or economic responsibility that could have been demanded.
30. Besides legal recognition, the administrative procedure after birth takes place never acknowledges the possibility of children being born to two mothers, even though lesbian and bisexual women indeed have children through the provisions of Law N° 19.167 of Human Assisted Reproduction (2012). Across national territory, the Born Alive (or dead) Certificates that must be filled out by the practitioner assisting the birth, both in cases of institutional and home births, are electronic<sup>23</sup>. These forms do not offer the option to register two mothers: there is a space to be filled with data of the mother (the one who was pregnant) and another space for data of the father, which may be completed with data of another woman, but who in the certificate will be identified as “father”. Such electronic document automatically generates the registration of the child as a Uruguayan citizen, giving the child a unique civil identification (identity card), which is mandatory to be exhibited by the persons who will register the child as son or daughter in the Civil Registry Office.
31. Lack of recognition and institutional discrimination against lesbian and/or bisexual mothers in health centers was also evident during 2020, when a lesbian couple were prevented from entering to a routine obstetric echography as part of pre-natal controls<sup>24</sup>. In that opportunity, the mothers went to a health center (Hospital de la Mujer Dra. Paulina Luisi, Centro Hospitalario Pereira Rossell) as a couple going for a routine control, but the companion of the pregnant woman was told that pregnant women could not entry with companions due to the situation of sanitary emergency of SARS-CoV-2 (covid-19). Such a regulation violates the right of pregnant women to be accompanied

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<sup>21</sup> Law N° 18.246 of Cohabitation Union (2008).

<sup>22</sup> Press article in *Montevideo Portal*, October 3, 2018. Available at: <https://www.montevideo.com.uy/Noticias/Justicia-accedio-a-que-pareja-homosexual-pueda-inscribir-a-sus-hijas-con-los-apellidos-de-ambas-madres-uc697294>

<sup>23</sup> It is part of the system for vital statistics about pregnancies and children, Ministry of Public Health.

<sup>24</sup> Colectivo Ovejas Negras Observatory 2020 of Incidents of Discrimination based on Sexual Orientation, Gender Identity or Expression.

during pre-natal controls, echographies, labor, birth or C-section intervention and puerperium, a right still valid even during the pandemic situation<sup>25</sup>. The women agreed to comply by what they were told, but once inside the waiting room where pregnant women waited to have echographies, the pregnant woman who entered alone saw that most of the other women were accompanied by their male partners. It was an evident act of discrimination against lesbians, because they were not allowed to stay together during the echography while heterosexual couples were allowed to do so.

### **Recommendations to the State of Uruguay**

The State of Uruguay should:

32. To guarantee that lesbian and bisexual women are not victims of cruel, inhuman or degrading treatment or punishment when accessing health care and that their sexual orientation is understood, respected and addressed in a comprehensive way.
33. To guarantee non-discrimination by public servants when the identity of children born to lesbian or bisexual mothers is to be determined. To erase marriage as a pre-requisite for the recognition by the civil registry of children born to couples formed by two women, in accordance with national law.
34. To modify and monitor the tools for the registry of persons, making it possible in all the cases to include the affiliation of newborns to two mothers, one as biological mother with all the data related to pregnancy and birth, and the other as non-biological mother.

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<sup>25</sup> Resolution N° 11/020 Sanitary measures for pregnant women in relation to covid-19, National Board on Health, Ministry of Public Health, September 1, 2020.