

# URUGUAY

## Key human rights concerns

*Amnesty International  
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**AMNESTY  
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# INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of Uruguay in January - February 2014, Amnesty International assesses the implementation of a number of recommendations accepted by Uruguay during its previous review in 2009. Amnesty International is concerned that Uruguay has made little progress in reforming Law 15.848 (1986) on the Expiration of Punitive Claims of the State (the Expiry Law) which has led to impunity for past human rights violations. In addition, prison conditions in Uruguay fail to meet international standards.

With regard to sexual and reproductive rights, Amnesty International welcomes the adoption of Law No. 18,987 as a step towards ending unsafe abortions; however, in practice it could become an obstacle for women and girls in accessing legal abortions. The organization is also concerned about a series of killings of transsexual women and the failure by the authorities to hold those responsible to account.

Amnesty International also sets out a number of recommendations for Uruguay to address these human rights concerns.

# FOLLOW UP TO THE PREVIOUS REVIEW

During its previous review in 2009, Uruguay accepted all of the 88 recommendations made to it by other states.<sup>1</sup> Amnesty International considers, however, that some of these recommendations have been only partially implemented, particularly those pertaining to impunity for crimes committed under the past military and civilian regimes, and to prison conditions.

## IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

Uruguay supported recommendations to abolish laws leading to impunity for human rights violations committed during the military and civilian regimes in 1973-1985, in particular Law 15.848 (1986) on the Expiration of Punitive Claims of the State (*Ley de Caducidad de la Pretensión Punitiva del Estado* - also known as the Expiry Law) and to take steps to make progress in the investigations into these crimes.<sup>2</sup> Amnesty International considers that despite some positive actions, truth, justice and reparations for the victims of crimes of the past have still not been achieved. In October 2011, the adoption of Law 18.831 by Parliament was an important step towards tackling past impunity in stipulating that crimes against humanity are not subject to statute of limitations and thereby allowing the judiciary to prosecute crimes previously covered by the Expiry Law. However, in a later ruling in March 2013, the Supreme Court declared key articles of Law 18.831 unconstitutional in a major set-back to achieving justice for human rights violations committed between 1973 and 1985. In effect, the Supreme Court decision brought the Expiry Law back to life.

## PRISON CONDITIONS

Despite accepting recommendations to improve prison conditions, measures

taken by Uruguay in recent years fall short of fulfilling its international human rights obligations in this area.<sup>3</sup> Overcrowding in some prisons remains a concern, some aspects of prison infrastructure have not improved, and the healthcare provision in prisons remains inadequate, according to national and international bodies that monitor prisons.<sup>4</sup>

Amnesty International welcomes the appointment by Congress of the Board of Directors of the National Human Rights Institution (*Institución Nacional de Derechos Humanos*) in May 2012. The Institution has among its main tasks to function as the National Mechanism for the Prevention of the Torture, as established by the Optional Protocol to the Convention against Torture (OP-CAT).<sup>5</sup>

## PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS

In recent years Uruguay has taken some steps towards addressing impunity for past crimes (1973-1985). However, the country still needs to overcome serious obstacles to ensuring justice, truth and reparation for the victims of such crimes. One such obstacle is Law 15.848 (1986) on the Expiration of Punitive Claims of the State (the Expiry Law) which protects police and military personnel from prosecution for human rights violations committed before 1 March 1985.

In February 2011, the Inter-American Court of Human Rights found that Uruguay was responsible for the enforced disappearance, in 1976, of María Claudia García Iruretagoyena de Gelman and for the suppression and substitution of the identity of her daughter, María Macarena Gelman García. The Court ordered Uruguay to pursue investigations to clarify the whereabouts of María Claudia García Iruretagoyena de Gelman and to bring those suspected of criminal responsibility to justice. The Court further stated that “given its express incompatibility with the American Convention, the provisions of the Expiry Law that impede the investigation and punishment of serious violations of human rights have no legal effect and, therefore, can not continue to obstruct the investigation of the facts of this case and the identification and punishment of those responsible, nor can they have the same or similar impact on other cases of serious violations of human rights enshrined in the American Convention that may have occurred in Uruguay”.<sup>6</sup>

In October 2011, a Uruguayan court ruled that five former military officers who were already serving prison sentences, should be prosecuted for the aggravated murder of María Claudia García Iruretagoyena de Gelman. In March 2012, the government - in compliance with the Inter-American Court’s judgment – publicly recognized the state’s formal responsibility in the events.

Amnesty International is also concerned that in recent years the Uruguayan courts have used the crime of “kidnapping” or “abduction” rather than “crimes under international law” to prosecute cases of enforced disappearances committed in the 1970s. As the crimes of both “kidnapping” and “abduction” are subject to statute of limitations there is a serious risk that the perpetrators of these crimes may not be prosecuted and it is therefore crucial that they be prosecuted as

“crimes under international law” to which statutes of limitations may not be applied.

In May 2011, the Supreme Court concluded that two former military officers could not be charged with enforced disappearance because that crime was not incorporated into domestic law until 2006 and, according to the Court, could not be applied retroactively. Instead, they were convicted of aggravated murder – an ordinary crime - in connection with the deaths of 28 people and sentenced to 25 years’ imprisonment.<sup>7</sup>

The interpretation of the courts on the applicability of the statute of limitations to cases of enforced disappearances was challenged by Congress in October 2011 through the adoption of Law 18.831. The law established that the crimes committed during the 1973-1985 period were crimes against humanity as defined in human rights treaties ratified by Uruguay and that no statute of limitations or other legal instruments could be applied or declared. The decision by Congress, in effect, made the Expiry Law null and void.

Prior to this measure, in June 2011, President José Mujica had issued a decree revoking the decisions by former presidents under the Expiry Law, about which cases of alleged human rights violations could be investigated. The decree raised hopes that some 80 cases could be re-opened.

However, the hopes of victims and relatives were frustrated when the Supreme Court, in a judgement on 23 February 2013, overturned two key articles of Law.18.831. The Supreme Court formally maintains the possibility for judges to investigate and to prosecute those suspected of criminal responsibility for human rights violations, if there is sufficient admissible evidence. However, based on what AI considers to be a wrongful interpretation by the Supreme Court of the principle of legality, the ruling concludes that no crimes against humanity were committed by the past military governments (1973-1985) because they were made criminal under national law only in 2006, and therefore are subject to a statute of limitations. Amnesty International is concerned that, in practice, the Supreme Court ruling revives the provisions of the Expiry law and threatens to undermine any criminal investigation into human rights violations committed during the military and civilian regimes of the past.<sup>8</sup> The ruling also contravenes the 2011 judgement of the Inter-American Court of Human Rights of 2011 (see above).

In May 2013, in response to the latest judgment by the Supreme Court, the UN Committee on Enforced Disappearances stated that Uruguay “should ensure that enforced disappearances are investigated as such and that the perpetrators are punished for the offence irrespective of the time that has elapsed since the commencement of the criminal conduct”.<sup>9</sup>

## PRISON CONDITIONS

In recent years the authorities have taken a number of positive measures to tackle poor prison conditions, including closing down facilities with cruel and inhuman conditions of detention, such as “*Las Latas*” in Libertad Penitentiary where prisoners were held in metal boxes. They have also created the National Institute for Rehabilitation (*Instituto Nacional de Rehabilitacion*).

However, according to reports, in some prisons there continues to be a lack of appropriate healthcare and hygiene, and of access to clean water and fresh air.<sup>10</sup> The problems of overcrowding have not been effectively tackled by the authorities.

Over the six-year period 2006-2012, the prison population increased by around 40 percent. By October 2012, the number of people in either pre-trial detention or serving a prison sentence was 9,535 while the overall prison capacity was only 7,650 prisoners.<sup>11</sup> Prison facilities in the interior of the country present the highest levels of overcrowding.<sup>12</sup> One of the main factors contributing to overcrowding in certain prisons has been identified as the excessive use of preventive detention by the courts.<sup>13</sup>

Between 2006 and 2012 the women population in prisons increased by 75 percent from 379 to 665 women. According to a preliminary report by the UN Special Rapporteur on Torture after his visit to Uruguay in 2012, most of the women in prison are in a situation of "social abandonment" because they receive fewer visits than male inmates and find themselves in a more vulnerable situation.<sup>14</sup>

### SEXUAL AND REPRODUCTIVE RIGHTS

On 18 September 2012, Congress passed Law No. 18,987 according to which women and girls may terminate unwanted pregnancies within the first 12 weeks of gestation. The law establishes a mandatory five-day reflection period and a review by a panel of experts when voluntary abortion is requested. Abortion remains criminalised after the first trimester unless the pregnancy is a result of rape in which case abortion is legal up until the 14<sup>th</sup> week of pregnancy. The law also decriminalizes abortions beyond the first trimester in cases where the woman's health is at risk or where the foetus would not survive.

While Amnesty International recognizes that Law No. 18,987 is a step towards stopping unsafe abortions, the new requirements could become an obstacle to accessing legal abortions in practice. Women and human rights groups have expressed concerns at the apparent shortage of professionals to form interdisciplinary panels of experts both in Montevideo and the interior of the country. The high number of doctors who have declared themselves conscientious objectors – around 30 percent of doctors registered in the country according to information from the Ministry of Health - is another challenge in ensuring legal and safe abortions.<sup>15</sup> When a doctor does not want to provide a legal abortion due to their beliefs, pregnant women and girls are referred to other clinics or hospitals. Despite this measure, concerns have been raised that not enough resources have been put in place to ensure a quick response in such cases.

### KILLINGS OF TRANSEXUAL WOMEN

Amnesty International is concerned about the lack of justice in recent killings of transsexual women in Uruguay. According to official information from the Ministry of Interior there were five murders of transsexual women between 2011 and 2012: three of them in the Department of Canelones and the Department of Cerro Largo and two in the capital of Montevideo.<sup>16</sup> According to information received by Amnesty International only the case in the Department of Cerro Largo has led to the prosecution of the perpetrator. Amnesty International has been told by relatives and local organizations that the investigations into the other four killings are not progressing.

# RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

## **Amnesty International calls on the government of Uruguay:**

### *Impunity for human rights violations*

- To abolish the 1986 Amnesty Law (*Ley 15.848, de Caducidad de la Pretensión Punitiva del Estado*) and to ensure that the perpetrators of crimes under international law are brought to justice;
- To ensure that amnesties, statute of limitations, non-retroactivity of the criminal law, or other similar measures do not apply to crimes under international law or to human rights violations committed during the past military and civilian regimes (1973-1985) and to fully and promptly comply with the 2011 judgement of the Inter-American Court of Human Rights.

### *Prison conditions*

- To fully comply with the recommendations made by national and international bodies to address the problem of overcrowding in the prison system and the poor living conditions for inmates;
- To develop specific plans to support women prisoners to make them less isolated and less vulnerable;
- To fully establish the National Mechanism for the Prevention of Torture, under the Optional Protocol to the Convention against Torture, including by ensuring its autonomy and sufficient funds and resources, and by developing a detailed plan for its effective implementation.

### *Sexual and reproductive rights*

- To ensure adequate resources for the implementation of Law 18.987 for women and girls to access to their right to safe legal abortions;
- To ensure that the health authorities have in place an effective and accessible referral system in cases where health professionals, due to their beliefs, wish to avoid providing abortion services allowed by law;
- To ensure that neither the women who have an abortion nor the personnel who perform it are criminalized.

### *Killings of transsexual women*

- To carry out independent, impartial and effective investigations into the killings of transsexual women in Uruguay, respecting their identity and ensuring that those responsible are brought to justice;
- To ensure that crimes against transsexual women are investigated as hate crimes driven by transphobia;
- To gather comprehensive data and indicators on acts of violence perpetrated against transsexual women;
- To guarantee the safety and right to life of all people in Uruguay, regardless of their sexual orientation or identity.

## ENDNOTES

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<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 12<sup>th</sup> session, A/HRC/12/12, 4 June 2009, paragraph 78.

<sup>2</sup> A/HRC/12/12, recommendations 78.64-78.66 (Czech Republic, Colombia, Germany).

<sup>3</sup> A/HRC/12/12, recommendations 78.52- 78.60, 78.63, 78.68- 78.70 ( Canada, Azerbaijan, Portugal, Spain, Italy, Turkey, Netherlands, Belgium, Chile and Finland).

<sup>4</sup> Report of the UN Special Rapporteur on Torture following his visit to Uruguay, 2-6 December 2012 ( A/HRC/13/39/Add.2) and the 2012 Report of the Parliamentary Commissioner for Prisons in Uruguay.

<sup>5</sup> A/HRC/12/12, recommendation 78.39 (United Kingdom).

<sup>6</sup> Inter-American Court of Human Rights, case *Gelman v. Uruguay*, Judgment of February 24, 2011, para.232.

<sup>7</sup> Supreme Court of Justice, *case Gavazzo Pereira, José Nino y Arab Fernández, José Ricardo for 28 crimes of homicide*. Case 98/247/2006, 6 May 2011. See also a similar sentence in July 2011 in the *case Silveira Quesada, Jorge Alberto- Ramas Pereira, Ernesto Avelino- Medina Blanco, Ricardo José- Vázquez Bisio, Gilberto Valentín- Maurente Luis Alfredo- Sande Lima, José Felipe for 28 crimes of homicide*.

<sup>8</sup> See Amnesty International press release *Uruguay: Fallo de la Suprema Corte ampara nuevamente la impunidad*, 25 February 2013 <http://www.amnesty.org/es/for-media/press-releases/uruguay-fallo-de-la-suprema-corte-ampara-nuevamente-la-impunidad-2013-02-25>.

<sup>9</sup> CED/C/URY/CO/1, 8 May 2013, para.14.

<sup>10</sup> UN Special Rapporteur on Torture, Preliminary Conclusion after his visit to Uruguay, 2-6 December 2012. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-39-Add2.pdf>.

<sup>11</sup> Parliamentary Commissioner for Prisons 2012 Report – Annex 1 page 48.

<sup>12</sup> Parliamentary Commissioner for Prisons, 2012 Report page 42.

<sup>13</sup> Parliamentary Commissioner for Prisons, 2012 Report page 19.

<sup>14</sup> *Ibid.* Endnote 10.

<sup>15</sup> El Observador, 26 March 2013; <http://www.elobservador.com.uy/noticia/246829/segun-briozzo-se-realizan-en-uruguay-entre-300-y-400-abortos-legales-por-mes-/>

<sup>16</sup> On 17 September 2012 Amnesty International requested information about the investigations of the killings to the Specialized Police Office for the investigation of the murder of transsexual women ( *Subcomisaria Andrea Aita sobre Asesinatos de Mujeres Trans y Estado de situación de las investigaciones*). On 24 September 2012 Amnesty International sent a letter to the Ministry of Interior in relation to the request made to the police. On 29 January 2013 Amnesty International received the *Expediente N° 2012-4-4-000-4820*.



# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

*Uruguay, los crímenes de derecho internacional no están sujetos a prescripción*, (AI Index: AMR 52/001/2011), (available at: <http://www.amnesty.org/es/library/asset/AMR52/001/2011/es/f05d9c61-7539-4039-9956-3f401d81fa85/amr520012011es.pdf>)

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