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Alternative Report

Paraguay

Submitted to the Human Rights Committee
in view of the consideration of the third periodic report of
Paraguay (107th session, 11-28 March 2013)

February, 2013



This report was possible thanks to the support of the European Commission and the OAK Foundation. Its content is under the sole responsibility of the organisations who subscribe it and by no means should it be interpreted as the opinion of the supporting institutions.

Introduction

This document is submitted as an alternative report to the third periodic report of the Republic of Paraguay about the fulfilment of the International Covenant on Civil and Political Rights (henceforth CCPR or “the Covenant”). It has been elaborated by the member organizations of the Paraguayan Human Rights Coordinating Committee (Coordinadora de Derechos Humanos del Paraguay – (CODEHUPY), the Paraguayan Chapter of the Inter-American Platform for Human Rights, Democracy and Development (Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo – PIDHDD)¹, with technical cooperation of the World Organisation Against Torture (OMCT) and the Centre for Civil and Political Rights (CCPR-Centre).

The report’s presentation has been structured taking into consideration the queries submitted by the Human Rights Committee (henceforth “the Committee”) in the List of Issues to be taken up in connection with the consideration of the third periodic report of Paraguay.²

Following this methodology, the following thematic axes have been created:

- 1) Constitutional and legal framework (articles 1 and 2)
- 2) Non-discrimination, rights of minorities and equal rights of men and women (articles 2, 3, 26 and 27).
 - a. Rights of indigenous people.
 - b. Rights of women.
 - c. Rights of persons with disabilities.
 - d. Rights of LGBT individuals.
- 3) States of emergency (article 4)
- 4) Right to life; elimination of slavery, servitude and forced labour (articles 6 and 8)
- 5) Rights of persons deprived of their liberty and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 7 and 10)
- 6) Right to liberty and security of person; right to a fair trial and procedural guarantees (articles 9 and 14).

¹ Integrated by: Main Organizations: American Jurists Association - AAJ; Association of Families of Victims of the Compulsory Military Service (AFAVISEM); Base of Social Investigations - Base/IS; Documentation and Research centre - CDE; The Antonio Guasch Research Center- Cepag; Paraguayan Centre of Theatre (CEPATE); Latin American and Caribbean Centre for the defense of women’s rights - CLADEM Py; Paraguayan Association of communitarian communication - Comunica; Women’s Coordinating Committee of Paraguay - CMP; National Coordination for the promotion of disabled persons’ rights - Conaprodís; the Children and Adolescents’ Rights Coordination Body - CDIA; Campaign for Citizen Voices - Decidamos; Celestina Pérez de Almada Foundation; Dr. Andrés Rivarola Queirolo Foundation - Fundar; Vencer Foundation; Institute of Comparative Studies in Criminal and Social Sciences - INECIP-Paraguay; Conscientious Objection Movement – MOC Paraguay; Popular Education Program- Ñemongetara; Seeds for Democracy; Popular Education Service - Sedupo; Education and Social Support Service/Rural Area-SEAS-AR; Complete Juridical Service for the Agricultural Development - Seija; Peace and Justice Service - Serpaj Paraguay; Syndicate of Journalists of Paraguay - SPP; *Sobrevivencia*, friends of the earth Paraguay; *Tierraviva* for the indigenous people of Chaco. Adherent Organizations: Amnesty International Paraguay; Educative and Communitarian Base of Support - BECA; National Coordinator of Indigenous Pastorals - Conapi-CEP; People Environment and Territory - GAT; New Moon Group, National Social Pastoral.

² Human Rights Committee, List of Issues to be taken up in connection with the consideration of the third periodic report of Paraguay, United Nations document CCPR/C/PRY/3, 27 April 2012.

Under each of these thematic axes the issues posed by the Committee to the Paraguayan State were transcribed with their corresponding numbering, followed by the complementary observations and information provided by Codehupy, OMCT and CCPR. At the end of each axis, recommendations to the State were elaborated in relation to each of issues.

1) Constitutional and legal framework (arts. 1 and 2)

Issue 1: *Please provide information on the provisions established in domestic law regarding compensation for victims of violations of the rights set forth in the Covenant and examples of their application in the administration of justice and by judicial bodies.*

The Paraguayan legislation does not envisage an impartial, quick, detailed and effective system of compensation or rehabilitation for the victims of human rights violations set forth in the Covenant. In general, there are regular procedures in criminal, civil and ordinary courts that due to their high costs and their slowness they difficult, in practice, the redress of human rights violations.

The cases assisted by the Human Rights Unit of the Public Prosecutor's Office, such as tortures, lesions in the exercise of public duties, illegal and arbitrary detentions, as well as extrajudicial executions, have been characterized by inconclusive and limited investigations which have led to the impunity of several of these crimes.

Other violations, such as restrictions to the freedom of assembly and peaceful demonstrations and discrimination, are not even denounced since the single possible way is the ordinary one, which could take up to ten years; therefore it is expensive and ineffective.

The inefficiency of the system of reparations for victims provided by the ordinary justice system forced the sanction of the Law No. 3993/10 "Which Compensates Victims of the Sinister happened in the Ycuá Bolaños Supermarket³", which established a payment system for the victims of this tragedy befallen 1st August 2004.

There is neither a national mechanism nor regulatory provisions that guarantee psychological attention or possible rehabilitation by a responsive and effective mechanism for the victims of human rights violations. Only the Mental Health system of the Ministry of Public Health and Social Welfare (MSP and BS) can be relied; and the system of financial compensation envisaged for the victims of human rights violations between 1954 and 2003, conducted before the Office of the Ombudsman.

Regarding the victims of torture, only those tortured in the Stroessner dictatorship period receive a financial compensation, and no rehabilitation is planned.

The victims of violations that are not torture do not have a specific instance to appeal to assure their rehabilitation. The Victim Assistance Centre of Public Prosecutor's Office

³ The fire in the Ycuá Bolaños Supermarket is a tragedy occurred Sunday 1st August 2004 in Asunción, capital of Paraguay. That day, approximately at 11.25 (local time) two big explosions took place inside the commercial building which counted, among other things, with a supermarket, a parking lot, commercial offices and a restaurant. In the kitchen of the latter there was an explosion that provoked a huge fire. According to police reports, at the moment of the accident, the security guards closed the doors of the building to avoid the people, who crowded the commercial center, to escape with goods that may not have been paid. As a result, 396 people died (half of them children) and 500 were left with varying degrees of injuries, including 56 people with third degree burns.

has no specialized personnel or resources to guarantee the effective recuperation of the victims of torture.

Recommendations to the State:

- To guarantee a quick, complete, independent and impartial investigation of all allegations of human rights violations based on criminal offences. The State should process the authors of these acts and ensure that their punishment is proportional to the severity of their offence. To achieve this, it should provide with human and material resources the Ministry of Defence, strengthen both the corruption investigation systems in the Public Prosecutor's Office and the Police Justice for the investigation and sanction of the cases of abuse and police corruption.
- Ensure the availability of quick and effective appeals by impartial organisms for all the range of violations protected by the Covenant and that are not determined as offences, such as discriminatory practices.
- Offer to the victims of all the violations of the Covenant—not only to the victims of torture during Stroessner Dictatorship, affordable ways to appeal, quick and effective, including economical compensation and rehabilitation. In particular, an administrative system for economical compensation should be created independent from the ordinary system for the victims of torture.
- The Victims' Assistance System of the Public Prosecutor's Office should be strengthened so that it counts with fitting personnel and infrastructure.

2) Non-discrimination, minorities' rights and equal rights for men and women (articles 2, 3 26 and 27)

Issue 3: *Please report on the status of the anti-discrimination bill and the measures planned to ensure its implementation and dissemination.*

The Bill against all form of discrimination remains idle in the Congress. Since its formal presentation, 17th May 2007, there has been no substantial development in the study of this bill. It does not even count with the dicta of all the commissions to which it was addressed. It was addressed the 24th May 2007 to the commissions of: Constitutional affairs, National Defence and Public Force / Legislation, Codification, Justice and Work / Human Rights / Equity, Gender and Social Development. The only commission that took care of the Bill is the Commission of Equity, Gender and Social Development, 25th June 2008.⁴

The slowness of the process of adoption of this bill and the pernicious effect that generates in vulnerable groups has been mentioned by the United Nations Treaty Bodies.⁵

Nowadays, the discrimination law in force is the 904/81, enacted during the dictatorship period. Even if the Law 904/81, previous to the Constitution of the Republic of Paraguay, can be credited with having emerged in a context where the then-Constitution did not even recognize the Indigenous People, it is now out of date regarding the human rights standards given by the current Constitution to the Indigenous People and by the different human rights international treaties ratified by Paraguay. The current law was analyzed by the Inter-American Court of Human Rights and declared ineffective, in the years 2005, 2006 y 2010, since it ensures no implementation of the indigenous rights. The Inter-American Court ordered its modification or the approbation of another State measure that would actually guarantee the indigenous rights, including the points that should be compulsory.⁶

⁴(http://www.senado.gov.py/silpy/main.php?pagina=info_proyectospaginaResultado=info_tramitacion&idProyecto=1163)

⁵Committee on the Elimination of Discrimination against Women, Concluding observations: Paraguay, October 2011, par. 12-13.

⁶ Cf. Inter-American Court of Human Rights – Judgment on the merits, reparations and costs, 24 August 2010 (Yakye Axa Indigenous Community v. Paraguay case) –par. 309— in the light of the conclusions drawn by the Court in Chapter VI of this Judgement the Court considers necessary that the State ensures the effective enjoyment of the recognized rights by the American Convention, by its National Constitution and its legislation. For the Court, the international responsibility of the State in this case has been generated because it was not adequate to the legislation to ensure the right to property of the traditional land of the indigenous communities, as well as for the fact that the institutional practice limits or does not ensure a full implementation of the rules that, formally, are established to guarantee the rights of the members of the indigenous communities. In the view of the Court, the social interest of propriety with regard to the indigenous communities should lead to the consideration of the circumstances of the fact that they are ancestral indigenous lands, which must be reflected in both substantive and procedural levels. Par 310—In consequence, the State, in the time of two years, should adopt in its national law, as disposed in article 2 of the American Convention, the legislative measures, administrative and of any other character that are necessary to create an effective redress procedure of the ancestral or traditional lands of the indigenous people to enable the effective right to propriety. This system should consecrate substantive laws that ensure: a) to take into consideration the importance for the indigenous people to have their traditional lands, and b) the fact that the lands are in private hands and their rational exploitation should cause no refusal of any demand of concession. Besides, this system should dedicate one judicial authority

Recommendations to the State:

- Accelerate the process of adopting the bill against all form of discrimination.
- Urgently remove from the domestic legislation those discriminatory provisions that are opposing the current Constitution of Paraguay and the human rights treaties ratified by the State.⁷

a) Rights of indigenous peoples

Issue 4: *Please provide information on the steps taken to prevent and punish discrimination against the indigenous population.*

The State does not mention either in the State Report⁸ neither in the responses to the Issues List⁹ preventive or sanctioning measures for the acts of discrimination against the indigenous population. This indicates the lack of measures and data in that sense, as previously specified by the Committee against Racial Discrimination.¹⁰

Recommendation to the State:

- The State should be committed to combat racial discrimination by drawing up a comprehensive national and global policy against racism and racial discrimination with indicators for collecting statistical data that allow evaluating the progress in preventing and punishing the acts of discrimination.

Issue 4: *Please describe the measures put in place to guarantee the right to prior consultation and the participation of the indigenous population in the development and implementation of public policy. In addition, describe the measures taken to strengthen the National Institute for Indigenous Affairs (INDI) in order to ensure that it has sufficient authority and resources to properly represent the interests of all indigenous persons.*

The Paraguayan State ratified the International Labour Organization (OIT) Convention 169 in 1993. However, to this day it has not yet regulated free, prior, and informed consultation. As indicated in the Responses of the State¹¹, the National Institute for Indigenous Affairs (INDI) adopted Resolution No. 2039 of 2010, but this has not been translated into a compulsory national legislation.

The INDI adopted as one of its axis the ethno-development; however this is limited to micro projects. There is not a single territorial management plan, to date, being implemented to allow communities real alternatives of development for a more rational use of natural resources.

to be the responsible to resolve the conflicts rising between the propriety rights of the individuals and of the indigenous people.

⁷ Committee on the Elimination of Discrimination Against Women, Op.cit., par. 12-13.

⁸ Third Periodic Report of Paraguay, United Nations document CCPR/C/PRY/3, 31 December 2010.

⁹ Responses of the Paraguayan State to the List of Issues (CCPR/C/PRY/Q/3) that should be addressed once the third periodic report of Paraguay is examined, United Nations document (CCPR/C/PRY/Q/3/add.1), August 2012.

¹⁰ The Committee on the Elimination of Racial Discrimination, Concluding observations: Paraguay, September 2011, par. 10.

¹¹ Responses of the Paraguayan State to the list of issues, Op.cit., p. 5.

Regarding the National Program for Indigenous Peoples (PRONAPI), developed by the Decree No. 1945 of 2009, to which the State Report makes explicit reference on numerous occasions¹², the Program did not even reach the second of the three stages that comprised it. It was cancelled.

Recommendations to the State

- Decisively encourage the adoption of a framework law for indigenous peoples to ensure an adequate protection and promotion of all indigenous peoples' rights and ensure free, prior and informed consent to the indigenous peoples in those decisions in which they are concerned.
- Drawing, in consultation with the Indigenous Peoples, a program for registration and documentation of these peoples.
- An institutional assessment of the INDI and the impact of its policies and activities should be carried out, to allow the needed changes to be made to turn it into an autonomous institution representative of the indigenous peoples.¹³

Issue 4: *How does the State party ensure that land claims made by indigenous communities are processed promptly? Please provide examples of the State's satisfactory settlement of such claims.*

With reference to the paragraph 150 of the State Report, where it was stated the General Budget of National Expenditures for the 2010 period that established a total of approximately 5 million US dollars to purchase around 58.750 hectares that would benefit six indigenous communities, many of them applying before the Inter-American Court, it is worth mentioning that, even if such quantity was allocated¹⁴, none of the international cases could be resolved, due to the lack of diligent management or arrangement of other legal ways for territorial restitution.

Moreover, the total amount assigned by the State is inferior to any of the cases referred as priority.¹⁵ The State has no plan of territorial management in progress, but specific micro projects for some communities. The issue of land titling is critic. There are still cases with a process of more than 10 years for the titling.

Recommendations to the State:

- Make the alignment process of the indigenous Land Restitution procedure fit the standards provided by the international Human Rights law, ensuring the right to information, consultation and participation of the Indigenous Peoples.
- A progressive allocation budget is essential for the acquisition of lands and a responsible and determined management for acquisition. On the understanding of the serious weaknesses of the law 904/81 (declared three times by the Court IDH as ineffective) the established procedure for the acquisition is conditioned

¹² Third Periodic Report of Paraguay, Op.cit., par. 153, 174, 195.

¹³ Committee on the Elimination of Racial Discrimination, Op.cit., par. 14.

¹⁴ Five million US dollars.

¹⁵ The five cases with international referral: the four of chaco (Yakye Axa, Sawhoyamaya, Xákmok Kásek y Kelyenmagategma) and the eastern region one.

to the land owner's will to sell, which should be reversed, applying the standards reached by the international Human Rights law.

b) Rights of Women

Issue 5: *Please provide disaggregated information for urban and rural areas on:*

a) Female employment rates and the percentage of positions of responsibility in the public and private sectors that are held by women.

The law has consecrated a minimum share of 20% of women in the candidates' lists in the primary elections for the members of the Congress. However, this measure had no boosting effect on the participation of women in politics, or achievement of equality *de facto* between men and women. In the Congress, women's inclusion is only of 13,6%, while in the Supreme Court of Justice, out of nine members, only two are women (Cladem-Paraguay, 2012).

There is a large predominance of women in domestic employment, sector in which even the legal measures (Labour Code) are discriminatory, allowing working days of up to 12 hours, permitted salaries 40% of the legal minimum wage, lack of employment security and of pension benefits (Cedaw Shadow Report 2005-2011).

It must be added that from the legislative power there was no modification of the current law driven to improve the working conditions of the domestic workers and eradicate discrimination in the current Labour Code (Law No. 213/93 and Law No. 496/95 Labour Code). Nevertheless, the convention No. 189 of the OIT about the male and female domestic workers has been sanctioned; its proclamation is pending (Cladem-Paraguay, 2012).

Concerning the given information of the State regarding the distribution of the jobs by sex inside the public administration¹⁶, numbers show a clear under-representation among females in positions of responsibility. There is not enough information about the feminine representation in positions of responsibility in the private sector, due to a lack of systematization of these data.

Recommendations to the State:

- Encourage and render sustainable the policies of women's equal access to senior positions in the civil service.
- Reinforce the awareness campaigns about the importance of the women's participation in positions of responsibility in the civil service and private sector, especially in rural areas.¹⁷
- Speed up the process of the amendment of the current legislation to improve the labour conditions of the domestic workers, as well as the access to social security benefits.¹⁸

¹⁶ Responses of the State of Paraguay to the List of Issues, Op.cit., p. 7-8.

¹⁷ Committee on the Elimination of Discrimination against Women, Op.cit, par. 16-17.

¹⁸ *Idem*.

b) The steps taken to guarantee equal pay for equal work for men and women.

In Paraguay there is still a considerable difference in labour incomes between men and women; in a local level this gap has increased from 4 to 7% in the last few years, according to a study published by the Inter-American Development Bank (Cedaw Shadow Report 2005-2011).

Recommendations to the State:

- Establish a monitoring system for the parity wage, from the Ministry of Justice and Labour, in public and private enterprises.

c) How literacy and school attendance rates for women compare with those for men.

According to the Permanent Survey of Households, the national illiteracy rate by sex shows a superior percentage of women, with a total rate of 5,6% in contrast with the 3,8% of men. This indicates the lack of parity in the access to education and accordingly, it has consequences in the non-parity of access to work and to elective public office (Cladem-Paraguay, 2012).

Recommendations to the State:

- Implement information and awareness-raising campaigns that promote schooling for all boys and girls of the country.
- Establish a monitoring and data collection system, from Municipal Councils for Boys, Girls and Adolescents' Rights (Codenis), about schooling for boys and girls in school age and the main reasons of school drop-out.
- Adopt specific policies offering support to pregnant adolescents, to ease their entry and continuity in the school, as well as their school performance during pregnancy and maternity;¹⁹

Issue 5: *Please indicate what action has been taken to eliminate negative stereotypes and attitudes in society and to end discriminatory practices, in the public and private sectors and in urban and rural areas, that undermine equality for men and women in the exercise of their human rights.*

The State shows no interest in organizing awareness-raising and educating public campaigns for the general population, and in particular for the political, religious leaders and for the government employees, focused on changing the traditional attitudes associated with gender discrimination in families and society. Additionally, nothing has been done for the regulation of the media and the adoption of a code of conduct to avoid stereotypes and gender discriminations (Cladem-Paraguay, 2012).

Traditional discriminatory attitudes persist in society and so does the negative dominant influence of some expressions of religious beliefs and cultural patterns in the State, which undermine the promotion of women's rights, specially their sexual and reproductive health. (Cladem-Paraguay, 2012).

¹⁹ Committee on the Elimination of Discrimination against Women, Op.cit., par. 27.

The decriminalization of abortion constitutes a non-negotiable issue in the Congress due to religious thinking, information referred to family planning and prevention of sexually transmitted diseases are distorted (Cladem-Paraguay, 2012).

The enforcement of the Guiding Pedagogical Framework for Sexual Education²⁰ has been interrupted by influence of fundamentalist groups, in spite of the intense campaigns accomplished by civil society organizations working on sexual and reproductive rights. The Catholic episcopacy suggests, in a statement of November 2010, that the difference of sex (man-woman), symbol of the other differences, should stay as the centre of our social values, and should be promoted and protected. To forget about it, to hide it, to minimize it is to promote sex without real identity, in addition to proposing wide participation to the religious sectors and the incorporation of the social doctrine of the church, which defends the family and the natural identity (Cladem-Paraguay, 2012).

Recommendations to the State:

- Re-establish the Guiding Pedagogical Framework for Sexual Education.²¹
- Deepen gender mainstreaming in the education promoting policies about comprehensive sexuality education in the human rights framework.
- Launch awareness-raising and public education campaigns for the general population and, in particular for the political, religious leaders and for the government employees, focused on promoting gender equality in families and society in general and eliminate the stereotypes that impede its realization.²²
- To foster the adoption of a code of conduct among the media to avoid stereotypes and gender discrimination practices.²³

c) Rights of persons with disabilities

Issue 6: *Please describe the decisions and action taken to safeguard the rights of persons with disabilities and ensure their full participation and inclusion in society.*

There is no specific national plan for the full inclusion into society of persons with disabilities. Nevertheless, there is a proposal of a National Plan of Human Rights, but

²⁰ The Guiding Pedagogical Framework for Sexual Education is a suggested guideline for the sexual education in public schools in Paraguay. From The Secretariat for Women's Affairs of the Presidency of the Republic, institution responsible for defining, applying and coordinating public policies for the development of women in Paraguay, concern has aroused in relation to the scope of Resolution No. 35.635 of the Ministry of Education and Culture; "By which the Socialization Process of Guiding Pedagogical Framework for Sexual Education becomes void, as well as the implementation that should follow after its revision, in the National Educative System and measures are adopted to ensure the effective implementation of the Comprehensive Sex Education at all levels and modalities of the Paraguayan Education." The Guiding Framework proposes a rights' focused education, beyond a limited vision of biology to include the manifestations of sexuality- in the broad sense- and reproduction, as human actions. When its said "sexuality in its broad sense" is to remark the fact that the comprehensive education should go further than the "sexual and reproductive organs" to include feelings, interests, joy and sorrow, that are expressed in the capacity to take action, in the interest about things, in the manifestation of emotions, in the ability to learn and many other ways of human expression (Communiqué of the Secretariat for Women's Affairs of the Presidency of the Republic, 30 de September 2011).

²¹ Committee on the Elimination of Discrimination against Women, Op.cit., par. 27

²² Ibid., par. 18-19.

²³ *Idem.*

the civil society organizations that work with and for persons with disabilities were not called to work in this proposal. There is also a National Plan for Equality and Non Discrimination of the Secretary of Public Service. However, the State does not promote the participation of persons with disabilities in the making of policies that affect them (CONAPRODIS, 2012).

Prisons. While in the State Party's Report about the fulfilment of the Convention on the rights of persons with disabilities (ICRPD) is mentioned the existence of a specific pavilion to shelter persons with psychosocial disabilities in the National Penitentiary of Tacumbú²⁴, this information is fake. In practice, due to the lack of special pavilions in the penitentiaries of the country, persons with disabilities coexist in overcrowded spaces with the rest of the prisoners, situation that increases the vulnerability of persons with disabilities (CONAPRODIS, 2012).

Public Transports. There are no accessible public transports for persons with disabilities. Drivers do not stop to lift up or help people using wheelchairs or blind.

Education. Boys and girls with disabilities have no access to education with adapted resources to their specific needs. They also face physical barriers, for example the access to transport and educative installations, communicative barriers and attitudinal barriers, which are often found in the own families and the immediate environment of persons with disabilities.

There is a lack of resources for the linguistic and cultural needs of deaf people and people with disabilities, required for the accessibility of persons with disabilities.

It must be clarified as well that there are many barriers for the access to education for adult persons with disabilities, which work on the disadvantage of their inclusion in the labour market.

Teachers do not have the required competencies for boys and girls with disabilities to be included in the educational spaces with equal conditions. (CONAPRODIS, 2012).

Health. There is no information found in accessible formats about health related topics for persons with disabilities. Many services are inaccessible for persons with disabilities, and the few accessible centres are concentrated in the capital. Community services have no interpreting services for deaf people. The incorporation of the persons with disabilities in the important services, like the promotion of health, is not a priority.

Sex and reproductive services for persons with disabilities do not exist in general, with a few exceptions.

The elderly with disabilities are the most vulnerable and the ones who have less access to health services.

²⁴ Committee on the Rights of Persons with Disabilities, Initial Report presented by Paraguay in conformity with the article 35 of the Convention, United Nations document CRPD/C/PRY/1, 28 June 2011.

Recommendation to the State:

- Develop a National Plan for social inclusion of persons with disabilities with direct involvement of persons with disabilities, as well as of human rights NGOs, mainly those working with and for persons with disabilities.

Issue 6: *Describe the restrictions which the State party has placed on the right to vote of persons with disabilities, the purpose of those restrictions and explain how they are compatible with the Covenant.*

In accordance to article 91 of Law No. 834/96 – that establishes the Paraguayan Electoral Code: “It will not be a voter: a. the deaf-mute who cannot make themselves be understood in writing or by other means...”

Ballot papers in accessible format (Braille) are not available for blind persons. When they ask to be accompanied into the polling booth by a trusted person the authorities do not permit it, reason why there is little participation of blind persons in elections.

Families do not promote participation by their mentally disabled relatives to exercise their right to vote (CONAPRODIS, 2012).

Recommendation to the State

- Remove the legal obstacles that impede the full participation in suffrage of deaf-mutes and facilitate the access to vote to other persons with disabilities.

d) Rights of lesbian, gay, bisexual and transgender (LGBT) persons

Issue 7: *Please indicate what legislative reforms or specific measures have been undertaken to combat discrimination against lesbian, gay, bisexual and transgender (LGBT) persons.*

Discriminatory practices remain in civil and criminal laws against the LGBT collective. Article 138 of the Penal Code punishes with up to two years prison or with a fine the consented sexual act between an adult with another 14 to 16 years old same-sex person. In the heterosexual case it is only punished with a fine.

There is no law about equal marriage, de facto unions, or some kind of provision ensuring the rights of homosexual couples that live together in marriage-like situations.

A single precedent exists in the recognition of the rights of homosexual couples, in the Binational Entity of Itaipú (Brazil and Paraguay), which through Resolution No. 6207, 9 August 2011, established social benefits for lesbian and gay couples that work in the entity.

Paraguay does not criminalize sexual orientation, nor identity or gender expression, but neither creates mechanisms to denounce discriminations. As the State remarks in its responses to the List of Issues “*nowadays there are no legislative reforms that establish sanctions due to discrimination grounds to lesbian, gay, bisexual and*

*transsexual people*²⁵. Public policies are not established either, nor educational measures are implemented to favour real inclusion of lesbians, bisexuals, gays, transvestites, transsexuals, transgender or intersex as citizens holding all rights (Robledo, 2011).

Homosexual persons held in detention centres of the country do not have the right of intimate visits of their couples. A documented case is that of V. O., who tried to get permission for the use of the private visits with his same-sex couple that was held in the mixed prison of San Juan (Misiones), through a written request. Permission was denied because the internal rules do not permit this kind of visits between persons of the same sex (Robledo, 2011).

Illegal detentions, tortures, and murders committed against LGBT people are a constant. Since 1998, 37 murders of transgender people have been committed. These crimes have not been investigated and most of them have been archived soon after. Almost all these crimes have been committed on the streets and in presence of other trans and strangers (Posa, 2008; Robledo, 2011).

Furthermore, police abuses against LGBT people often enjoy impunity. For example, the 9 December 2011, the trans activist Mariel was distributing flyers in San Lorenzo square (a city close to Asunción). The police agent Miguel Aguilera demanded a payment to stay in the square. To the refusal of the activist, she was beaten. Another activist filmed the events. In spite of complaints and commitments of the then director of Human Rights of the Ministry of the Interior, Diana Vargas, the agent remained immune (Robledo, 2011).

Recommendations to the State

- Abolish article 138 of the Penal Code and legal restrictions to marriages between partners of the same sex or the registration of homosexual couples.
- Adopt public policies to end social stigmatization of homosexuality and indicate that no form of harassment, discrimination or violence will be tolerated against people because of their sexual orientation or their gender identity.
- Ensure a proper investigation, processing and sanction of the people that provoke or commit violent acts against LGBT people.
- Eliminate discrimination towards homosexual couples in the internal rules regarding the use of private visits, which prevents the Access of homosexual couples to intimate visits in the Penitentiaries of the country²⁶.

²⁵ Responses of the State of Paraguay to the List of Issues, Op.cit, p. 17.

²⁶ Committee against Torture, Concluding observations: Paraguay, November 2011, par. 19.

3) States of emergency (article 4)

Issue 8: *Please explain why states of emergency were declared in May 2010 and October 2011 and indicate whether they were duly reported as provided for under article 4 of the Covenant.*

The two states of emergency proclaimed by laws of the Republic lack from factual substantiation.²⁷ Both times, article 1 of the states of emergency makes reference only to generic situations. They hold that there was “*serious internal upheaval generated by the criminal groups operating in the area, threatening the regular functioning of the Constitutional Bodies, as well as the safeguarding of life, freedom and the rights of people and its possessions*”, without explaining what was the turmoil about, nor which were the dangers.

Article 4 of laws 3994/08 and 4473/11, which established the states of exception, authorized the President of the Republic to order, in each situation, the detention of people, in the absence of prior judicial authorization. These laws did not specify why it was necessary to arrest civilians without judicial control.

Neither the account of the reasons for these laws, nor its articles explain which are the facts that constituted the “*serious internal upheaval*”; nor which were the constitutional bodies that were potentially threatened to stop working regularly.

There is neither reference to the criminal groups that were threatening the regular performance of the institutions, in the sense of how many groups they were; how many people constituted them, nor which type of actions were made or could have been made by them.

The report made by the International Human Rights Observation Mission was undertaken from the 1 to the 6 December 2011 in the provinces where the state of emergency had been applied, San Pedro and Concepción²⁸, considers that: “*Taking into consideration the gathered testimonies, as well as the situation in the provinces, it may look like the declaration [of the state of exception] had from the beginning underlying interests that were not those stated [in laws 3994 and 4473]. They use the figure of the Paraguayan People’s Army (EPP) to stop, frighten, discipline and stigmatize sectors that are organized to claim for rights that affect the direct interests of*

²⁷ Law No. 3994, 24 April 2010, declared the state of emergency during 30 days, in the provinces of Concepción, San Pedro, Amambay, Alto Paraguay and Presidente Hayes; and Law No. 4473, 10 October 2011, declared the state of emergency during 60 days, in the provinces of Concepción and San Pedro.

²⁸ The Mission consisted of an international delegation of thirty five people representing social organizations from eight countries -Argentina, Brazil, Chili, Colombia, Ecuador, Paraguay, Peru and Uruguay- they covered the provinces of San Pedro and Concepción, BASE IS, CONAMURI, CDIA, CODEHUPY, CLADEM-Paraguay, COMUNICA, FUNDAR, COLECTIVO 25 DE NOVIEMBRE, DIAKONIA, Platform against Criminalization, Journalists Unions of Paraguay, SERPAJ-Paraguay, SOBREVIVENCIA, SERPAJ AMÉRICA LATINA, SERPAJ Argentina, SERPAJ Colombia, COMISEDE, Social Network for Justice and Human Rights BRAZIL, INREDH Ecuador, Latin-American Team of SOAW, to discuss with the communities and authorities in the area, to understand the situation of population’s human rights from the provinces of Concepción and San Pedro, in the framework of the security arrangements established by the State of Paraguay after the second declaration of state of emergency. The gathered information by the International Mission has vast data carriers.

the privileged groups that operate in the area". Among these privileged groups, pointed out in the report, there are the large farmers, agronomist operators, narcotics traffickers, corrupt state officials, and political sectors that support and benefit from the transfer of land to foreign hands.

According to the consulted jurists, material and legal conditions necessary to declare the state of emergency never existed. The problems going on did not cause internal conflict that posed significant risk to the correct functioning of the institutions of the State.²⁹

During the state of emergency many house raids took place, supposedly searching for members of Paraguayan People's Army (EPP). Members of Codehupy and of the Observation Mission gathered testimonies on several of these house raids saying they were illegal, that is to say, contradicting rules of criminal procedure that regulates this research activity. Rules establish that there must be a permission for intrusion, signed by a competent judge in criminal proceedings that must be shown and given to the owners of the intruded house, a brief identification of the procedure must be detailed, the exact address of the place or places to be searched, the allocated authority for the search, the precise reasons for the intrusion, with details of the objects or people that are being searched and the procedures, as well as the date and the judge's signature.³⁰

"Several house raids during the state of emergency were made in early hours and there were testimonies that reveal the absence of the prosecutor, which in some cases arrived some hours later, to legitimate the procedure. It was remarkable the case of a boy with disability who, according with the description of the community visited,³¹ was seriously traumatized by the intrusion operation in a neighbouring house; in another case, a girl was forced at gunpoint to hit the ground, an elderly, face to the demonstration of violence lost control of her sphincter and was assisted by doctors who then refused to tell her blood pressure. Being diabetic and then decompensated, her children asked the assistance of another doctor and they did not permit it. When going away, the soldiers warned: 'aniquena pe takyi eterei ore rehe la prensape' ('don't talk so bad about us to the press')".³²

The state of emergency also had a demobilizing effect in the rural organizations: People are afraid to be related with the EPP so peasants substantially reduced or even gave up on participating in those organizations, or participate in protests, meetings and demonstrations to claim their rights. Moving without being bothered by the task forces is difficult for them. Recorded testimonies of leaders from these organizations reported to be subjected to inform to the police station about the meetings they organize and the agenda they deal with. There were cases of police appearing and monitoring the development of the meetings. This affected specially women.

²⁹ Roque A. Orrego, ex criminal trial judge, current member of the National Body for the Prevention of Torture.

³⁰ Art. 189 penal procedure code. Warrant and content of the procedure.

³¹ Arroyito Community, Horqueta district, Province of Concepción.

³² Report of the International Human Rights Observation Mission.

As a result of the intrusions, the impact in people's sensitivities and subjectivities is substantive. The sense of insecurity prevails due to the encroachment from different State agents that operated in the deployed procedures during the state of emergency. Considering the violation of human rights, the public prosecutor's offices that were part of the events, are not regarded as actors to ensure the investigation of the allegations.

Similarly, regarding the associated procedures (public prosecutor's service and police), recorded testimonies for the International Mission show that both the intelligence guiding the operative services, and the ostentation of force deployment, fully violate the populations' teko (idiosyncrasy), that among other things imply the free passage among the community's proprieties.

The use of telephonic communications is a critical point. Many interviewees stated to be unwilling to answer calls from unknown numbers³³ and that, the times during the procedures, if their phone had been taken they felt very frightened thinking of the possibility that calls or messages from supposed members of the EPP were to be faked in their phone lines (Report of the International Human Rights Observation Mission).

Recommendations to the State:

- Carry a thorough investigation of human rights violations of civilians in hands of the police, soldiers and prosecutors and ensure that the perpetrators are brought to justice.
- Ensure that the victims of violations during the state of emergency have the right to reparation for the violated rights.

³³ The concern about the phone call fear is central in the area called by the government as under the influence of the Paraguayan People's Army (EPP), specially, Horqueta and Concepción districts, in the province of Concepción; and, Tacuatí, in the province of San Pedro, since there are earlier cases of persons prosecuted and imprisoned only for "cross calling," that is to say, allegedly for communicating with EPP members, without prove of the content of the communications, nor the fact that these contributed to a criminal enterprise. "Cross calling" prosecuted persons are Sindulfo Agüero, Sixto Sánchez, Alcides Giménez, Rumilda Giménez, Mary Bracho, Alcio Soria, Estela Agüero, Zonia Muñoz and Juan Ovelar. All of them were deprived from their liberty until the judge Gustavo Bonzi decided to definitely dismiss them, after the pre-trial conference, in June 2011. The judge who decided to apply the National Constitution and international treaties was suspended by the Jury for the Prosecution of Magistrates and arrest warrants were again dictated against these persons. Some of them are nowadays fugitives or applied for asylum in neighbouring countries.

4) Right to life; elimination of slavery, servitude and forced labour (articles 6 and 8)

Issue 9: *Please provide information on the scale of the problem posed by violence against women and by domestic violence in the past five years, in particular, domestic violence cases.*

While the State, through the Ministry of Women, has adopted various measures to protect women from domestic violence, the lack of a coordinated, unified and coherent system can be noted, for the data gathering about gender related violence. Incidence of violence against women is still high.

According to the Ministry of Women, only in the period between January and April 2012 a total of 435 women went to receive psychological and legal assistance in the Assistance Service to Women (Sedamur), from which 36 were due to sexual violence, 210 physical violence, 115 economic violence and 74 due to psychological violence (Cladem-Paraguay, 2012).

Violence against lesbians at family level goes unpunished. Most cases are not investigated because victims dare not report for fear to be victims again from the Police or the prosecutor service (Cladem-Paraguay, 2012).

Issue 9: *Please specify the applicable legislation and the measures taken to ensure that domestic violence cases are properly investigated and that perpetrators are tried and punished. Please advise the Committee of: (a) the number of complaints received; (b) the number of investigations carried out; (c) the number and nature of the penalties imposed; (d) the compensation awarded to victims; and (e) the number of safe houses and other resources allocated to assist domestic violence victims.*

There is still no law to prevent, punish and eradicate violence against women, in particular the sexual abuse, domestic violence and violent deaths of women, offences that have been increasing the last few years³⁴. The bill developed in this regard by the State that is being examined in the Chamber of Deputies had no participation from the civil society (Cladem-Paraguay, 2012).³⁵

There are no systematized data sets about violence, in all its forms, affecting women, in neither in the prosecutor's nor the judiciary services. Most gender-related violence cases are treated and processed as ordinary offences.

As evidence the data given by the Paraguayan State in its Responses to the Issues List³⁶, gathering of data only covers in a comprehensive manner the number of

³⁴ In the Penal Code the domestic violence is typified, punished with depriving from their liberty up until three years; and there is Law 1600, Against Domestic Violence, of precautionary and civil character. However, they are insufficient to cover integrally the problem.

³⁵ 13 February 2013 the vice-minister of parity and non-discrimination has given an opinion on the subject: <http://www.abc.com.py/edicion-impresa/locales/las-organizaciones-sociales-hubieran-entorpecido-el-trabajo-538321.html>

³⁶ Responses of the State of Paraguay to the List of Issues, op.cit, p. 20-21.

allegations of abuse, but not which proportion of them resulted in investigation, processing and prosecution. Furthermore, data only refer to 2010-2011 period and there is no information about the prosecution of cases, kinds of imposed penalties or compensations awarded.

Recommendations to the State:

- Strengthen a specialized unit to investigate gender related offences in the Public Prosecutor's Office.
- Reinforce the training of the fiscal agents of the ordinary criminal units in the investigation of gender-based and hate crimes.³⁷
- Strengthen the assistance to victims system of the Ministry of Women, starting new units in the provinces.
- Reinforce current campaigns against gender related violence.³⁸
- Improve, within a set deadline, the statistical data gathering system about gender based violence, broken down by sex, kind of violence and relationship of the victim with the offender, as well as the relation between the number of allegations, police and prosecutor's investigation, their prosecution, the kind of sanctions imposed and the given compensations.

Issue 10. *Please provide statistics on:*

- a) *the number of abortions performed on adult and adolescent women in the last five years.*

There is no reliable data about the quantity of abortions carried in the country because it is a clandestine practice.

- b) *the steps taken to permit access to safe, legal abortions;*

Abortion is still an offence under article 109 of the Penal Code, even if there is sexual violence, incest or inviability of the foetus, with the sole exception of the indirect death of the foetus, in other words, if it were a needed operation to protect the mother's life from a severe risk.

Even in non-punished and therapeutic cases, the death rate is considerable. Only in 2011 100 women died from pregnant-related and birth reasons. From them, 24 died from unsafe abortions (Ministry of Public Health and Social Welfare, 2011).

For affected women this situation implies a constant exposure to the risk of losing their lives, as well as the consequent traumatic stress, with the risk of lengthy psychological problems, not to have had assistance in the right moment (Cladem-Paraguay, 2012). While Resolution No. 146 – 12 *establishes the compulsory nature of the access to quality Health Services and assistance without discrimination fulfilling the confidentiality duty and guarantee the full applicability of the Professional Secrecy in the assistance*, the dissemination of it has been paralyzed since 22 June 2012.

³⁷ Committee on the Elimination of Discrimination against Women, op.cit., par. 21.

³⁸ *Idem.*

Recommendations to the State:

- Adopt measures to face the high rate of maternal mortality and prevent women from resorting to unsafe abortions, reinforcing the capacity of health assisting institutions and programs and policies implementation to ensure women's access to information and health services, in particular regarding reproductive health and affordable contraception³⁹;
- Decriminalize abortion, at least in rape or incest cases, and offer specialized care services for women that resort to health services as a result of abortion complications⁴⁰.

Issue 11: *Please describe the measures taken to prevent trafficking in persons, to protect and rehabilitate victims of trafficking and to ensure their reintegration into society.*

The assistance system for victims of human trafficking is highly deficient in spite of normative progress and some inter-institutional efforts. There is not a comprehensive accompanying plan to rebuild their life projects, once rescued from the exploitation centres; they are provided neither with medical nor psychological attention.

However, recently a comprehensive law was approved to fight against human trafficking. Once implemented, it would improve the situation, at a criminal prosecution level as well as at a level of preventing and rebuilding life projects.

The Human Trafficking Bureau of the National Police does not have enough human or material resources to accomplish an effective work. The Institute for Comparative Studies of Criminal and Social Sciences in Paraguay (INECIP-Paraguay) has recorded cases of police agents involved who have to pay their procedures due to lack of government support. The Bureau of Asunción does not even have telephone lines capable to call mobile phones.

Furthermore, there is little information about the follow-up of the rescued victims; how long they were provided with counselling is not specified; in which homes were placed or how they were helped to reintegrate in their families and/or society.

Recommendations to the State:

- Ensure the allocation of sufficient human and economical resources for the national plans of prevention and eradication of human trafficking for its effective implementation, as well as for the national bodies focused on this problem⁴¹;
- Address the reasons of trafficking, increase initiatives to improve the economic situation of women and girls, eliminating their vulnerability to exploitation and traffickers;
- Establish continuous assistance allowing victims rebuild their life projects.

³⁹ Committee on the Elimination of Discrimination against Women, op.cit., par. 21.

⁴⁰ Committee on the Elimination of Discrimination against Women, op.cit., par. 30-31; Committee against Torture, op.cit., par. 22.

⁴¹ Committee on the Elimination of Discrimination against Women, op.cit., par. 25.

Issue 13: *Please describe the steps that have been taken to prevent and sanction forced labour, along with the results obtained, including debt bondage among indigenous communities in the Chaco.*

Inspections in the establishments where already weak indigenous people work, have been held only in cattle establishments close to the transchaco route, the main one in the region, as well as the dairies farms of central Chaco. The most important reports made by indigenous leaders, in contrast, describe similar forms of forced labour in cattle ranches in regions far from the main ways of land communication, places where the State never arrives.

“Training and sensitization” of the ‘corporate’ sector are not enough for the eradication of forced labour or the debt bondage. Protective actions expected from the State must consist in police measures to make prevail the rule of public power in the private work sphere that violate workers’ rights, for this reason the mechanisms for inspections must be permanent and count with a greater coverage.

Recommendations to the State:

- The State must identify and record thoroughly natural or legal persons who employ as assistants in their farms, as apprentices, indigenous people. Implemented measures until now have been ineffective.
- The State, in consultation with indigenous organizations and civilian society, must establish a protocol of special action, to allow the adequate monitoring and intervention when needed, to guarantee promptness and integrity of the government’s protection towards the workers, including investigation and prosecution of forced labour, as well as ensure the access to justice to the affected communities;⁴²
- Reform the Labour Code, eliminating differences between rural workers such as “first class” and “second class” workers.

⁴²Committee on the Elimination of Racial Discrimination, op.cit., par. 16.

5) Rights of persons deprived of their liberty and prohibition of torture and other cruel, inhuman or degrading treatment (arts. 7 and 10)

Issue 14: *Please describe the measures taken to investigate and prosecute cases of torture by agents of the State and to ensure that victims receive fair and adequate compensation, including the cases mentioned in the report of the Truth and Justice Commission.*

Impunity of the perpetrators of acts of torture is constant, in spite of some policy and normative efforts, such as modification of the criminal type of torture in the internal legislation; the reinforcement of the Human Rights Bureau of the Ministry of the Interior; prison visits by the Office of the Ombudsman and the recent installation of the national mechanism for the prevention of torture. (Villalba and Valiente, 2005; Ramírez and others, 2008; Martens and Orrego, 2011).

The Public Prosecutor's Office does not even give information about investigated cases or about the number of convicted for torture crimes or crimes that punish inhuman cruel and degrading treatment, in contrast with other crimes, showed in the Reports of the Public Prosecutor's Office of 2008, 2009, 2010, 2011 and 2012. Furthermore these reports detail no kind of prosecuted punishable acts, neither the stage of conclusion of the cases.

Allegations of torture must be investigated by the Special Human Rights Unit the Public Prosecutor's Office. The Prosecution, in its annual reports, does not share information about the cases investigated by the Specialized Human Rights Unit, as other special and ordinary units do. This prevents us from having certain data about the situation of the cases of allegations of torture.

The Memory 2009/2010 of the Public Prosecutor's Office reports that in that year 64 cases were filed in the Human Rights Unit and only 27 were concluded. The Memory 2010/2011 reports that in that year 168 cases were filed and 21 were concluded. The Memory 2008/2009 reports that in that year 106 cases were filed and none were concluded. There is no specification regarding which crimes are they related to. They merely state the number of filed and finished cases. The vagueness in the categorized data according to the kind of case and relationship of the victim with the perpetrator, as well as the condition of the case is also pointed out in the Responses to the State of Paraguay to the Issues List.⁴³

As mentioned before, there is no compensation mechanism to the victims of torture committed after the fall of the dictatorship of Alfredo Stroessner (Codehupy, 2011). Many times the judges responsible for procedural safeguards do not meet with their legal obligation to denounce traces of tortures in the accused presented to them the first hours of detention. Codehupy counts with documentation about persons in detention, with evident physical traces of tortures, who have been brought before judges who did not denounce it, and were not interested in their lesions (Observatory

⁴³ The only given information is: "we conclude that between 2004 and 2012 there was registration of the following procedural outcome: dismissed cases: 16; archived cases: 33; pending cases: 40." Responses of the State of Paraguay to the List of Issues, op.cit, p. 32.

for Public Protection: INECIP, National University of Pilar, Codehupy, Ministry of Public Defence).

In fact, many judges are unaware of their duty to denounce cases of tortures that they find in the exercise of their duty, as called for in Article 280 of the Code of criminal procedure.

As well, prosecutors do not fulfil their duty to investigate the allegations of tortures presented by the processed. (Observatory for Public Protection: INECIP, National University of Pilar, Codehupy, Ministry of Public Defence, 2012; Ramírez and others, 2008).

Issue 14: *Please explain why almost all the torture cases reported by the Special Human Rights Unit of the Public Prosecution Service since 2004 have been placed on file and why perpetrators of acts of torture have not been criminally prosecuted..*

The Specialized Human Rights Unit is characterised by deficient and slow investigations that conclude in impunity. The allegations of tortures presented by Codehupy do not make progress because of the lack of investigation. Ximena López, jurist from the Coordinator of Human Rights in Paraguay, states that none of the allegations presented by Codehupy have made progress due to lack of procedures from the Public Prosecutor's Office.

In the dictum of Ernesto Benítez vs. Paraguay case, presented before the Committee of Human Rights, there is a lack of action from the Human Rights Unit of the Public Prosecutor's Office.⁴⁴ The prosecutor responsible of the impunity of the Ernesto Benítez case continues exercising the functions of prosecutor.

Recommendations to the State:

- Strengthen the Specialized Human Rights Unit of the Public Prosecutor's Office for the investigation of cases of torture and cruel inhuman and degrading treatment;
- Investigate as a matter of urgent priority the cases of government officials responsible of the impunity of cases of torture;
- Adopt adequate measures to give victims of torture and abuse compensation, including a fair and adequate compensation, and the most complete rehabilitation possible⁴⁵;
- Create an independent administrative system for the compensations of victims of torture and abuse;
- Strengthen the capacities of forensic doctors of the Public Prosecutor's Office and the judiciary for the detection and diagnose of the cases of torture and abuse;
- Publish statistical data of the labour of the Human Rights Unit of the Public Prosecutor's Office, detailing the information regarding the kind of crime committed and the number of cases filed, resulting from the police

⁴⁴ Human Rights Committee, Views of individual communication No. 1829/2008, Ernesto Benítez vs. Paraguay, 30 May 2012.

⁴⁵ Committee Against Torture, op.cit., par. 25.

investigations and of the Public Prosecutor's Office, prosecuted cases and kind of punishment given in each case.

- Fulfil the recommendations of the dicta of the Committee of Human Rights in the individual communications No. 1828/2008 and No. 1829/2008, of 30 May 2012.

Issue 15: *Please provide information on the steps taken to prevent the torture and ill-treatment of persons deprived of their liberty, including those in pretrial detention.*

Paraguayan prisons not only deprive of liberty but also of other fundamental rights, such as food, health, education, personal safety and integrity (Inecip, 2006; Orrego and Martens, 2011)

Some detention centres have improved in the application of medical exams to new inmates. However, it does not always take place. It depends rather in the publicizing of the cases and/or the arrested people.

The right to be communicated about the arrest of a relative or a trusted person still depends, most of the cases, of the goodwill of the pertinent public servant, since there are no resources, nor infrastructures to guarantee this right. Codehupy recorded cases when the public servants make available to the arrested their own mobile phones to tell their relatives, and/or situations when the arrested had to pay to have access to a telephone.

The communication to the arrested about their rights is an exception. Codehupy have no record of a single case, in the last ten years, in which the arrested is told his rights.

The communication of the reasons of the arrest is also an exception, particularly when it affects persons belonging to vulnerable collectives, like sex workers, organized peasants, LGTB persons and low-income persons. Codehupy has no knowledge of any case in which the communication of the reasons of the arrest to persons belonging to any of these groups took place. However, there is record of cases in which the reasons of the arrest were communicated to persons not belonging to vulnerable groups.

Codehupy has documented cases in which days have passed and the arrested did not know the reasons for his arrest.

Prison staff is used to a hostile and violent working environment and they use force against interns to “keep order”. Authors of this report confirmed that in Tacumbú, the custodians, mainly in the night shift, keep using the *teju ruguái* (a whipping tool in Guarani) as a proper element of their labour (Rodi and others, 2008, interview to members of the Legal Team of Codehupy, 2012).

The use of force is normalized and institutionalized by the prison officers against persons deprived from their liberty. Prison officers use violence against prisoners, in retaliation or because acts of indiscipline such as the denial of the prisoners to gratify the officers personal whims (Codehupy, 2011).

Pretrial detention is illegal and non-regulated, because of the lack of legal and factual foundations, contributes to increase the prison population and thus the risk to be tortured or suffer inhuman, cruel or degrading treatment (Orrego and Martens, 2011).

Codehupy found at the beginning of 2013 that the registration of people convicted in Tacumbú, is not computerized and that there are people who have served their sentence but continue in prison, in spite of having release orders signed from competent judges. In this sense, Codehupy recorded cases of people convicted to 6 or 7 months of prison who continue in prison after serving their sentence for more than one or two years.

Many times, pretrial detention keeps being a rule imposed by the valuation of alternative and substitutive measures, introduced in the Code of Criminal Procedure, to the point of executing a personality-based but not offence-based criminal law, in the late legislative modifications (Martens and Orrego, 2008; Orrego and Martens, 2011).

The discretionary use of pretrial detention makes pretrial detainees the majority of the population in the prisons of the country in the last years. The 2 August 2012, 71,9% of men deprived from their liberty were pretrial detainees; the 20 October 2008, they were 69,6% of the 5673 persons deprived from their liberty in the country (Daily Report, Direction of Criminal Institutions, Ministry of Justice and Labour).

Persons deprived from their liberty that are assisted by lawyers from the Ministry of the Public Defense have difficulties in the good communication with their lawyers. State-appointed lawyers have work overload and lack from proper infrastructure for an adequate effective defence and provide the legal representation from the first moments of detention. In other situations, it is recorded that they demand money to their defendant for the exercise of their labour. This fact was documented in the provinces of San Pedro, Concepción, Amambay, Alto Paraná, Canindeju, Itapúa and Paraguari (Martens and Orrego, 2008).

The habeas corpus is not an effective resource to establish in an immediate way the right to personal freedom in cases of illegal loss, since the incompleteness of the fixed procedural deadlines established by the law has been installed as a legal systematic practice, without there being penalties for non-compliant judges and officers.

Recommendations to the State:

- The State party should quickly adopt efficient measures to ensure that all detainees count in practice with all the fundamental legal safeguards from the moment of their detention.⁴⁶
- The State party should ensure that, in practice, all detainees are immediately informed about the reason of the detention and their rights, and to ensure the detainees' right of access to a lawyer and communication with a relative or trusted person.⁴⁷

⁴⁶ Committee against Torture, op.cit., par. 11.

⁴⁷ *Idem*.

- Ensure, as a matter of urgency, free legal assistance from a State-appointed lawyer from the very first moments of detention and take disciplinary measures against those lawyers who ask for informal payments to offer a competent exercise of his functions.

Issue 15: *Please provide information on the steps taken to prevent the torture and ill-treatment of persons deprived of their liberty.*

There is not an efficient investigation system for the follow up of allegations of tortures and other kinds of ill-treatment of persons deprived of their liberty, which lead to the non-existing presentation of these kind of denounces, for fear of retaliation.

Recommendations to the State:

- Develop a system of safe and confidential denounces about the abusive behaviour of the prison officers and an independent mechanism for investigation and documentation of these cases.
- Establish an adequate system for promotion and sanctions for penitentiary staff.

Issue 15: *List the measures adopted to restrict the use of solitary confinement as a punishment for persons deprived of their liberty.*

Isolation cells are used arbitrarily and as a way of extortion for persons deprived of their liberty who, to get rid of this punishment, must give an amount of money to prison officers (Inecip, 2006, interview to members of the Legal Team of Codehupy 2012). People are punished without previous summary.

Recommendations to the State:

- Regulate the use of isolation cells, so that they are used as measure of last resort, the shortest time possible, under strict supervision and together with the possibility of judicial control.⁴⁸
- Establish a register of the use of isolation cells and the reasons motivating the decision.

Issue 15: *Also please report on the steps taken to implement Act No. 4288 on the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment and to define torture in domestic law in terms that are compatible with article 7 of the Covenant.*

The National mechanism for the Prevention of Torture already has six elected commissioners. The electing process, compiling with the law, was constituted by members of the State and civilians. The Selector Body announced a public competition; and, after the public hearings, with citizen participation, they elected the commissioners.

⁴⁸ Committee against Torture, op.cit., par. 19.

By Law No. 4614, 22 May 2012 articles 236 and 309 of the Penal Code which regulate enforced disappearance and torture, respectively, were modified to fit international standards.

The restrictive classification of the type of torture was one of the main causes of impunity of this crime. Legislative modification would ease a better criminal prosecution of the perpetrators.

Issue 16: *Please describe the results achieved under the plans of the Ministry of Justice and Labour and through other measures to reduce overcrowding in prisons and to improve the conditions of detention in accordance with article 10 of the Covenant.*

The rate of persons in prison has increased in recent years, as the following table shows:

Year	Total of detainees	Rate per 100 mil Hab.
1998	3900	74,7
2008	6003	96,3
2009	6281	99,5
2012	7748	116,1

Source: Own figures based on the Daily Report of the Penal Institutes Management of the MJT, of 17 October 2008; 9 November 2009; 2 August 2012; and the Population Projection by sex and age, regarding urban and rural areas of the DGEEC, of the 2002 census.

According to the Daily Report of 2 August 2012, criminal population in the country was 22% higher than the accommodation capacity, since there were 7748 inmates, and capacity is 6331. In the case of Tacumbú National Penitentiary accommodation capacity is 62% higher.

This increase in the inmate population has direct impact in the living conditions of the prisons characterized not only by depriving of liberty but also of basic human rights and high rates of overcrowding.

Available medical staff in penitentiaries of the country is not enough to ensure the inmates' right to health to the point of many of them depending on their relatives' economical capacity to be assisted or on public charity.

Among the main problems affecting inmates are skin infections, because of lack of proper personal toileting, and problems in the respiratory tract, as well as cavities and all teeth to be extracted.⁴⁹

Prisons do not have spaces or enough infrastructures for leisure and/or recreation activities which leads inmates to be idle in their spare time.

⁴⁹ Stories by doctors Fernando Zárate and Oscar Papaluca, who in 22 December 2012 participated in a session of free assistance for inmates of Tacumbú, within a day of solidarity. <http://www.ultimahora.com/notas/587253-Medicos-atendieron-a-presos-en-Tacumbu>

Issue 16: *Also please indicate whether and, if so, how often alternative measures to detention are applied (such as the referral of cases to non-judicial procedures, probation, community service or suspended sentences).*

Judges keep convicting people for six months, a year and two years, instead of using alternative measures to imprisonment, in minor offences, in spite of the fact that imprisonment encourages criminal tendencies, and the insanitary conditions and overcrowding of the prisons of the country.

Recommendations to the State:

- Computerize the register of convicted and pretrial detainees in the prisons of the country, so as to identify the dates of purged sentences; time for the request for conditional release; and the limit of pretrial detention, of the convicted and the pretrial detainees.
- Urge judges to the rational use of pretrial detention and the resort to alternative measures to imprisonment when sentences are inferior to two years or when dealing with minors.

1) Right to liberty and security of person; right to a fair trial and procedural guarantees (arts. 9 and 14)

Issue 18: *Please describe the measures taken to guarantee the legal and functional autonomy, as well as the financial independence, of the Public Defender Service, whose establishment was approved under Act No. 4423/11.*

Despite policy's progress, the Office of the Public Defense still needs the required staff and infrastructure to ensure a fair trial to people using their services.

The law of the General Budget of National Expenditures funded the Office of the Public Defense, however, through a regulatory decree, it is forbidden to use those funds from January 2013. This decree permits the use of budget items created from March 2013; and gradually.⁵⁰

Issue 18: *Please also report on the implementation of the projects for the recruitment of new public defenders undertaken in connection with the budgets for 2010 and 2011, together with the outlook in this respect for the next five years.*

The Office of the Public Defense requires 100 new defender officers to work at ease, according to general defender Noyme Yore Ismael. Nowadays, this office counts 320 public defenders with work overload due to increasing criminality and youngsters and children abandoned by their parents who are also assisted by this office.

Recommendation to the State:

- Provide the Office of the Public Defense with human and material resources.

Issue 19: *Please provide information on the specific steps taken to combat corruption, particularly in the judiciary, the police force and the prison system, and on the investigation of corruption cases in the past five years, together with the disciplinary measures and judicial sanctions imposed in such cases.*

In the prisons of the country it continues the institutionalized practice of paying the prison officers to enjoy basic rights of the inmates, such as visits, telephonic communications, and food.

In the prison of Tacumbú, the VIP sector, located over the Management Office of the prison, in the right wing of the Penitentiary, allocates wealthy inmates who pay to stay in that place and have access to extra privileges like the consumption of alcoholic drinks, marihuana and a different regime from the other inmates. The prison officers' low salary influences corruption.

Recommendations to the State:

- Strengthen the corruption investigation system in the Prosecutor's Office.

⁵⁰ La acción de inconstitucionalidad se presentó el 17 de enero de 2013.

- Strengthen the Department of Internal Affairs and the Bureau of Police Justice to investigate and sanction cases of police abuse and corruption.
- Dignify police and prison officers' salary.

Issue 20: *Please report on the criteria used to determine the amount of compensation to be received under Act No. 3603/08 by victims of the human rights violations perpetrated during the 1954–1989 dictatorship.*

There is no objective criterion for the determination of the quantity of the indemnities paid to victims of human rights violations, according to Law 3603/08 and amendments thereto. Codehupy recorded testimonies that indicate that partisan-political decisions and cronyism are important when the quantity of amend to the victims is established.

Recommendations to the State:

- Strengthen the system of attention to the victims of the Prosecutor's Office.
- Develop an independent administrative system of compensations to the victims of torture.

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