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on Civil and  
Political Rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Second periodic report**

**PARAGUAY\***

[9 July 2004]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## GENERAL

### A. Protection of rights under the Constitution

1. It is important to note at the outset that the Preamble to the Constitution (annex 1), promulgated on 20 June 1992, recognizes human dignity with the aim of ensuring freedom, equality and justice, and reaffirms the principles of representative, participatory and pluralist republican democracy. The interrelationship and interdependence of human rights and democracy are thus identified, in the spirit of the basic law, as two indispensable and indivisible elements that are mutually reinforcing when it comes to safeguarding the full enjoyment of both rights.

2. The Constitution, which is based on international human rights instruments, also sets forth a wide range of basic guarantees, rights and freedoms, respecting the principle of the universality, interrelatedness and interdependence of civil, political, economic, social and cultural rights.

3. The Constitution refers, among other fundamental rights and freedoms, to the right to life (article 4); the prohibition and imprescriptibility of the crimes of genocide, forced disappearance, torture and cruel, inhuman or degrading treatment or punishment (article 5); the right to liberty and security of the person (article 30); the prohibition of slavery and other forms of servitude (article 10); the right to a fair hearing and procedural rights (articles 16 and 17); the right to freedom of religion and ideology, and to conscientious objection (article 24); freedom of expression and of the press (article 26); freedom of association (article 42); the rights of the family (articles 49 to 61); the rights of indigenous peoples (articles 62 to 67); the right to health (articles 68 to 72); the right to education and culture (articles 73 to 85); and political rights and duties (articles 117 to 126). Enforcement of the rights set forth in the Constitution is also constitutionally guaranteed through, for instance, unconstitutionality proceedings (article 132), habeas corpus proceedings (article 133), *amparo* proceedings (article 134) and *habeas data* proceedings (article 135).

4. The 1992 Constitution also provides for the establishment of a special institution, the Office of the Ombudsman (*Defensor del Pueblo*), for the protection and promotion of human rights. In 1995 Act No. 631 establishing the Office of the Ombudsman was adopted and nine years after the promulgation of the Constitution, on 11 October 2001, the Ombudsman and Deputy Ombudsman were appointed by resolution No. 768/01 adopted by the Chamber of Deputies in implementation of article 277 of the Constitution and articles 4 and 11 of Act No. 631 of 14 November 1995.

5. The Office of the Ombudsman is now a firmly established institution that has played an active part in the enactment of legislation, the safeguarding of human rights, the channelling of complaints from members of the public and the protection of community interests. Mention should also be made of the Office's efforts to clear the way for the granting of reparations to the victims of the 1954-1989 dictatorship by making representations to the executive and legislative authorities, and by challenging the unconstitutionality proceedings brought by the Public Prosecutor's Office in the Constitutional Division of the Supreme Court of Justice against the Ombudsman's advice regarding the compensation of victims. Thanks to a dialogue between the Ombudsman and the Attorney-General, it was possible to achieve a favourable settlement for the victims through the withdrawal of the unconstitutionality proceedings against the Ombudsman's advice, which cleared the way for the initiation of compensation payments to the victims of the dictatorship. The State wishes to inform the Committee that the Office of the Ombudsman has facilitated access to information about its work through its web site [www.paraguaygobierno.gov.py/defensoria](http://www.paraguaygobierno.gov.py/defensoria).

6. Chapter V of the Constitution, entitled “International Relations”, stipulates in article 142 that: “International human rights treaties can be denounced only through the procedures governing amendments to this Constitution.”

7. In addition, article 137 of the Constitution entitled “Supremacy of the Constitution”, contained in Part II “Political Organization of the Republic”, Chapter I “Fundamental Declarations”, stipulates that: “The Constitution is the supreme law of the Republic, followed by adopted and ratified international treaties, conventions and agreements, laws enacted by the Congress and other related subordinate legislation, which constitute national positive law in the foregoing order of precedence. Any attempts to change that order other than through the procedures set forth in this Constitution shall constitute offences which shall be characterized and punishable by law. Any measure or act by a public authority that is at variance with the provisions of this Constitution shall be null and void.”

8. Accordingly, all international treaties, conventions and agreements clearly take precedence inasmuch as they are listed second in the order of priority above national legislation. It should be noted that the individual enjoys double protection of his or her human rights in the Republic of Paraguay: on the one hand, the protection afforded by the Constitution and the domestic legal system, and, on the other, international protection, inasmuch as Paraguay has ratified most international human rights instruments, including the International Covenant on Civil and Political Rights, ratified by Act No. 5 of 9 April 1992, and the Optional Protocol to the Covenant, ratified by Act No. 400 of 26 August 1994.

9. It is also important to remind the Committee that the Republic of Paraguay, in its foreign policy regarding human rights, has facilitated individual access to international legal protection through its acceptance of the binding jurisdiction of the Inter-American Court of Human Rights in 1993. The State is currently engaged in proceedings pertaining to its first three cases before the Inter-American Court. The first concerns an alleged violation of the right to life, physical integrity, personal freedom and judicial guarantees (*Centro de Reeducación de Menores v. Paraguay*). The second case concerns an alleged violation of freedom of expression and other rights (*Ricardo Canese v. Paraguay*) and the third concerns an alleged violation of the right to community property and other rights of an indigenous community (*Yakye Axa indigenous community of the Enxet Lengua people v. Paraguay*).

10. The circumstances and requirements for the suspension of certain rights and guarantees will be addressed in the context of the response regarding article 4 of the Covenant.

#### **B. Possibility of invoking the provisions of the Covenant in legal proceedings**

11. In Chapter I of Part II of the Constitution concerning “Fundamental Declarations”, article 137 stipulates: “The Constitution is the supreme law of the Republic, followed by adopted and ratified international treaties, conventions and agreements, laws enacted by the Congress and other related subordinate legislation, which constitute national positive law in the foregoing order of precedence. Any attempts to change that order other than through the procedures set forth in this Constitution shall constitute offences which shall be characterized and punishable by law. Any measure or act by a public authority that is at variance with the provisions of this Constitution shall be null and void.” Accordingly, all international treaties, conventions and agreements clearly take precedence inasmuch as they are listed second in the order of priority above national legislation.

12. Similarly, article 141 states: “International treaties that have been duly concluded and adopted by an act of Congress and in respect of which the instruments of ratification have been exchanged or deposited shall form part of domestic legislation, with the rank specified in article 137.”

13. The Government’s first human rights report (annex 2), submitted on 14 July 2004 and accessible electronically on the web site [www.mre.gov.py/ddhh/ddhh3.htm](http://www.mre.gov.py/ddhh/ddhh3.htm), states in Chapter II, Report of the Judiciary, in the section entitled “Human rights and criminal defence: Use of international human rights instruments in legal proceedings”: “In the Republic of Paraguay the order of precedence of legislation is laid down in article 137 of the Constitution which establishes the supremacy of the Constitution and ranks next in the order of priority international treaties, conventions and agreements adopted and ratified by the Republic of Paraguay, which constitute national positive law. The Ministry of Public Defence in criminal proceedings has always instructed its members that the content of their applications and written statements to courts and tribunals must be in keeping with the provisions of the Constitution and the international treaties and conventions or agreements to which Paraguay is a party. These include the 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights (Pact of San José of Costa Rica), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, which has been in force since 1990, and the Convention on the Elimination of All Forms of Discrimination against Women.”

14. It is furthermore important to inform the Committee that in 2000 the Supreme Court of Justice, by resolution No. 759/00, established a Human Rights Unit (UDH) to deal with claims pertaining to the promotion and enforcement of human rights. In the preambular part of the resolution, the Court stated: “...That since 1989, with the advent of democratization, many international human rights instruments have been ratified by the Republic of Paraguay, both in the Inter-American system and in the United Nations system; that the adoption of the 1992 Constitution also represented a major advance in this regard, inasmuch as it enshrines these fundamental rights in broad terms and establishes guarantees for their protection; that a necessary corollary of the full enforcement of human rights is the existence of an alert, effective and competent judiciary, with judges who are well trained and dedicated to the application of these fundamental rights and guarantees...”.

15. In pursuance of resolution No. 759/00, the Human Rights Unit of the Supreme Court of Justice performed the activities assigned to it in 2002, including the organization of workshops with support from the German technical cooperation agency, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), with a view to developing a clear definition of its role, drawing up a strategic plan and creating an inter-agency team in the judiciary to analyse and monitor human rights issues.

16. In the light of the goals defined, a three-year strategic plan (2002-2005) was developed as well as an operational plan. The Strategic Plan of the Court’s Human Rights Unit aims at:

- (a) Generating a critical mass of human resources in the legal community, especially in the judiciary, who are sensitized to and well trained in human rights; ensuring high-quality technical human rights counselling;
- (b) Coordinating, as appropriate, with the judiciary, other state bodies and civil society;

- (c) Monitoring alleged cases of human rights violations at the request of the Supreme Court of Justice and other state institutions, and cases reported to international bodies and agencies that are referred to the judiciary;
- (d) Efficiently handling cases of alleged human rights violations; and
- (e) Providing for a sufficient number of suitable human resources, efficient internal and external communications, the infrastructure required to achieve its goals, reliable and timely information, a database on human rights legislation and jurisprudence, and the financial resources needed to attain its goals.

17. The Strategic Plan was adopted by the full bench of the Supreme Court of Justice in Document No. 31 of 8 August 2002. Following its adoption by the full bench of the Court, the Unit began implementing the Plan with an official presentation to judges in Asunción, state officials and representatives of civil society.

18. The Government regards the Human Rights Unit as a key actor in the training process and in promoting and disseminating international human rights instruments and jurisprudence in order to ensure their effective application by judges, magistrates, prosecutors, public defenders and lawyers. A specific project that could be undertaken jointly by the judiciary and the executive, with support from specialized human rights bodies, is the convening of a national symposium on “the role of judges and other judicial officers in the promotion and protection of human rights, focusing on the application of relevant international instruments” in accordance with the Vienna Declaration and Programme of Action. This project calls for a concerted effort by national institutions and, above all, support from the Office of the United Nations High Commissioner for Human Rights.

### **C. Authorities with jurisdiction in the area of human rights**

19. Judicial enforcement is ensured by the judiciary through courts and tribunals throughout the Republic.

20. In 2000 the Supreme Court of Justice established a Human Rights Unit, which is implementing a Strategic Plan (2002-2005) that focuses on the promotion of human rights and the dissemination of international norms and jurisprudence, as described in the preceding section of this report. The Unit performs no judicial functions.

21. In addition, the Public Prosecutor’s Office, through the Office of the Attorney-General, has given special attention to the protection of constitutional rights and guarantees by establishing specialized prosecution departments and units with the specific mandate of handling all matters pertaining to reports of violations of human rights protected by the Constitution and international human rights instruments.

22. In this connection, we wish to inform the Committee that the Human Rights Unit at the Public Prosecutor’s Office has been operational since 23 August 2002. It has a coordinating office and three specialized prosecution units responsible for conducting criminal investigations of offences that have been characterized as crimes, an official who handles letters rogatory and a legal adviser. These units deal, in particular, with the following cases: hostage-taking, causing bodily harm during the performance of public duties, use of duress to obtain statements, torture, prosecution of innocent persons, enforcement of penalties against innocent persons, breach of the

secrecy of mail and telecommunications, genocide and war crimes. The working method employed consists in providing technical support to the prosecution departments that specialize in monitoring compliance with constitutional rights and guarantees in cases in which the State, through its agencies or officials, is suspected of violating fundamental rights and freedoms.

23. The specific functions of the Unit are:

- (a) To receive written or oral complaints of human rights violations;
- (b) To forge cooperative links between the Public Prosecutor's Office and other domestic or international governmental or non-governmental institutions dealing with human rights;
- (c) To gather data on cases involving Paraguay before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights with a view to taking action thereon;
- (d) To make suggestions regarding the human rights policies to be pursued by the Public Prosecutor's Office;
- (e) To prepare opinions and recommendations regarding human rights;
- (f) To disseminate human rights information and provide training in human rights;
- (g) To request reports from prosecution units and other departments of the Public Prosecutor's Office regarding cases involving human rights violations.

24. The relevant bodies in the legislature are the Human Rights Committees in both the Chamber of Senators and the Chamber of Deputies. The committees are composed of legislators from the political parties represented in the Congress.

25. The Human Rights Committee of the Chamber of Deputies, for example, is responsible for issuing opinions on any matter or bill that has a bearing on the promotion and protection of human rights and on legislation pertaining to human rights and indigenous matters. Furthermore, since the entry into force of the Constitution in 1992, the Committee has received all petitions from conscientious objectors to compulsory military service. In addition to its legislative functions, the Committee performs the equally important task of receiving, processing and finding appropriate solutions for miscellaneous complaints from members of the public regarding violations of fundamental rights. In this context, the Committee receives legal advice on the provision of guidance and counselling to persons who approach the Committee or on promoting appropriate action under private sponsorship in cases involving serious violations of human rights.

26. Another institution is the Office of the Ombudsman, which has constitutional status. According to the Constitution, the Ombudsman is a parliamentary commissioner whose functions consist in safeguarding human rights, channelling claims from members of the public and protecting community interests. Article 276 of the Constitution stipulates that in no circumstances shall the Ombudsman perform judicial or executive functions. The duties and powers of the Ombudsman are set forth in Chapter IV, Section I, article 279, of the Constitution and in Title II, article 10, of Act No. 631/95 establishing the Office of the Ombudsman.



27. The Ombudsman is appointed by a two-thirds majority of the Chamber of Deputies from a list of three candidates proposed by the Chamber of Senators. He or she holds office for a period coinciding with the session of Congress and is eligible for re-election. During his or her term of office, the Ombudsman may not be a member of any branch of government or exercise any political or party-related activity (articles 277 and 278 of the Constitution).

28. The constitutional powers of the Ombudsman include: to receive allegations, complaints and claims of human rights violations; to request information from the authorities, at different levels, including from the police and law enforcement agencies in general, that will facilitate the discharge of his or her functions; to issue a statement of public censure concerning acts or behaviour deemed contrary to human rights; and to prepare and disseminate reports on aspects of the human rights situation that call for prompt public attention.

29. During the period preceding the submission of this report, the coverage of the Office of the Ombudsman was extended to 13 departments of the country, in which Offices of Delegates of the Ombudsman operate. These are bodies to which the inhabitants of the different regions may have recourse in order to submit requests and claims. The Offices draw in turn on the services of 18 Delegates of the Ombudsman stationed in different towns. Most of them work on a *pro bono* basis.

30. An Ombudsman was appointed on 11 October 2001 and his mandate has been extended by law until such time as a new Ombudsman is appointed.

31. In the executive branch of government, institutional bodies with responsibility for the promotion and protection of human rights were established with effect from 1990. The first Directorate-General of Human Rights was established in the Ministry of Justice and Labour in 1990. An important part of its mandate, in addition to the promotion of human rights, consists in oversight of the prison system to ensure appropriate treatment of detainees and protection of the human rights of persons deprived of their liberty.

32. A Department for Human Rights and International Humanitarian Law operates in the Ministry of National Defence. The Ministry of Internal Affairs has a Department of Civil Security and Protection. Furthermore, the armed forces have a Liaison Department for human rights and international humanitarian law issues.

33. Since 2002 the Ministry of Foreign Affairs has had a Human Rights Department coordinated by the State Inter-agency Human Rights Group, which submitted its first report on the human rights situation in Paraguay on 14 July 2003. The report is accessible on the web site [www.mre.gov.py/ddhh/ddhh3.htm](http://www.mre.gov.py/ddhh/ddhh3.htm). This Department also coordinates the preparation and submission of periodic reports to treaty monitoring bodies, and the preparation and submission of replies in respect of individual proceedings, petitions, precautionary measures and requests to international protection bodies. To that end, it coordinates an ad hoc group composed of representatives of other government agencies.

34. In addition, an Executive Secretariat for Women, an institution with ministerial status, was established by Act No. 34 of 20 August 1992 as an agency attached to the Office of the President of the Republic. The principal task of the Secretariat, which, as already noted, enjoys ministerial status, is to promote a leadership role for women and their active participation in all aspects of political, economic, cultural, family, labour and social life in the framework of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Act No. 1215 of

28 November 1986. The Executive Secretariat for Women played a crucial role in the enactment of Act No. 1600 against domestic violence and has promoted the establishment of women's networks to ensure implementation of the Convention and Act No. 1600 throughout the national territory.

35. The Executive Secretariat for Women has also been actively involved in the work of the Inter-American Commission of Women and has served on its Executive Committee for several terms. It has also played a significant role in the preparation and timely submission of periodic reports to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW); Paraguay is now up to date with its reporting obligations to the Committee.

36. Furthermore, the Executive Secretariat works, insofar as its human and financial resources permit, to promote the integration of women into the country's political, institutional and social life. The Secretariat for Women is becoming the leading national institution engaged in coordinating, monitoring and evaluating public policies on gender, performing a vital role in the promotion of equality of opportunity for men and women.

37. Paraguay recently adopted a new legal regime governing children and adolescents, a regime that is in keeping with the international Convention and is based on the principle of integrated protection and the higher interests of the child. In December 2001 the new Childhood and Adolescence Code entered into force with the adoption of Act No. 1680/01 (annex 3), bringing into being the National System for the Protection and Promotion of Childhood and Adolescence, which is a grouping of centralized and decentralized bodies that seeks to focus attention on childhood and adolescence, adopting an approach based on decentralization, participation and coordination.

38. The National Secretariat for Childhood and Adolescence (SNNA) was created as part of this System. It has ministerial status and is attached to the Office of the President of the Republic. The Secretariat was established in December 2001 and since then has acted as the governing body for all matters pertaining to childhood and adolescence. Its principal achievements to date include adoption of the National Plan and Five-Year Programme for Childhood and Adolescence, the Plan for the Gradual Elimination of Child Labour in fulfilment of obligations incurred through ratification of ILO Convention No. 138 and the Plan to Eliminate the Sexual Exploitation of Children and Adolescents.

39. The Government has also established specialized bodies to deal with social matters (Secretariat for Social Action, with ministerial status, attached to the Office of the President of the Republic), indigenous affairs (Paraguayan Indigenous Institute), social housing (National Housing Commission – CONAVI) and other matters.

#### **D. Remedies available to persons claiming that their rights have been violated**

##### **Constitutional remedies**

40. Title I, Chapter XII, entitled "Constitutional Guarantees", provides for habeas corpus, and article 133 stipulates: "A petition for this safeguard may be filed by the person concerned, acting on his or her own behalf or through an intermediary, without need of power of attorney, by any reliable means and with any court of first instance in the relevant judicial district."

41. Habeas corpus may be:

- (a) *Preventive*: in which case anyone who has been unlawfully deprived of his or her physical liberty may apply for consideration of the lawfulness of the circumstances which, in the opinion of the person concerned, constitute a threat to his or her liberty, as well as an order for the termination of such restrictions;
- (b) *Reparative*: in which case anyone who has been unlawfully deprived of his or her liberty may apply for the circumstances to be rectified. The judge shall order the detainee to appear in court and also order a report from the public official or private agent who detained him or her, within 24 hours of the filing of the petition. In the event of failure to comply, the judge shall proceed to the place at which the person is being held and, at that place, shall determine the merits and order immediate release, just as if the detainee had been brought before the court and the report had been filed. If there are no legal grounds for deprivation of liberty, the person shall be released immediately; where there is a written order by a judicial authority, the record shall be sent to the person who ordered the detention;
- (c) *General*: in which case a petition may be filed for rectification of circumstances that are not covered by the two cases mentioned above and constitute a restriction of liberty or a threat to personal safety. A petition for this safeguard may also be filed in cases of physical, mental or moral violence that aggravate the conditions in which persons lawfully deprived of their liberty are being held. The law shall regulate the various procedures governing habeas corpus proceedings, which shall be applicable even during a state of emergency. The procedure shall be brief, summary and free of charge, and may be initiated automatically.

42. In addition to extending the scope of habeas corpus, the Constitution stipulates that this safeguard shall not be affected by a state of emergency and authorizes any lower-court judge or justice of the peace to deal with the petition as a matter of urgency. It should be noted in this regard that the previous Constitution allowed only the Supreme Court of Justice to consider such petitions and that the safeguard was not available during a state of siege. The National Congress adopted Act No. 1500 regulating the constitutional safeguard of habeas corpus, which was approved by the Chamber of Senators on 22 July 1999 and by the Chamber of Deputies on 21 October 1999, following which it entered into force on 5 November 1999 in accordance with the provisions of article 204 of the Constitution.

43. Article 134 of the Constitution also guarantees the right of *amparo* (protection) in the following terms:

“Anyone who, as a result of a manifestly unlawful act or omission by an authority or an individual, considers that he or she has been seriously harmed or is in imminent danger of being harmed with respect to rights and guarantees set forth in this Constitution or in the law, and who, owing to the urgency of the case, cannot seek redress through the usual channels, may file a petition for *amparo* to the competent court. The procedure shall be brief, summary and free of charge and shall be in the form of a class action in the cases provided for by law. The court shall have authority to safeguard the right or guarantee or immediately to restore the legal situation that existed prior to the infringement. In matters pertaining to elections or political organizations, electoral courts shall have jurisdiction.

A petition for *amparo* may not be filed in the course of judicial proceedings, against acts by judicial bodies or during the elaboration, enactment and promulgation of laws. The law shall regulate the relevant procedure. Appeals may be made against decisions in *amparo* proceedings.”

44. Article 135 of the Constitution also guarantees *habeas data*: “Any person may obtain information and data about him or herself or his or her property contained in publicly available official or private records, and may also learn what use is being made of the information and data and for what purpose. He or she may file a request to the relevant court for the updating, correction or destruction thereof if they are erroneous or unlawfully affect his or her rights.”

45. Article 136 of the Constitution concerning the jurisdiction and responsibility of judges stipulates: “No judge with jurisdiction shall refuse to entertain the actions or remedies envisaged in the preceding articles; any judge who does so without legal cause shall be prosecuted and, if appropriate, removed from office.”

46. In handing down decisions, judges must also rule on the responsibilities incurred by the authorities in respect of the unlawful conduct and, where there is *prima facie* evidence of the commission of a crime, shall order the detention or suspension of those responsible as well as any precautionary measure deemed appropriate to ensure the more effective discharge of such responsibilities. Furthermore, where a judge has jurisdiction, he or she shall institute pre-trial proceedings and involve the Public Prosecutor’s Office; where the judge lacks jurisdiction, he or she shall transfer the record to the competent judge.

### **Remedies under the new criminal legislation**

47. Two new Codes, the Criminal Code and the Code of Criminal Procedure (annex 4), promulgated by Act No. 1160/97 and Act No. 1286/98 respectively, are now in force.

48. In addition, Act No. 1444 regulates the period of transition applicable to all criminal proceedings initiated under the former Criminal Code.

49. The Transition Act established 28 March 2003 as the deadline for the termination of all such proceedings or their final disposal. In practice, however, many proceedings could not be disposed of by the date appointed. The Act, specifically article 5 thereof, was the subject of a claim of unconstitutionality filed by the Public Prosecutor’s Office. By decision No. 2805 of 5 November 2002, the Supreme Court of Justice approved the Action for Agreement and Judgement No. 979 of 18 September 2002. The Public Prosecutor’s Office thus succeeded in preventing impunity in thousands of cases initiated when the 1890 Code of Criminal Procedure was still in force. Pursuant to article 5 of Act No. 1444/99, criminal proceedings instituted under the previous Criminal Code that had not concluded with a final enforceable judgement or enforceable dismissal by 28 February 2003 were to be terminated, creating a risk of impunity in thousands of cases. After the filing of the successful unconstitutionality claim, such unfinished proceedings could be disposed of in the normal way, since there was no longer a time limit to be observed.

50. The new Criminal Code entered into force in November 1998. As a result, Paraguay was integrated into contemporary legal culture. The values underpinning the Code are based on penal guarantee theories, drawing on the basic concept of protection of human dignity and commitment to the rule of law.

51. The general principles underlying the Criminal Code are human dignity, the rule of law and minimum intervention. Other basic principles of interpretation and application are: 1. The principle of legality (article 1); 2. The principle of culpability; 3. The principle of proportionality (article 2.3); and 4. The principle of prevention (article 3). In a special section, the new Criminal Code safeguards a series of legal interests that had previously been unprotected. They relate, for instance, to computer crime, the environment and the financial and economic system. It will be possible, through the characterization of these offences, to ensure more comprehensive protection of society's basic legal values.

52. In addition, the new criminal procedure regime has been in force since March 2000. It is based on the following principles:

- (a) Vesting of the Public Prosecutor's Office with investigative powers, authority to direct police investigations, and responsibility for indictment and the burden of proof;
- (b) Establishment of mechanisms to ensure the full exercise of the right to present a material and technical defence;
- (c) Establishment of oral proceedings as an essential part of the procedure;
- (d) Introduction of means of controlling the duration of the proceedings by providing for time limits and personal and procedural penalties;
- (e) Introduction of alternatives to ordinary proceedings such as the principle of discretionary prosecution, conditional suspension of proceedings, conciliation and shortened proceedings;
- (f) Ensuring the exceptional nature, proportionality and limited duration of precautionary measures;
- (g) Making the victim's participation in the proceedings less formal so that he or she can exercise control over final decisions even without having the status of plaintiff;
- (h) Establishment of special procedures tailored to the nature of the criminal dispute (proceedings relating to offences in a private criminal suit), the nature of the penalty (proceedings for the application of measures), and the characteristics of the population involved in the dispute (proceedings relating to unlawful acts involving indigenous peoples).

53. As may be seen from the foregoing, the new Code, in addition to placing emphasis on making existing constitutional safeguards operational, established mechanisms to enhance the efficiency of the system of administration of criminal justice. It follows that efficiency and safeguards are the two pillars on which the new criminal procedure is based.

54. A description is provided below of some articles of Act No. 1286/98, the Code of Criminal Procedure, that the State considers important from the point of view of the safeguards that we shall mention in general terms in that regard.

55. Article 284 stipulates: "Anyone who obtains knowledge of a publicly prosecutable act may report it to the Public Prosecutor's Office or the National Police. Where the criminal action

depends on a private party, a complaint may be filed only by the party entitled to press charges pursuant to the provisions of the Criminal Code.”

56. Article 285, entitled “Form and Content” stipulates: “The complaint may be filed orally or in writing, in person or through an agent. When it is filed orally, a record thereof shall be made; a power of attorney shall be required where the complaint is filed through an agent.”

57. “In both cases, the official receiving the complaint shall verify and place on record the identity and place of residence of the complainant.”

58. “The complaint shall contain, if possible, a detailed account of the act, indicating the perpetrators and participants, injured parties and witnesses, and providing other evidence that may be used for purposes of substantiation and legal characterization of the act.”

59. Article 286, entitled “Duty to Report” stipulates: “The following have an obligation to report publicly prosecutable acts:

- (a) Public officials and employees who obtain knowledge of the act in the performance of their duties;
- (b) Doctors, chemists, nurses and other persons employed in any branch of medical science, where they obtain knowledge of the act in the exercise of their profession or occupation, unless the information confided is subject to professional secrecy; and
- (c) Persons who are responsible, pursuant to the law, the decision of an authority or any legal instrument, for the management, administration, care or control of the property or interests of an institution, entity or individual, in respect of unlawful acts committed to the detriment of the latter or of the assets or property placed under their responsibility or control, provided that they obtain knowledge of the act in the performance of their duties.”

60. “In all these cases, reporting shall cease to be a duty where there is a reasonable risk of criminal prosecution of the complainant, his or her spouse, cohabitant or relative within the fourth degree of consanguinity or by adoption, or within the second degree of affinity, or where knowledge was obtained of the facts in a context of professional secrecy.”

61. Article 289, entitled “Complaint to the Police”, stipulates: “Where the complaint is filed with the National Police, the latter shall inform the Public Prosecutor’s Office and the court, and shall initiate preliminary investigations in accordance with the provisions of Section III of this chapter.”

62. Article 290, entitled “Complaint to the Public Prosecutor’s Office”, stipulates: “The Public Prosecutor’s Office, on receiving reliable information by any means regarding the commission of an unlawful act, shall organize the investigation in accordance with the rules laid down in this Code, requesting the immediate assistance of the National Police unless the investigation is conducted by the Criminal Investigation Service. The Office shall in all cases inform the court within six hours of the initiation of the investigation.”

### **Remedies under the new “Childhood and Adolescence Code”**

63. The Childhood and Adolescence Code, promulgated as Act No. 1680/01 (annex 3), consists of five books and 259 articles. Its basic aim is to ensure the integrated protection of the human person from conception until the age of majority, which is 18 years.

64. In legal terms, it comprises a wide range of fundamental rights, eliminating any remaining doubts about the status of the child, who (as a child or adolescent) is an active subject and beneficiary of all rights inherent in the human person. An outstanding development in this context was the establishment of the Secretariat for Childhood and Adolescence and the gradual mobilization of an aware and organized civil society in support of children’s and adolescents’ rights. Some of the articles of the new Code are mentioned below, for instance article 5, entitled “Duty to Report”, which stipulates: “Anyone who obtains knowledge of a violation of the rights and guarantees of the child or adolescent shall immediately report it to the Municipal Council for the Rights of Children and Adolescents (CODENI) or, failing that, to the Public Prosecutor’s Office or the Ombudsman.”

65. “The duty to report is binding, in particular, on persons who, as health workers, educators, teachers or professionals in other branches, are responsible for the supervision, education or care of children or adolescents.”

66. “On receiving the information, the Municipal Council for the Rights of Children and Adolescents (CODENI), the Public Prosecutor’s Office and the Ombudsman shall take appropriate action in accordance with their mandate.”

67. Article 26, entitled “Right of Petition”, stipulates: “Children and adolescents have the right to submit and file petitions to any public body or officials regarding matters falling within their jurisdiction and to obtain an appropriate response.”

68. Article 34, entitled “Measures of protection and support” stipulates: “Where the circumstances of the child or adolescent are such as to require the provision of protection or support, the following protection and support measures shall be applied:

- (a) Notification of the father, mother, guardian or other responsible person;
- (b) Counselling of the child or adolescent and of his or her family group;
- (c) Temporary monitoring of the child or adolescent and of his or her family group;
- (d) Enrolment of the child in a basic educational establishment with duty of assistance;
- (e) Medical and psychological treatment;
- (f) In emergencies, provision for the material sustenance of the child or adolescent;
- (g) Shelter;
- (h) Placement of the child or adolescent with a substitute family; and
- (i) Placement of the child or adolescent in a home.”

69. “The measures of protection and support referred to in this article may be ordered separately or jointly. They may also be changed or replaced if the higher interests of the child so require.”

70. “The measures of protection and support shall be ordered by CODENI. In the case of a measure under subparagraphs (g) to (i) of this article, the order shall require judicial authorization.”

71. Article 111, entitled “Duty to Report”, stipulates: “Anyone who obtains knowledge of the abandonment of a child or adolescent owing to neglect shall bring the situation to the notice of any competent authority within forty-eight hours; the authority shall in turn notify the situation to the childhood and adolescence court. Should the omission be attributable to the persons mentioned in article 4 of this Code, the unlawful act described in article 199 of the Criminal Code shall be applicable.”

### **Remedies under new Act No. 631/95 instituting the Office of the Ombudsman**

72. Since the effective entry into force of Act No. 631 and the appointment of the Ombudsman in October 2001, Paraguayan citizens have access to a body whose mandate is to safeguard human rights, to channel complaints from members of the public and to protect community interests. The Office of the Ombudsman also has authority to process and render opinions on applications for compensation for human rights violations during the 1954-1989 dictatorship in accordance with Act No. 838/96 concerning compensation for victims of the 1954-1989 dictatorship.

### **E. Other measures adopted to ensure implementation of the provisions of the Covenant**

73. With the ratification of the International Covenant on Civil and Political Rights and other international treaties, the Paraguayan Government has displayed its firm resolve to ensure full respect for and observance of human rights, in accordance with the fundamental principles of freedom, justice, the rule of law, democracy and peace.

74. The Republic of Paraguay has made every effort to achieve a proper understanding of the provisions of the Covenant. To that end, the Directorate-General of Human Rights attached to the Ministry of Justice and Labour has organized seminars, panels, talks and training days for teachers at various levels, in order to inform them about the subject, its content, the need to adjust existing circumstances in the country, and the various international instruments ratified by Paraguay, including the International Covenant on Civil and Political Rights. In addition, training is provided for officials of various public departments such as the Office of the Attorney-General, the police and the Ministry of Foreign Affairs which, in one way or another, have to apply its principles in the performance of their duties. Moreover, the first Manual for Human Rights Curricula, prepared in cooperation with the Inter-American Human Rights Institute, has been launched and is now the first official text for use in formal human rights education in Paraguay.

75. At the same time, TAREA, a non-governmental organization, has been conducting a publicity campaign through the publication and distribution of educational brochures on human rights instruments, including the International Covenant on Civil and Political Rights.



76. It is also important to mention the Paraguay Human Rights Coordinating Office (CODEHUPY), which has prepared an annual report on human rights in Paraguay for the past seven years, the report entitled "Human Rights in Paraguay, 2002" being the seventh in the series. CODEHUPY is the result of an initiative promoted in 1996 by the Paraguay Peace and Justice Service (SERPAJ-PY), which invited various non-governmental organizations to take up the challenge of preparing a human rights report in the country. In addition, the Committee of Churches for Emergency Assistance (CIPAE) publishes an annual report.

77. The following is a list of all non-governmental bodies involved in all aspects of human rights work in Paraguay: the Association of Relatives of Victims of Military Service (AFAVISEN); the American Association of Jurists (AAJ); Alternatives for Mental Health (ATYHA); the Social Research Base (BASE-IS); the Documentation and Studies Centre (CDE); the Childhood and Adolescence Rights Coordinating Office (CDIA); the Justice and International Law Centre (CEJIL); the Cordillera Human Rights Coordinating Office (CODEHUCO); the Paraguayan Community Broadcasting Association (COMUNICA); the National Coordinating Office of Indigenous Pastoralists (CONAPI-CEP); the Coordinating Office of Native Peoples of the Pilcomayo River Basin; the Decidamos (Let's Decide) campaign for citizens' right of expression; Defence for Children International; Forums for Citizen Participation; the Kuñy Aty Foundation; the Foundation for State Reform (FUNPARE); the Gay Lesbian Action Group (GAG-L); Local Management, Luna Nueva Group; the Institute for Comparative Studies in Criminal and Social Sciences (INECIP); the Conscientious Objection Movement (MOC-Py); the People's Education Programme (ÑEMONGETARA); the Education and Social Support Service/Rural Areas (SEAS/AR); the People's Education Service (SEDUPO); the Paraguay Peace and Justice Service (SERAJ-PY); Sobrevivencia; the Union of Journalists of Paraguay (SPP); Tierraviva; and the many other organizations that continue to be created every day in our country to work jointly for the praiseworthy goal of safeguarding human rights. Many of these non-governmental bodies are subsidized by the Paraguayan State.

78. With a view to publicizing human rights, the Office of the Ombudsman, having become fully operational in 2001, drew up a programme of work in 2003 involving publicity and the dissemination of information regarding the role of the Office of the Ombudsman. To that end, offices were established in different parts of the country.

79. These offices, which are called Offices of Delegates of the Ombudsman, are now operating in 13 departments with a total of 22 Delegates of the Ombudsman. Although they have only been operating for a short time with scanty human and material resources, each and every staff member of the delegations has worked efficiently and effectively to assist petitioners with the various complaints filed in order to obtain a satisfactory solution. The Offices of Delegates of the Ombudsman have attended to the needs of a total of 798 persons, preparing 621 case files, of which 443 concern citizens' complaints and 178 petitions under Act No. 838/96. Furthermore, legal counselling has been provided to 177 persons. The Asunción Office of the Ombudsman has received a total of 1,328 cases, of which 33.6 per cent concern petitions for compensation under Act No. 838/96 on compensation of victims of the dictatorship, 18.2 per cent citizens' complaints, 17.6 per cent requests for legal counselling, 12.7 per cent *habeas data* applications and 17.8 per cent requests pertaining to the terror archives. In addition to publishing citizens' complaints and petitions under Act No. 838/96, both the Ombudsman and the Delegates of the Ombudsman in the regions and Asunción have visited military establishments, police stations and prisons to observe the conditions in such institutions and to ensure that they are respecting human rights in practice.

## **INFORMATION CONCERNING THE APPLICATION OF ARTICLES 1 TO 27 OF THE COVENANT**

### **Article 1**

80. Paraguay accepts, as a matter of law, the principles contained in article 1 of the Covenant and makes every effort to ensure that they are fully respected, protected and promoted.

81. Under the Constitution, the Republic of Paraguay is a free and independent State and has adopted a form of government based on representative, participatory and pluralist democracy, founded on the equality of all and respect for human dignity. In addition, sovereignty lies under the Constitution with the people who exercise their public authority by voting; government is the responsibility of the legislature, the executive and the judiciary, and the system is based on separation of powers, balance, coordination and mutual supervision.

82. Article 144 of the Constitution establishes the principle of self-defence. This declaration is compatible with Paraguay's rights and obligations as a member of the United Nations and the Organization of American States and as a State party to integration treaties.

83. In article 145, the Constitution recognizes a supranational legal order guaranteeing human rights, peace, justice, cooperation and political, economic, social and cultural development.

84. The Republic of Paraguay accepts international law and abides by the principles of national sovereignty, the self-determination of peoples, the legal equality of States, solidarity and international cooperation, and non-intervention; it condemns all forms of dictatorship, colonialism and imperialism.

85. Paraguay has no colonies and does not administer any non-self-governing or trust territory.

### **Article 2**

86. The Constitution guarantees respect for human dignity and non-discrimination. Both principles are set forth in articles 46 and 47, which stipulate that all inhabitants of the Republic are equal in dignity and rights. There is no discriminatory institutional regime. The Constitution also stipulates that the State shall guarantee that all inhabitants have equal access to justice, that they are equal before the law and that they have equal access to non-elective public office, with no requirement other than ability.

87. The Constitution also provides, in article 117, that all citizens, regardless of sex, have the right to take part in public affairs. Access by women to public office must also be encouraged.

88. The question of discrimination on grounds of sex will be dealt with in greater detail in connection with article 3. Nevertheless, it is important to refer here to article 115 of the Constitution, subparagraph 10 of which states that: "Agrarian reform shall be encouraged with the participation of rural women on an equal footing with men." It should be noted in this regard that Paraguay co-sponsored resolution "[...]"

89. As regards nationality, the only difference between nationals and foreigners is in the entitlement to vote in general elections. Article 120 states that: "All Paraguayan citizens without distinction who are resident in the national territory and who are over 18 years of age shall be

entitled to vote. Citizens shall be entitled to vote and to be elected, with no restriction other than those established by the Constitution and the law. Foreigners who are permanent residents shall have the same rights in municipal elections.”

90. In that regard, article 2 of Act No. 834/96 concerning the Electoral Code provides that all Paraguayan citizens who are resident in the national territory and all foreigners who are permanent residents, and who are over 18 years of age, shall be entitled, without distinction, to vote provided that they meet all the requirements of the law and are enrolled in the Permanent Civil Register. Article 14 of Part I of the same Code establishes the equality of all political parties before the law. Article 292, clause (b), sets forth the regulations on canvassing and prohibits any propaganda advocating discrimination on the grounds of class, race, sex or religion.

91. Fundamental human rights are also guaranteed for foreigners, whatever their nationality.

92. Article 73 of the Constitution establishes the right of everyone to an all-round lifelong education. Article 74 guarantees the right to learn and equality of access, without discrimination, to the benefits of culture, science and technology.

93. With regard to work, article 88 of the Constitution stipulates that no discrimination shall be permitted between workers on ethnic grounds or on the basis of sex, age, religion, social status and political or trade union preferences. With reference to working women, article 89, paragraph 1, stipulates that workers of the two sexes shall have the same labour rights and obligations, and that special protection shall be provided for maternity.

94. Furthermore, article 283 of Act No. 213/93 concerning the Labour Code recognizes the right of all workers and employers, without distinction as to sex or nationality and without the need for prior authorization, freely to establish organizations to examine, defend, promote and protect their professional interests. The same Code states that its provisions shall apply to all employers and workers, whether national or foreign.

95. As regards language, article 140 of the Constitution states that Spanish and Guaraní are the official languages of the Republic of Paraguay. Guaraní is the mother tongue of most of the rural population. Since the reform of the education system, basic initial education takes the mother tongue into account and gradually incorporates the second language, be it Spanish or Guaraní, into the syllabus. In rural and provincial urban areas, Guaraní is the predominant language. In Asunción and towns close to the capital, the most commonly used languages are Spanish and Jopará (a mixture of Spanish and Guaraní).

96. Article 77 of the Constitution guarantees instruction in the pupil's official mother tongue (be it Guaraní or Spanish). The pupil shall also be taught and learn to use both of the official languages of the Republic. Ethnic minorities whose mother tongue is not Guaraní can opt for either of the two official languages. The aim is to preserve the language and culture of the ethnic minorities, most of whom opt for Guaraní as their second language.

97. Thanks to growing awareness, the Guaraní language, which is the principal medium of communication of our culture, has been declared an official language, together with Spanish, under the present Constitution, and the Ministry of Education and Culture has included it in all curricula at the primary, basic, intermediate and tertiary levels. The National University of Asunción can award a degree in the Guaraní language.

98. In the social field, the Constitution also stipulates that all children are equal before the law (article 52, para. 4). Article 2591 of the Civil Code (annex 5) concerning inheritance for children born out of wedlock states that they have the same rights as those born in wedlock to inherit the separate property of the decedent, but not acquests (after-acquired property), in respect of which they shall be entitled to one half of the portion due to children born in wedlock.

99. With regard to the rights of persons with disabilities, article 58 of the Constitution guarantees persons with special needs the same health care, education, recreation and vocational training in order to ensure their full integration into society. To that end, special policies shall be developed to ensure preventive health care, treatment, rehabilitation and integration for persons with physical, psychological and sensory disabilities and they shall be provided with the necessary care. They enjoy the same rights as those granted by the Constitution to all other inhabitants of the Republic, with emphasis on equality of opportunity in order to offset their disadvantages.

100. Legislation has been enacted in Paraguay to promote equality of opportunity for people with disabilities and their integration into society. A favourable prescriptive framework is provided by the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1994) and the ILO Convention ratified by Paraguay which refers to non-discrimination in recruitment against persons with any type of disability.

101. Article 88, entitled “The Right to Work” stipulates: “No discrimination shall be permitted against workers on ethnic grounds, or on the basis of sex, age, religion, social status and political or trade union preferences. The work of persons with physical or mental impairments or disabilities shall enjoy special protection.”

102. In addition, article 23 of Act No. 1626 concerning Public Service stipulates: “Physical disability shall not constitute an impediment to public-service employment.”

103. As an employer, the Paraguayan State has not yet succeeded in creating consistently favourable conditions for the employment of persons with disabilities in the public sector. It should nevertheless be noted that since 1993 initiatives and projects have been launched in municipalities and governors’ offices.

104. The Labour Code makes no provision for differential treatment. The equal rights of persons with disabilities in respect of wages and salaries in general are recognized and article 229 stipulates: “Rates of remuneration may not provide for inequality on grounds of sex, physical impairment, nationality, religion, social status and trade union preference (...).”

105. Act No. 780/79 creating the National Institute for People with Special Needs (INPRO) establishes obligations with respect to integrated (non-discriminatory) care with a view to offsetting any disadvantage ensuing from their condition and provides them with the opportunity to perform, through their own efforts, a role equivalent to that of non-disabled people. The Institute has a division for Job Training and Therapy, which has now been supplemented by the Employment Integration Secretariat. INPRO is attached to the Ministry of Education and Culture.

106. In the area of legislation, responsibility is widely dispersed, there is no inter-agency coordination and legal proceedings refer implicitly to non-disabled persons.

107. The governors' offices with their departmental committees composed of representatives of different branches of the public and private sector stimulate citizen involvement with a view to promoting real commitment to the programme and forging bonds of solidarity based on the need for greater and more effective integration of people with disabilities into the daily life of society.

108. The National Occupational Promotion Service (SNPP) attached to the Ministry of Justice and Labour is an institution that provides training and skills for members of the workforce without any kind of discrimination.

109. Censuses conducted in some parts of the country by private institutions have found a ratio of over 12 per cent of persons with some kind of disability. Paraguay has ratified the International Labour Organization's Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

110. INPRO is an official body that provides medical and social care for people with disabilities. A number of private organizations, some of which are subsidized, also provide health, educational and employment assistance in this branch. However, their coverage is limited to the capital and major urban centres, so that people with disabilities living in provincial areas have no access to integrated care services and programmes.

111. People with disabilities have themselves taken the initiative in a number of areas, becoming involved as a result in national affairs. For instance, they are represented on the Municipal Governing Council of the city of Asunción, working to improve health services, vocational training and promotion of social integration, including cultural development.

112. As early as 1992, plans were drawn up for joint action by the United Nations Development Programme (UNDP) and the Social Welfare and Assistance Department (DIBEN) which resulted in the elaboration of an Integrated Action Plan for Persons with Disability. The aim of the Plan is to extend services to provincial areas, to establish and/or strengthen existing institutions and human resources, and to further the involvement, participation and training of those directly affected and their families. The Self-Management Plan focuses on promoting self-management of institutions and persons concerned and on the process of decentralization. The social security regime also provides for rehabilitation and disability care for persons covered by the system. Mention should further be made in this context of the services offered by the Social Insurance Institute (IPS) and its regional centres, although users often report that its services are inadequate.

113. The Act that established DIBEN also had to provide for the needs of sectors of the population without sufficient access to economic resources and to extend assistance to persons with special needs. Lastly, the legislation setting forth the rights and privileges of persons with disabilities enunciates a number of principles (non-discrimination), introduces new features and provides for free health, educational and employment services.

114. Articles 46 and 47 of the 1992 Constitution of Paraguay guarantee non-discrimination and recognize that all persons are equal. They furthermore require the State to remove obstacles to the elimination of different kinds of discrimination. In addition, the Labour Code, echoing article 88 of the Constitution, stipulates: "No discrimination shall be permitted between workers on ethnic grounds or on the basis of sex, age, religion, social status and political or trade union preferences."

### Article 3

115. Article 48 of the Constitution guarantees the equality of men and women and stipulates that they have equal civil and political, social, economic and cultural rights. The State shall promote conditions and create appropriate mechanisms to ensure that there is real and effective equality, by removing any obstacles that prevent or hinder its enjoyment, and by facilitating the participation of women in all spheres of national life. In the chapter entitled "Family Rights", the Constitution stipulates that every person has the right to found and raise a family, and that men and women have the same rights and obligations in that regard.

116. The broadest framework is thus established by the Constitution, which is followed in the order of precedence by international instruments ratified by Paraguay. Those providing specific protection for the rights of women are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Act No. 1215/86, the Optional Protocol to CEDAW, Act No. 1683/01, which permits individual complaints to the Committee on the Elimination of All Forms of Discrimination against Women, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Act No. 605/95.

117. The 1987 Civil Code (annex 5) contained provisions that discriminated against women, since it did not accord them the same rights as men in family relationships and de facto unions. These shortcomings were removed with the promulgation of Act No. 1 of 15 July 1992, which partly amended the Civil Code. Article 1 of the Act stipulates "that men and women have equal capacity to enjoy and exercise their civil rights, whatever their marital status".

118. With regard to marriage, article 6 of Act No. 1 specifies that: "In the home, men and women have equal duties, rights and responsibilities, regardless of their financial contribution to the upkeep of the joint home. They owe each other mutual respect, consideration, fidelity and assistance."

119. Article 9 deals with care and maintenance of the home, stating "that it is the joint responsibility of the two spouses".

120. Under article 15, both spouses have the duty and the right to participate in running the household. They have equal responsibility for deciding jointly on questions pertaining to the household economy.

121. With regard to the family name of children born in or out of wedlock, article 12 states that children born in wedlock shall bear the first family name of each parent and the order of those names shall be decided by the parents by common consent. The second part of the article stipulates that the first family name of children born out of wedlock shall be that of the parent who first recognizes them.

122. With regard to the administration of community property, article 40 stipulates that the management and administration of acquests shall be the responsibility of both spouses, jointly or separately.

123. With regard to cohabitation or de facto union, article 86 provides that, after 10 years of cohabitation, cohabitants may appear before a civil registry official or a local justice of the peace and register their union, which shall be deemed fully equivalent to a legal marriage, also for

purposes of inheritance, and the children of the union shall be considered as having been born in wedlock.

124. The adoption of Act No. 45/91 regulating divorce certainly constituted a major advance in civil law. Under domestic legislation, divorce now has the following effects: remarriage is authorized (within one year), marital community of property is dissolved, the spouses lose their right to inherit from each other, a divorced woman may not use the family name of her former spouse; a spouse who has been declared or deemed guilty is not entitled to apply for alimony from the other party and an innocent spouse retains the right to alimony.

125. The Labour Code contains a section on women, in which it declares that there shall be no discrimination on grounds of sex. Article 128 stipulates that: "Women shall enjoy the same labour rights and have the same obligations as men."

126. Articles 2 and 3 of the Labour Code state that labour legislation applies to all workers, whether manual or non-manual, Paraguayan citizens or foreigners. Furthermore, the rights set forth in the Labour Code may not be waived, compromised or limited by contract. In addition, employees of the State, municipal authorities and state autonomous entities are governed not by the labour laws but by Act No. 1626/00, the new civil service law.

127. The Labour Code has a special chapter regulating domestic service, which is the main source of employment for women. Article 151 stipulates: "The financial remuneration of domestic workers may not be less than 40 per cent of the minimum wage"; furthermore, article 152 states: "Barring proof to the contrary, it is presumed that the contractually fixed remuneration of domestic workers includes, in addition to cash, the provision of food and, where appropriate, accommodation."

128. With respect to women's earnings, the Labour Code stipulates that every worker must earn at least the minimum wage and it prohibits discrimination on various grounds, including sex.

129. With respect to social security and paid leave, the Labour Code requires the State to protect workers' rights. To that end, the Institute of Social Welfare (IPS) was established (Act No. 18070/43, amended by Act No. 1860/50). It should be noted that article 30 of Act No. 1860/50 states that the main insuree may insure his or her spouse or cohabitant; however, if the insuree is a woman, she may not insure her spouse or cohabitant in respect of medical care.

130. Every insured person who has reached 60 years of age and paid a minimum of 750 weeks' contributions is entitled to a retirement or old-age pension. Insured workers normally become eligible for a pension on reaching the age of 60 if they have completed at least 20 years of recognized service, or on reaching the age of 55 if they have completed 25 years of recognized service.

131. With regard to maternity leave, article 135 provides for antenatal and post-natal leave for women on presentation of a medical certificate. The Labour Code provides for two days of paternity leave. The legislation also refers to the need for a healthy working environment for pregnant women.

132. The Department for the Social Advancement of Working Women, attached to the Ministry of Justice and Labour, was established by Decree No. 1761 with the aim of preventing

employment discrimination against women. Its resources are still very limited but its functions, in legal terms, are extremely important. According to article 2, they are:

- (a) All kinds of action to provide integrated training for working women;
- (b) Monitoring of compliance with the laws dealing with women's employment and ensuring that women are not subject to discriminatory practices;
- (c) Raising awareness of legislation that protects working women;
- (d) Conducting studies of the training and use of female labour.

133. In criminal law, Act No. 1160/97 makes no distinction between men and women in the characterization of offences.

134. Abortion is a very serious problem in Paraguay because, according to information from the Ministry of Public Health and Social Welfare, it ranks second among the causes of maternal death. The penalties applicable depend on the way in which the abortion is carried out and its consequences.

135. With regard to the participation of women in public and political affairs, history was made in Paraguay in 1962 when the political rights of women were placed on an equal footing with those of men. In the area of politics, the law does not discriminate on the basis of sex and the statutory provisions aimed at promoting equality are contained in the Electoral Code, Act No. 834/96.

136. Article 32 of the Electoral Code stipulates: "The party's organizational charter or statutes shall lay down the rules governing its organization and operation. As the party's basic law, this instrument shall, as a minimum, address the following matters: ... (r) Appropriate measures for the advancement of women so that they hold not less than 20 per cent of elective offices and appointment of a significant proportion of women to decision-making posts."

137. "With a view to guaranteeing the participation of women in collegiate electoral bodies, the quota for internal nomination of candidates shall be one woman candidate for every five places on electoral lists; women may appear in any place on the list but there shall be one woman candidate for every five elective offices to be filled. Every party, movement or alliance putting forward a list is free to establish an order of precedence."

138. "Political parties, movements or alliances that fail to comply with these provisions in nominating candidates for their internal elections shall be punishable by non-publication of their lists in the respective electoral courts." Women are therefore entitled to vote and stand for election regardless of their civil status.

139. In the past women were excluded from executive political posts both at the State level and in political parties, trade unions and professional associations. Since the emergence of democracy, however, some important changes are discernible in this regard. For example, article 117 of the Constitution, in the chapter on political rights and duties, provides that: "All citizens, regardless of sex, are entitled to participate in public affairs, either directly or through their representatives, in the manner prescribed by this Constitution and the law. The access of women to public office shall be encouraged." Since 1989 women have begun to occupy



influential posts in the area of public administration, having acceded to office in the legislature (as senators, deputies and members of departmental and municipal councils), the executive (as ministers, governors of departments and mayors of municipalities) and the judiciary (prosecutors, judges of courts of first instance and appeal courts, Supreme Court judge). They have also attained leadership posts in political parties – both traditional parties (Colorado/Liberal/PRF) and emerging parties (PEN/Patria Querida/País Solidario/UNACE) – and in political movements.

140. The promulgation of Act No. 1600 against domestic violence has played a vital role in ensuring that all cases of domestic violence against women are reported. Other encouraging developments have been the establishment by the three branches of government and a number of private agencies of a women's police unit attached to Police Station No. 12, in Asunción, and the Physical and Sexual Abuse Prevention Campaign. In addition, women's issues have recently been included as a research topic in the Population and Development Department of the Economics Faculty in the National University of Asunción, and a secretariat has been set up in the municipality of Asunción.

141. An important new development that has had a direct impact on women's lives was the promulgation in January 2002 of Act No. 1863/02 establishing the "Agrarian Statute". Some of its most significant articles in terms of the recognition of women are:

- (a) Paraguayan citizenship "without distinction on the basis of sex" as a prerequisite for enjoying the benefits of the Statute (article 2);
- (b) Rural development, as a result of agrarian reform, shall, inter alia, "promote women's access to land ownership, safeguarding their property through access to title, credit and appropriate technical support" (article 16);
- (c) First place in the order of precedence for adjudication of land to women heads of household (article 49);
- (d) Extension of the period of payment for land when the owner is a woman (article 52); and
- (e) With regard to type of ownership, article 57 stipulates that "Titles to property shall be registered on special forms, stating the name of the owner and that of his or her spouse in the case of a married couple", and that "in cases of cohabitation where the union has lasted for more than one year, titles to property shall be drawn up in the name of the man and the woman".

142. Paraguay is a unitary State, divided politically and administratively into departments. Women already hold office as governors and as mayors of municipalities.

143. The figures for the legislature are (1998-2003 session): 15 per cent of women registered in the Chamber of Senators and 2.5 per cent in the Lower Chamber. The overall percentage of women in the legislature is 8 per cent.

144. In the past no woman held office in the higher decision-making echelons of the judiciary such as the Supreme Court of Justice, the Judicial Service Commission and the High Court of Electoral Justice. Today, however, one of the judges of the Supreme Court of Justice is a woman.

145. Women in Paraguay currently occupy a number of important offices in the area of public administration. The proportion of women in the Cabinet has been increasing. Women now hold office in 8 of the 11 ministries constituting the executive: the Ministry of Foreign Affairs, the Ministry of Education and Culture, the Secretariat for Women, the Secretariat for Childhood and Adolescence, the National Secretariat for Refugees and Paraguayan Returnees, and the Tourism Secretariat.

146. With regard to political parties, there was formerly no difference between them in terms of the participation of women, with female representation in party leadership posts ranging from 3 to 8 per cent. In 1992 the Asociación Nacional Republicana, also known as the Colorado Party, convened an Assembly at which it was decided to amend the party's Statutes to establish a 20 per cent quota for women on electoral lists. It is the only political party that provides benefits of this kind for women.

147. In the most recent municipal elections in 2001, a slight increase was recorded in the proportion of women elected compared with the previous results (1996 municipal elections), i.e. 4.7 per cent in the elections for mayors and 17.7 per cent in those for councillors.

#### Women elected

	1993	1998	2003
Senators	5	8	5
Deputies	2	2	8
Governors	0	0	1
Departmental councils	8	16	27

148. With regard to trade union rights, there are currently a total of 402 trade unions in Paraguay, of which 295 are affiliated to existing trade union federations and 107 are independent. The Unified Confederation of Workers (CUT) was founded in August 1989 and has the largest membership, totalling 26,167, of whom 19,791 are men and 6,736 women. The Paraguayan Workers Confederation (CPT), which was founded in 1951, has 22,990 members, of whom 18,258 are men and 4,732 women. The National Workers Confederation (CNT) has a membership of 9,630, of whom 6,605 are men and 3,925 women.

#### Article 4

149. Under the Alfredo Stroessner Government, a state of emergency, known at that time as a state of siege, was in force almost continuously during the Government's successive terms of office. Every six months the executive systematically informed the population and Congress that the state of siege had been extended. One of the main failings or defects of the state of siege in Paraguay was the absence of any parliamentary oversight (either at the time of its introduction or while it was in force) and the lack of effective means of ensuring appropriate protection of human rights (owing to the suspension of habeas corpus, etc.), apart from the many abuses ensuing from its continuation in force without a break.

150. Since the adoption of the Constitution in 1992, article 288 in the section entitled “State of Emergency” in Title III stipulates that Congress or the executive is empowered to declare a state of emergency in all or part of the territory of the Republic.

151. During a state of emergency, the executive has the authority to issue a decree ordering the detention of persons suspected of participating in any of these events, their transfer from one place to another in the Republic, and the prohibition of public meetings. This procedure is in keeping with the President's powers under article 238, subparagraph 7, of the Constitution to declare a state of national defence or to agree on peace terms in the event of external aggression, with the prior authorization of Congress. Article 238 of the Constitution also states in one of its provisions “that the state of emergency may not interrupt the functioning of the branches of government, the applicability of the Constitution or, specifically, habeas corpus”.

152. Mutual oversight of the different branches of government is ensured through the provision enabling Congress to decide at any time, by an absolute majority, to lift the state of emergency if it considers that the circumstances that led to its declaration no longer exist. Once the state of emergency has ended, the executive is required to inform Congress, within a period of not more than five days, of the action taken while it was in force.

153. This new wording ensures adequate protection for the criteria of legality laid down in international law, namely: proclamation, notification, exceptional threat, proportionality, non-discrimination, compatibility and consistency with the democratic regime, and non-derogability of certain rights.

154. With regard to the functions of the armed forces and the police, as the state of emergency is a constitutional norm, it has not yet been fully regulated by law, and while it is in force the armed forces and the police, as public authorities, act in accordance with their constitutional mandate and the orders of the executive.

155. On 18 May 2000 an attempted coup d'état occurred in Paraguay, led by members of the Army's First Corps, the Police High Command and other offices of the National Police.

156. Immediately the Paraguayan State, through the Permanent Mission to the Organization of American States (OAS), requested that a special meeting of the OAS Permanent Council be convened to reject the coup attempt and to offer support to the Government of President González Macchi. On 19 May 2000, a meeting of the OAS Permanent Council was held at which Paraguay reported on the events and the other countries expressed their fullest support and backing for Paraguay's democracy and institutions.

157. On 19 May 2000, pursuant to Decree No. 8772, the Paraguayan State suspended certain rights and guarantees enshrined in the American Convention on Human Rights throughout the national territory. On 23 May 2000, the Permanent Mission of Paraguay to the OAS reported that suspension to the other States parties to the American Convention, through the Secretary General of the Organization.

158. On 1 June 2000, the Permanent Mission of Paraguay to the OAS notified the other States parties to the American Convention, through the Secretary General of the OAS, that it had suspended the state of emergency on 31 May 2000.

159. On 14 July 2002 and for most of the following day, several thousand demonstrators supporting the political movement of former General Lino Oviedo staged a series of protests in different parts of the country, closing off roads and occupying public places, and calling for the resignation of the President of the Republic, Luis González Macchi. In Ciudad del Este the demonstrators committed acts of violence, looting shops and blocking Amistad bridge which spans the Paraná River and links Paraguay to Brazil. In response to these events, the executive declared a state of emergency for five days with effect from 15 July 2002 throughout the territory of the Republic, and decided that the armed forces should be used to back up the National Police in maintaining law and order in the country. To that end, they were authorized to engage in operations and adopt all appropriate measures to accomplish the task assigned to them (Decree No. 17855 of 15 July 2002). The state of emergency was based on information received from the Police High Command on 13 July 2002 reporting the closure of roads, assaults, acts of violence against persons and their property, and disturbances of law and order endangering internal security and the constitutional order, the aim obviously being to undermine security and the constitutional order. The Attorney-General, indicating in a note that he had been informed of preparations for the execution of unlawful acts against the existence of the State and of the possibility of flagrant violations of article 32 of the Constitution, requested the executive “to take preventive measures with the specific aim of preventing the blockage of roads throughout the national territory and to ensure freedom of movement”. In addition, all demonstrations and public meetings were prohibited throughout the national territory for the five days of the state of emergency (Decree No. 17870 of 15 July 2002).

160. The executive lifted the state of emergency on 17 July 2002 before requesting the approval of Congress, having secured “the detention of many individuals suspected of participating in the events that disturbed law and order and the security of the State”; these persons had been placed “at the disposal of the ordinary courts” and it had therefore been possible “to restore order and calm throughout the national territory” (Decree No. 17924 of 17 July 2002).

161. While the state of emergency was in force, 182 persons (172 men and 10 women) were detained by decree. Most detentions took place in Ciudad del Este, followed by Asunción and metropolitan districts of the capital and Encarnación.

162. The detainees were held in police stations and at the special branch of the National Police, Alto Paraná police headquarters and Itapúa police headquarters. Almost all detention decrees were issued after the police had arrested the suspects. They have been charged by the Public Prosecutor’s Office and are currently under investigation. All detainees were brought before a court without delay and were guaranteed the right to due process. All detainees were released without delay as soon as the judicial proceedings were completed.

#### **Article 5**

163. The Constitution contains provisions intended to prevent any activity by groups or officials involving or entailing a violation of the rights and freedoms recognized in the Covenant.

164. Thus, the Preamble states: “The Paraguayan people, through their legitimate representatives convened in the National Constituent Assembly, invoking God, recognizing human dignity with the aim of ensuring freedom, equality and justice, reaffirming the principles of representative, participatory and pluralist republican democracy, ratifying national sovereignty

and independence, and forming part of the international community, hereby approves and promulgates this Constitution.”

165. Article 3 of the Constitution stipulates: “The people shall exercise public authority by suffrage. Government is the responsibility of the legislature, the executive and the judiciary in a system based on independence, balance, coordination and mutual oversight. None of these branches of government may arrogate to itself, or grant to any other individual or group, extraordinary powers or a monopoly of power. Dictatorship is prohibited by law.”

166. Article 172 states: “The forces of law and order consist exclusively of the armed forces and the police.” Article 173 of the Constitution stipulates: “The armed forces are a permanent, professional, non-deliberating and obedient national institution, subordinate to the State authorities and subject to the provisions of this Constitution and the law. Their task is to safeguard territorial integrity and to defend the lawfully constituted authorities, in accordance with this Constitution and the laws. Serving members of the armed forces shall act in accordance with the laws and regulations and may not join any political party or movement or engage in any type of political activity.”

167. Article 175 states: “The National Police is a professional, non-deliberating, obedient and permanent institution subject to the authority of the executive branch, which is responsible for ensuring the internal security of the nation. Within the framework of this Constitution and the law, it has the task of maintaining legally established law and order and protecting the rights and safety of individuals and corporate bodies and their property, preventing crime, carrying out orders issued by competent authorities and, under judicial supervision, investigating crimes. Serving members of the police force may not join any political party or movement or engage in any type of political activity.”

168. Article 137 of the Constitution stipulates: “The Constitution is the supreme law of the Republic, followed by adopted and ratified international treaties, conventions and agreements, laws enacted by the Congress and other related subordinate legislation, which constitute national positive law in the foregoing order of precedence. Any attempts to change that order other than through the procedures set forth in this Constitution shall constitute offences which shall be characterized and punishable by law. Any measure or act by a public authority that is at variance with the provisions of this Constitution shall be null and void.”

169. Article 138 of the Constitution states: “This Constitution shall not be voided by failure to respect its provisions through acts of force or through derogations from its provisions by any means other than those stipulated herein. Should any person or group of persons seize power, invoking any principle or representation that is at variance with this Constitution, the acts of that person or group shall be null and void and non-binding, and the people, exercising its right to resist oppression, shall for that reason be exempt from compliance therewith. Citizens are hereby authorized to resist such usurpers by all means available. Foreign States which, under any circumstances, have dealings with such usurpers may not invoke any covenant, treaty or agreement signed or authorized by the usurping government as an obligation or commitment subsequently binding on the Republic of Paraguay.”

170. In this connection, article 269 of the Criminal Code stipulates: “Anyone who, through force or the threat of force, aims at or succeeds in undermining the existence of the Republic or changing the constitutional order shall be punishable by imprisonment for a minimum term of ten years.”

171. Article 273 of the Code states: “Anyone who attempts to change the constitutional order through procedures other than those set forth in the Constitution shall be punishable by imprisonment for a maximum term of five years.”

172. Article 286 of the Criminal Code stipulates in this regard: “Anyone who, through force or the threat of force, coerces:

- (a) The National Constituent Assembly;
- (b) The National Congress, its chambers or one of its committees;
- (c) The Supreme Court of Justice; or
- (d) The High Court of Electoral Justice;

to refrain from exercising its powers or to exercise them in a particular way, shall be punishable by imprisonment for a maximum term of ten years.”

173. Article 287 of the Criminal Code stipulates: “Anyone who, through force or the threat of force, coerces:

- (a) The President or Vice-President of the Republic;
- (b) A member of the National Congress;
- (c) A member of the Supreme Court of Justice; or
- (d) A member of the High Court of Electoral Justice;

to refrain from exercising his or her powers or to exercise them in a particular way, shall be punishable by imprisonment for a maximum term of five years.”

174. In particularly serious cases, the penalty of imprisonment may be increased to a maximum term of ten years. In such cases, attempted coercion shall also be punishable.

## **Article 6**

175. In keeping with the provisions of the Covenant, the Constitution protects the right to life as a basic right which is not subject to any restriction whatsoever. It is safeguarded by article 4, paragraph 1, which states: “The right to life is inherent in the human person whose protection is guaranteed, as a general rule, from the moment of conception.”

176. The Criminal Code also contains provisions establishing legal protection for life, characterizing deprivation of the life of a human being, including abortion, as an unlawful act (offence). Book Two, Title I, Chapter I, of the Code, entitled “Unlawful Acts against Life”, contains, in articles 105 to 109, a number of provisions pertaining to such acts.

177. Article 105 of the Criminal Code stipulates: “1. Anyone who kills another person shall be punishable by imprisonment for a term of between 5 and 15 years.”

178. “2. The penalty may be increased to 25 years where the perpetrator:

- (a) Kills his or her father or mother, child, spouse or cohabitant, or brother or sister;
- (b) Through his or her action immediately endangers the life of third parties;
- (c) In carrying out the act, inflicts serious and unnecessary physical or mental pain on the victim in order to increase his or her suffering;
- (d) Acts treacherously, deliberately taking advantage of the victim's defencelessness;
- (e) Is motivated by gain;
- (f) Acts to facilitate an unlawful act or, on the basis of a decision taken prior to its execution, to conceal it or to secure impunity for himself or herself or for another person;
- (g) Is motivated exclusively by failure to achieve the objective of another attempted offence; or
- (h) Acts deliberately and purely for the pleasure of killing."

179. "3. A penalty of imprisonment for a maximum term of five years shall be applicable and attempts shall also be punishable where:

- (a) The blame attached to the perpetrator is considerably reduced by emotional excitement or by compassion, desperation or other relevant motives;
- (b) A woman kills her child during or immediately after childbirth."

180. "4. Where there is concurrence of the conditions set forth in paragraphs 2 and subparagraph 3(a), a penalty of imprisonment for a maximum term of ten years shall be applicable."

181. Article 106: Homicide in response to a request by the victim: "Anyone who kills another person who is seriously ill or injured, responding to serious, reiterated and insistent requests on the part of the victim, shall be punishable by imprisonment for a maximum term of three years."

182. Article 107: Culpable homicide: "Anyone who, through culpable action, causes the death of a human being, shall be punishable by imprisonment for a maximum term of five years or by a fine."

183. Article 188: Suicide: "1. Anyone who incites another person to commit suicide or who assists him or her shall be punishable by imprisonment for a term of between two and ten years. Anyone who fails to prevent suicide despite being in a position to do so without risk to his or her life shall be punishable by imprisonment for a term of between one and three years."

184. The Convention on the Prevention and Punishment of the Crime of Genocide (New York, 1948) was signed by Paraguay and ratified by Act No. 1748 of 14 August 2001.

185. The crime of genocide is characterized as such in Title IX of the Criminal Code, which consists of a single chapter containing two articles, 319 and 320. Article 319 stipulates:

“Anyone who, with the intention of destroying, wholly or in part, a national, ethnic, religious or social community or group:

- (a) Kills or seriously injures members of the group;
- (b) Subjects the community to inhuman treatment or inflicts on it conditions of life that may bring about its destruction in whole or in part;
- (c) Transfers children or adults, by force or intimidation, to other groups or to places other than their place of habitual residence;
- (d) Prevents it from practising its religious rites or customs;
- (e) Imposes measures aimed at preventing births in the group; and
- (f) Forcibly disperses the community;

shall be punishable by imprisonment for a term of not less than five years.”

186. Article 320 of the same Code stipulates: “Anyone who, in violation of the norms of international law in time of war or armed conflict or during military occupation, commits the following acts against the civilian population, wounded or sick persons or prisoners of war:

- (a) Homicide or serious bodily harm;
- (b) Inhuman treatment, including subjection to medical or scientific experiments;
- (c) Deportation;
- (d) Forced labour;
- (e) Imprisonment;
- (f) Coercion to serve in the enemy’s armed forces; and
- (g) Looting of private property and, in particular, deliberate destruction of heritage of great economic or cultural value;

shall be punishable by imprisonment for a term of not less than five years.”

187. The Convention on the Prevention and Punishment of the Crime of Genocide was signed by Paraguay and ratified by Act No. 1748 of 14 August 2001. Although it took the country more than 50 years to ratify the Convention, Paraguay has now demonstrated its good will and determination to eradicate crimes against humanity such as genocide once and for all. The Code of Criminal Procedure currently in force also contains in Title IX, “Unlawful acts against Peoples”, a single chapter entitled “Genocide and War Crimes”; article 310 stipulates: “Anyone who, with the intention of destroying, wholly or in part, a national, ethnic, religious or social community or group:

- (a) Kills or seriously injures members of the group;



- (b) Subjects the community to inhuman treatment or inflicts on it conditions of life that may bring about its destruction in whole or in part;
- (c) Transfers children or adults, by force or intimidation, to other groups or to places other than their place of habitual residence;
- (d) Prevents it from practising its religious rites or customs;
- (e) Imposes measures aimed at preventing births in the group; and
- (f) Forcibly disperses the community;

shall be punishable by imprisonment for a term of not less than five years.”

188. With regard to the death penalty, article 4 of the 1992 Constitution states clearly: “The death penalty is hereby abolished.” In keeping with this provision of the Constitution, article 37 of the Criminal Code omits capital punishment from the penalties enumerated.

189. Act No. 1160/97, the Penal Code, lists penalties in article 37, which is contained in Title III, Chapter I, entitled “Types of Penalty”. Article 37 stipulates: “Types of penalty:

- (a) Principal penalties:
  - (i) Penalty of imprisonment;
  - (ii) Penalty of fine;
- (b) The following are complementary penalties:
  - (i) Pecuniary penalty;
  - (ii) Prohibition of driving;
- (c) The following are additional penalties:
  - (i) Settlement;
  - (ii) Publication of the judgement.”

190. Chapter II: Principal Penalties; Section I, Penalty of Imprisonment; article 38 stipulates: “The minimum duration of a penalty of imprisonment shall be six months and the maximum duration twenty-five years. It shall be measured in terms of full months and years.”

191. The penalties applicable to minors are set forth in Act No. 1680/01 “Code of Childhood and Adolescence”. They are contained in Book V concerning criminal offences, specifically in Chapter IV, entitled “Custodial Measure”. Article 206, entitled “Nature of the custodial measure” stipulates: “The custodial measure shall be carried out in a special establishment designed to promote the minor’s education and adjustment to a life free of crime.”

192. “Such a measure shall be ordered only when:

- (a) Socio-educational measures and correctional measures are not sufficient to ensure the convicted minor's education;
- (b) Internment is recommendable owing to the degree of blameworthiness of the minor's conduct;
- (c) The adolescent has wilfully, repeatedly and seriously failed to comply with the socio-educational measures ordered or the obligations imposed;
- (d) An attempt has previously been made to address the adolescent's difficulties of social adjustment through the modification of non-custodial measures; or
- (e) The adolescent has been judicially warned of the possibility of application of a custodial measure if he or she fails to change his or her behaviour.

In such a case, the duration of the custodial measure shall be not more than one year.”

193. Article 207, entitled “Duration of the custodial measure”, stipulates: “The duration of the custodial measure shall be a minimum of six months and a maximum of four years. In the case of an act characterized as a crime in ordinary criminal law, the maximum duration of the measure shall be eight years.”

194. “In determining the duration of the measure, the penalties envisaged in the provisions of the ordinary criminal law shall not be applicable. The duration of the measure shall be determined in the light of the objective of educational internment for the benefit of the convicted minor.”

195. Article 215, entitled “Implementation of the custodial measure”, stipulates: “The custodial measure shall be implemented in accordance with the educational requirements and capabilities of closed and semi-open regimes, and shall seek to encourage a form of treatment that enables the adolescent to learn to live in freedom without committing unlawful acts. To that end, contacts between the adolescent and the world outside the establishment shall be promoted as well as his or her involvement in educational and social training programmes.”

196. A fine or commutation of the penalty does not entail extinction of civil liability for an offence. Article 97 of the Criminal Code stipulates: “An unlawful act, the criminal prosecution of which depends on the victim, shall be actionable only in cases where the victim institutes the proceedings.” Article 99 stipulates: “That the authorized party may terminate the proceedings until such time as a final judgement has been handed down. In such cases, the proceedings may not be reopened.”

197. With regard to the delays in abolishing the death penalty, both the Constitution and the new Criminal Code, as already mentioned, have abolished capital punishment, so that the paragraph of the Covenant dealing with the matter is inapplicable.

198. Abortion is also considered an offence in Paraguay and, notwithstanding the repeal of the former Criminal Code (18 June 1914), amended versions of articles 349, 350, 351 and 352 remain in force, and article 353 contains the following provisions: “A woman who causes herself to abort, by any means employed by herself or by a third party with her consent, shall be punishable by imprisonment for a term of from 15 to 30 months. Abortion undertaken with a view to safeguarding her honour shall be punishable by imprisonment for a term of from 6 to

12 months; the penalty shall be a term of from 4 to 6 years if the methods used to cause the abortion bring about the woman's death. If the death of the woman is caused by the use of more dangerous abortion methods than those she agreed to, the penalty shall be a term of imprisonment of from 6 to 8 years; anyone who, without the consent of the patient, wilfully causes an abortion, using violence or direct means, shall be punishable by imprisonment for a term of from 3 to 5 years. In other cases, abortion without the patient's consent shall be punishable by imprisonment for a term of from 2 to 5 years. The penalties applicable under the preceding three articles shall be increased by 50 per cent where the offender is the husband of the patient. The same increase shall be applicable to doctors, surgeons, herb doctors, midwives, pharmacists, their trainees and assistants, the makers or vendors of chemical products, and medical students who knowingly suggest, supply or employ means for bringing about the abortion or who are in attendance at the death. However, any of the foregoing who provide evidence of having caused the abortion indirectly in an attempt to save a woman whose life was endangered by pregnancy or childbirth shall be exempt from liability; in the case of an abortion undertaken to safeguard the honour of a person's wife, mother, daughter or sister, the applicable penalties shall be reduced by one half."

199. Furthermore, article 109 of the Criminal Code, entitled "Indirect death in case of necessity", provides for exemption from liability in the following case: "It shall not be unlawful for a person to bring about the death of the foetus indirectly through acts related to childbirth if, in the light of medical knowledge and experience, such acts were necessary and inevitable to avert a serious risk to the life or health of the mother."

200. According to statistical data provided by the Biostatistics Department of the Ministry of Public Health, the five main causes of maternal death are:

**Causes of maternal death (ratios recorded per 100,000 live births)**

**1999**

<i>Causes</i>	<i>Total</i>	<i>%</i>	<i>Ratio</i>
1. Haemorrhage	28	27.2	31.1
2. Abortion	23	22.3	25.6
3. Toxaemia	21	20.4	23.3
4. Complications of pregnancy, labour, puerperium	20	19.4	22.2
5. Septicaemia	11	10.7	12.2

**2000**

<i>Causes</i>	<i>Total</i>	<i>%</i>	<i>Ratio</i>
1. Toxaemia	37	26.2	43.0
2. Abortion	35	24.8	40.7
3. Complications of pregnancy, labour, puerperium	32	22.7	37.2
4. Haemorrhage	22	15.6	25.6
5. Septicaemia	15	10.6	17.4

**2001**

<i>Causes</i>	<i>Total</i>	<i>%</i>	<i>Ratio</i>
1. Haemorrhage	33	24.6	39.6
2. Abortion	32	23.9	38.4
3. Complications of pregnancy, labour, puerperium	25	18.7	30.0
4. Septicaemia	22	16.4	26.4
5. Toxaemia	20	14.9	24.0
6. AIDS	2	01.5	02.4

**2002**

<i>Causes</i>	<i>Total</i>	<i>%</i>	<i>Ratio</i>
1. Haemorrhage	48	29.3	53.3
2. Abortion	39	23.8	43.3
3. Complications of pregnancy, labour, puerperium	31	18.9	34.4
4. Septicaemia	19	11.6	21.1
5. Toxaemia	27	16.5	30.0
6. AIDS	0	0.0	0.0

**2003**

<i>Causes</i>	<i>Total</i>	<i>%</i>	<i>Ratio</i>
1. Complications of pregnancy, labour, puerperium	38	25.3	45.8
2. Abortion	36	24.0	43.4
3. Toxaemia	32	21.3	38.6
4. Haemorrhage	28	18.7	33.7
5. Septicaemia	19	11.6	21.1
6. AIDS	0	0.0	0.0

201. According to other data provided by the same Department concerning the health of adolescents in the 10 to 19 age group, “external causes” ranked first among the causes of death in 1999, accounting for 55.7 per cent, with tumours accounting for 49 per cent, pneumonia and influenza for 26 per cent, complications of pregnancy, labour and puerperium for a high ratio of 18 per cent, and circulatory diseases for 31 per cent.

**Mortality of adolescents in the 10 to 19 age group due to infectious and parasitic diseases**

<i>Year</i>	<i>Population</i>	<i>%</i>	<i>Ratio per 100,000 inhabitants</i>
1999	1,232,007	0.00179	1.79
2000	1,270,615	0.00212	2.12
2001	1,293,846	0.00185	1.85

202. The five main causes of death in infants aged one to four are, in order of importance, pneumonia and influenza, external causes, diarrhoea, nutritional diseases and anaemia, and septicaemia, representing 100 children for every 1,000 live births, according to data from the Ministry of Public Health and Social Welfare. The mortality rate for infants under one year of age is still very high and attributable to the following causes: injuries sustained during delivery, neonatal infections, congenital malformations, prematurity, diarrhoea, pneumonia and influenza.

203. Although the Ministry of Public Health and Social Welfare has given priority to mother and child care, difficulties are still being experienced in providing country-wide coverage. A total of 67 per cent of the population is registered with departments of the Ministry of Public Health and Social Welfare. The following data give some indication of the effective coverage of the population by the Ministry's services.

**Number of pregnant women with access to care (number and ratio)  
by month of gestation (1999-2002)**

<i>Year</i>	<i>Pregnant women</i>	<i>Total receiving care</i>	<i>Percentage receiving care</i>	<i>Up to fourth month</i>	<i>Percentage receiving care</i>	<i>Fourth month and later</i>	<i>Percentage receiving care</i>
1999	170,663	123,040	72.10	32055	18.78	80985	53.31
2000	170,785	120,127	70.34	30414	17.81	89713	52.53
2001	170,858	117,794	68.94	32433	8.98	85361	49.96
2002	171,047	127,445	74.51	33699	19.70	93746	54.81

**Persons receiving care by age group  
(1999-2002)**

**Y = year(s)**

<i>Year</i>	<i>Children</i>				<i>Pregnant</i>	<i>Not pregnant</i>	<i>Men</i>	<i>Women</i>	<i>Total</i>
	<i>&lt;1 Y</i>	<i>1-4 Y</i>	<i>5-14 Y</i>	<i>&lt;15 Y</i>	<i>15-49 Y</i>	<i>15-49 Y</i>	<i>15 Y +</i>	<i>15 Y +</i>	
1999	144,178	168,421	203,240	912	121,091	332,287	142,195	93,330	1,205,654
2000	149,483	173,823	220,549	1242	130,703	373,492	165,989	108,910	1,324,191
2001	140,183	161,630	203,905	1004	126,394	356,164	150,077	98,530	1,237,887
2002	138,514	150,509	204,587	1569	134,145	364,288	157,585	102,207	1,253,404

### Article 7

204. Our legislation strictly prohibits torture, a provision which has constitutional status. Thus, article 5 of the Constitution stipulates that: “No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Genocide and torture as well as the forced disappearance of persons, abduction and homicide for political reasons shall be imprescriptible.” Article 102(3) of the Criminal Code is in keeping with article of the Constitution: “The unlawful acts set forth in article 5 of the Constitution shall be imprescriptible.”

205. Paraguay is a State party to the Inter-American Convention to Prevent and Punish Torture (Act. No. 56/90) and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, Act No. 69/90).

206. With a view to further strengthening human rights, the Constitution establishes the general framework in which the State must operate, prescribing specific safeguards for the country’s inhabitants:

- (a) Article 9 states that everyone has the right to protection of his or her freedom and security. “No one shall be compelled to do anything that is not required by law or prevented from doing anything that is not prohibited by law”;
- (b) Article 11: “No one shall be deprived of his or her physical freedom or tried otherwise than on the grounds and in the circumstances established by this Constitution and the law”;
- (c) Article 12: “No one shall be arrested or detained without a written warrant from the competent authority, unless he or she is caught in the act of committing an offence that carries a custodial sentence.”

207. In keeping with these principles, article 1 of the Criminal Code stipulates: “No one shall be punishable by any penalty or measure unless the prerequisites for the unlawfulness of the conduct and the penalty applicable thereto are set forth and strictly characterized in a law that was in force prior to the act or omission entailing the penalty.” In addition, Act No. 1286/98, the Code of Criminal Procedure, refers in its first part, Book One, Title I, “Principles and Safeguards in Criminal Matters”, to the requirement of prior judicial proceedings, a competent court, independence and impartiality, the principle of innocence, doubt, inviolability of the right of defence, right to an interpreter, *ne bis in idem*, equality of arms, interpretation, application, non-observance of guarantees, generality.

208. The 1998 Criminal Code contains a whole range of procedural safeguards to prevent the use of torture in the context of criminal investigations. In particular, the following conduct is prohibited during the questioning of the accused:

- (a) The use of methods that are incompatible with his or her dignity (article 75.1);
- (b) Physical immobilization of the accused at the place and during the conduct of the hearing or of any other proceedings that require his or her presence, without prejudice to such measures of supervision as may be required by the court or the Public Prosecutor’s Office in special cases (article 75.8); shackling, in particular, is prohibited (article 91);

- (c) Subjection to any means of force or coercion and to measures that affect his or her decision-making capacity, memory, will, understanding and handling of his or her own statement (article 88);
- (d) Interrogation by means of trick questions, leading questions or peremptory insistence on an immediate response to the questions asked (article 89);
- (e) Under no circumstances may the police take a statement from arrested persons; such statements are null and void and inadmissible as evidence (article 90). The only information that police officers may require of a person at the time of arrest is his or her identity in order to ensure that the warrant is being served on the right person (article 298.5);
- (f) Once a person is detained, the police must notify the prosecutor who issued the warrant within six hours of arrest. The Act establishing the Public Prosecutor's Office (Act No. 1562/00) stipulates that, on receiving notification, the responsible prosecuting officer shall visit the police premises with a view to checking:
  - (i) The physical conditions in which the accused is being held;
  - (ii) Conditions in the place of detention;
  - (iii) Strict compliance with all rights of the accused;
  - (iv) That the date and time of arrest or detention have been recorded;
  - (v) That the police record complies with the provisions of the Code of Criminal Procedure;
  - (vi) The existence and accuracy of the inventory of property confiscated or handed over;
  - (vii) That the victim or complainant has been treated with respect; and
  - (viii) The officer shall establish a record of any irregularity for immediate submission to the deputy prosecutor.

209. It should be mentioned that, at the time of arrest, the police must ask the arrested person for details of the relative, other person, association or entity that he or she wishes to inform of his or her arrest and of the place to which he or she is to be taken.

210. Moreover, article 12 of the Constitution states: "Everyone has the right to be informed, at the time of arrest, of the reason for his or her arrest; to inform his or her relatives of the arrest and to communicate freely; to have the assistance of an interpreter if necessary and to be brought before a competent court established by law within 24 hours." With regard to the requirement to bring the arrested person before a competent court, the Code of Criminal Procedure now in force sets the time limit at six hours.

211. Article 17 of the Constitution lists the rights of the accused as follows: "In criminal proceedings or any other proceedings in which a penalty or sanction may be imposed, everyone

has the right ... 2. To a public hearing, except in cases determined by the court with a view to safeguarding other rights; 3. Not to be convicted without a trial based on a law enacted prior to the act that is being prosecuted and not to be tried by special courts; ... 7. To be informed in advance and in detail of the charge against him or her, and to have copies thereof and adequate facilities and time to prepare his or her defence, communicating freely with counsel; ... 10. To have access, either in person or through his or her counsel, to documents pertaining to the proceedings, which may on no account be kept secret from them; and 11. To be compensated by the State in the event of wrongful conviction.”

212. The safeguards enjoyed by the country’s inhabitants are based on fundamental principles laid down in the legislation of all countries of the world, and Paraguay, having adopted a Constitution that is solidly founded on democratic principles, has incorporated such safeguards in its articles, thus requiring that all domestic legislation ranking lower in the juridical hierarchy provides for consistency in the implementation of relevant international treaties.

213. Paraguay ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1990 and in the same year acceded to the Inter-American Convention to Prevent and Punish Torture.

214. The offence of torture has been incorporated in positive legislation and its characterization corresponds to the definition contained in article 1 of the Convention. Article 307 of the new Criminal Code, contained in Title VIII, Chapter III, entitled “Unlawful Acts in the Performance of Public Functions”, stipulates: “1. Any public official who, in the performance or in connection with the performance of his or her duties, inflicts or orders the infliction of physical ill-treatment or an injury, shall be punishable by imprisonment for a maximum term of 5 years. In less serious cases, the applicable penalty shall be imprisonment for a maximum term of 3 years or a fine. 2. In the event of a serious injury as characterized in article 112, the offender shall be punishable by imprisonment for a term of from 2 to 15 years.”

215. Article 309: “Torture”: “1. Anyone who, with the intention of destroying or seriously damaging the personality of the victim or a third party and who, acting as a public official or with the consent of a public official, carries out an unlawful act against:

- (a) Physical integrity as set forth in articles 110 to 112;
- (b) Liberty as set forth in articles 120 to 122 and 124;
- (c) Sexual autonomy as set forth in articles 128, 130 and 131;
- (d) Minors as set forth in articles 135 and 136;
- (e) Lawfulness of the performance of public functions as set forth in articles 307, 308, 310 and 311;

or subjects the victim to severe mental suffering, shall be punishable by imprisonment for a term of not less than five years.”

216. “2. Paragraph 1 shall be applicable even where the status of the public official:

- (a) Has no valid legal foundation; or



(b) Has been improperly assumed by the offender.”

217. With regard to confessions obtained through torture, Paraguay’s settled and consistent jurisprudence has been based on the principle that no one should be compelled to testify against him or herself, so that a statement obtained through torture is clearly inadmissible as evidence. Any statement made outside the context of legal proceedings has no legal relevance and does not constitute evidence against a person.

218. Article 310: “Prosecution of innocent persons”:

“(a) Any public official required to act in criminal cases who, deliberately or knowingly, criminally prosecutes or contributes to the criminal prosecution of an innocent person or another person against whom no criminal proceedings have been brought, shall be punishable by imprisonment for a maximum term of 10 years. In less serious cases, the act shall be punishable by imprisonment for a term of from 6 months to 5 years.

(b) Where the act relates to proceedings concerning non-custodial measures, a maximum term of 5 years’ imprisonment shall be applicable.

(c) In such cases, attempts shall also be punishable.”

219. Article 311: “Enforcement against innocent persons”:

“(a) Any public official who, deliberately or knowingly, unlawfully enforces a penalty or custodial measure shall be punishable by imprisonment for a maximum term of 10 years. In less serious cases, the act shall be punishable by imprisonment for a term of from 1 to 5 years.

(b) The provisions of the preceding paragraph shall also be applicable, where appropriate, to the enforcement of a precautionary custodial measure.

(c) In such cases, attempts shall also be punishable.”

Mention should also be made of article 88 of the Code of Criminal Procedure (Act No. 1286):

“In no case shall the accused be required to swear or promise to tell the truth, nor may he or she be subjected to any kind of force or coercion. All measures that affect the accused person’s decision-making capacity, memory, will, understanding and handling of his or her own statement are prohibited.”

220. The perpetration of an act that causes bodily harm does not go unpunished. This is evidenced by the fact that the Paraguayan justice system is currently investigating a number of cases of human rights offences committed under the regime that was toppled in 1989, as well as new cases such as ill-treatment in police, military and penal establishments. The aim of the judicial investigations is to clarify the circumstances and punish the perpetrators. Considerable progress has been made in this regard and convictions have already been obtained in a number of cases.

221. Chapter II of the same title of the Code, entitled “Unlawful Acts against Physical Integrity” addresses personal health in articles 110 to 118.

222. Article 110 stipulates: “Anyone who physically mistreats another person shall be punishable by a prison term of up to 180 days or a fine.” Article 111 stipulates: “Anyone who damages the health of another person shall be punishable by imprisonment for a maximum term of one year or by a fine. Where the offender uses poison, an edged weapon, a firearm or a blunt instrument, or subjects the victim to serious physical or mental pain, the applicable penalty shall be imprisonment for a maximum term of 3 years or a fine.”

223. Article 112 stipulates: “A penalty of imprisonment for a maximum of 10 years shall be applicable to anyone who, deliberately or knowingly, through such injury:

- (a) Endangers the life of the victim;
- (b) Seriously mutilates the victim or inflicts long-term disfigurement;
- (c) Considerably impairs, for a long period, the victim’s physical or sensory functions, coital or reproductive capacity, mental or intellectual capacity, or ability to work; or
- (d) Causes a serious or distressing illness.”

224. Article 113 of the Criminal Code stipulates: “Anyone who wrongfully damages a person’s health shall be punishable by imprisonment for a maximum term of one year or by a fine.”

225. In addition, article 117 of the same Code stipulates:

“1. Anyone who fails to save a person from death or serious injury, although he or she could have done so without personal risk, shall be punishable by imprisonment for a maximum term of one year or by a fine, where:

- (a) The person who failed to act was present at the time of the event;
- (b) He or she was directly and personally requested to intervene.”

2. Where the person who failed to act contributed, through previous unlawful conduct, to the creation of the risk, a penalty of imprisonment for a maximum term of 2 years or a fine shall be applicable.”

226. Chapter III of the same title of the Code, entitled “Exposure of an Individual to Danger to Life and Physical Integrity” contains article 119, entitled “Abandonment”, which stipulates:

“1. Anyone who:

- (a) Exposes a person to a situation of abandonment; or
- (b) Absents himself or herself, abandoning a person placed under his or her care or to whom, irrespective of the obligation laid down in article 117, he or she should afford protection, and thereby endangers that person’s life or physical integrity

shall be punishable by imprisonment for a maximum term of 5 years.”

Where the victim is the offender’s child, the penalty may be increased to 10 years.

Where the offender, prior to the occurrence of harm, voluntarily averts the danger, the penalties applicable in subparagraphs 6 ad 7 [...] Where the danger was diverted for other reasons, it shall be sufficient for the offender to have voluntarily and seriously attempted to avert it.”

227. The judicial proceedings against numerous former public officials are handled in accordance with the country’s procedural legislation, although it should be noted that the handing down of a final judgement has been held up in a number of cases because of delays caused by the defence through interlocutory applications that slow down the normal pace of such proceedings. As already noted, the Public Prosecutor’s Office has set up special human rights units which are promoting current judicial proceedings in respect of reported cases of torture. Since their establishment, over 56 cases have been handled to date (May 2003). Cases pertaining to victims of the dictatorship are given special treatment through the Office of the Ombudsman, which is authorized to do so by Act No. 838/96, entitled “Compensation for Victims of the Dictatorship”. By October 2002 a total of 467 cases had been dealt with. In addition, 175 *habeas data* applications have been filed with the courts regarding victims of the dictatorship, 68 of which have been followed up. The Judiciary Documentation and Archives Centre, which contains the so-called “Terror Archives”, has received applications for 246 reports concerning data pertaining to victims of the dictatorship; to date 105 have been followed up and legal counselling has been provided to 243 persons.

228. With regard to expulsion, the Convention against Torture prohibits the extradition of a person to a country where he or she might risk being subjected to torture. As this prohibition is not set forth in specific norms in extradition treaties, it is the Convention provision that must be complied with: accordingly, article 43, paragraph 2, of the Constitution stipulates that “no political refugee shall be forcibly removed to a country where he or she is wanted by the authorities”.

229. *Compensation*: The right to compensation for human rights violations in Paraguay has constitutional status. Article 106 of the Constitution states that no public official shall be exempt from liability and that such officials are personally liable for infringements and serious or minor offences committed in the performance of their duties, without prejudice to the vicarious liability of the State.

230. There is a special law dealing with reparations for victims of the dictatorship, Act No. 838/96, which compensates victims of human rights violations during the dictatorship of 1954 to 1989.

231. Act No. 1183/95, the Civil Code, deals with “Civil Liability” in Title VIII which regulates, inter alia, liability for one’s own wrongdoing, vicarious liability, liability without fault, damage assessment and settlement, and the bringing of a civil action and its relationship with criminal proceedings.

232. Furthermore, article 273 of the Code of Criminal Procedure guarantees compensation for an accused person as follows: “Where, following review of the proceedings, a convicted person is acquitted or a less severe sentence is imposed, he or she shall be compensated for the time spent in prison or for the excess time served.”

233. Mention may be made of some cases that are currently under review for compensation by the State of Paraguay. The responsible body, as laid down in the relevant legislation

(Act No. 838/96) is the Office of the Ombudsman in the case of victims of the dictatorship. The Office has been fully operational since 11 October 2001, when the Ombudsman and Deputy Ombudsman were appointed, although budgetary limitations hamper its ability to perform its duties effectively.

234. The courts are unquestionably guided by human rights treaties in applying procedures that guarantee the due process rights set forth in many conventions and in basing their decisions on the principles of international human rights law. Accordingly, Paraguay has undertaken, in its international instruments, to provide an effective remedy for anyone whose fundamental rights or freedoms have been violated, to expand the scope of existing remedies and to comply with the decisions to which such remedies give rise. Judicial remedies should operate in such a way as to establish whether a human rights violation was committed, and the State must take the necessary steps to remedy the situation.

235. Moreover, within the structure of the National Police the system of procedures governing crime prevention and the restriction of liberty has been completely overhauled. The Code of Criminal Procedure has been brought into line with the provision in the Constitution regarding detention. Accordingly, article 279, *in fine*, stipulates that the Public Prosecutor's Office shall be responsible for handling proceedings in respect of all publicly prosecutable acts and shall act at all times with the assistance of the National Police and the Criminal Investigation Service.

236. Article 58 stipulates that the National Police shall act on the initiative of the Public Prosecutor's Office and shall carry out the orders of the competent authority ... ; article 59 stipulates: "National Police officials and officers assigned to an investigation shall carry out the directives and instructions of the Public Prosecutor's Office and those issued to them by the courts during the judicial proceedings, without prejudice to the administrative authority to which they report. The administrative authority may not revoke, change or delay an order issued by the prosecutors or the courts."

237. Article 60 stipulates: "National Police officials and officers shall comply with the procedures prescribed for the investigation and shall align their action with the general or specific directives and instructions issued by the Public Prosecutor's Office." Article 61: "Police officials and officers who breach legal or regulatory provisions, fail to perform or delay the performance of any act pertaining to their investigatory duties, or perform it negligently, shall be punishable under the relevant institutional act, without prejudice to their criminal liability."

238. These articles of the new Code of Criminal Procedure are designed to ensure that police action is fully in line with the orders of the Public Prosecutor's Office, since the latter has full and exclusive authority to act when a person is arrested and deprived of his or her liberty on suspicion of having committed an unlawful act.

239. Article 4 of the Constitution stipulates, *in fine*, that the law shall regulate the freedom of individuals to dispose of their own body. Accordingly, article 123 of the Criminal Code prohibits medical treatment without consent.

### Article 8

240. Paraguay has declared that it is absolutely opposed to all forms of slavery. The Preamble to the Constitution states this principle as follows: "recognizing human dignity with the aim of ensuring freedom, equality and justice". The principle is reinforced by article 10, which states:

“Slavery, personal servitude and the slave trade are prohibited.” This norm is reflected in article 10 of the Labour Code, which stipulates: “Any labour contract, pact or agreement that provides for the impairment, sacrifice or loss of personal liberty shall be null and void.” Article 12 of the Code states: “All labour shall be remunerated. There shall no presumption of free labour.” Furthermore, article 13 stipulates: “No one may be compelled to provide personal services without his or her full consent and fair remuneration.”

241. Article 124 of the Criminal Code stipulates: “1. Anyone who deprives a person of his or her liberty shall be punishable by imprisonment for a maximum term of 3 years or by a fine. 2. Where the offender (a) deprives a person of his or her liberty for more than one week; (b) severely abuses his or her public office; or (c) takes advantage of the victim’s legal or de facto dependence, he or she shall be punishable by imprisonment for a maximum term of 5 years. 3. Where the offender uses deprivation of liberty to coerce a person to do, to refrain from doing or to tolerate something against his or her will, by threatening death or serious bodily harm within the meaning of article 112 or by prolonging the deprivation of liberty for more than one week, he or she shall be punishable by imprisonment for a maximum term of 8 years.”

242. Article 125 stipulates: “1. Anyone who, by force, deception or threat, conveys a person out of the national territory in order to subject him or her to a regime that endangers his or her life, physical integrity or liberty, shall be punishable by imprisonment for a maximum term of 10 years. 2. Anyone who acts without intent but with foresight of the subjection of a person to the regime described in the preceding clause, shall be punishable by imprisonment for a maximum term of 5 years. 3. Attempts shall also be punishable.”

243. Article 46 of the Constitution stipulates: “All inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles and factors that maintain or encourage such discrimination. Protective measures adopted in respect of unjust inequalities shall not be regarded as discriminatory but as egalitarian.”

244. With regard to prostitution as a form of servitude, article 128 of the Criminal Code addresses the question in the following terms:

“(a) Anyone who, by force or threat of a present danger to life or physical integrity, coerces a person to undergo, in his or her presence, sexual acts or to perform such acts upon himself/herself or with third parties, shall be punishable by imprisonment for a maximum term of 10 years. Where the victim is forced to engage in coitus with the offender or with third parties, the penalty of imprisonment shall be for a term of from 2 to 12 years. Where the victim of the coitus is a minor, the penalty of imprisonment shall be for a term of from 3 to 15 years.

(b) The penalty may be mitigated in accordance with article 67 where, on account of the victim’s relations with the offender, considerable extenuating circumstances exist.

(c) For the purposes of this legislation:

Sexual acts shall mean only those acts which, from the point of view of legal protection, are manifestly relevant;

Sexual acts performed in front of others shall mean only those acts which the other person perceives through his or her senses.”

With regard to human trafficking, article 129 stipulates: “1. Anyone who, through force, threat of serious harm or deception, conveys a person out of or into the national territory and, taking advantage of that person’s defencelessness, coerces him or her into prostitution, shall be punishable by imprisonment for a maximum term of 6 years; 2. Where the offender acts for commercial gain or as a member of a gang formed to carry out the acts described in the preceding clause, the provisions of articles 57 and 91 shall be applicable.” (Article 57 deals with pecuniary penalties and article 91 with special attachment of replacement assets.)

245. Similarly, article 139 of the Criminal Code deals with procuring as follows: “1. Anyone who coerces into prostitution a person under 18 years of age; a person between 18 and the age of majority by exploiting his or her helplessness, trust or naivety; or a person between 18 and the age of majority who is in his or her care, shall be punishable by imprisonment for a maximum term of 5 years or by a fine. 2. Where the offender acts for commercial gain, the penalty shall be increased to imprisonment for a maximum term of 6 years. 3. Where the victim is under 14 years of age, the penalty shall be increased to imprisonment for a maximum term of 8 years.”

246. Article 140 of the Code stipulates: “Procuring: Anyone who exploits a person engaged in prostitution, deriving profit from that person’s earnings, shall be punishable by imprisonment for a maximum term of 5 years.”

#### **Report on the State’s actions to combat human trafficking for sexual exploitation**

247. In response to increasing reports of cases of Paraguayan victims of human trafficking for sexual exploitation, the Government has identified and tackled the problem, giving it high priority on its agenda.

248. At the invitation of the Government, the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, visited Paraguay from 23 February to 5 March 2004. His report will be submitted to the Commission on Human Rights in March 2005.

249. In addition, a first meeting of government authorities and officials with representatives of civil society and consultants from international organizations (International Organization for Migration/Inter-American Development Bank) was organized in the context of a seminar held on 4 and 5 March 2004 in the Ministry of Foreign Affairs.

250. The seminar resulted in a report and conclusions (annex 6), which provide an account of the present situation and present recommendations for action to address the problem.

251. Ad hoc workshops have also been held to follow up the seminar conclusions and evaluate the action to be taken.

252. In addition, formal requests for technical and financial cooperation have been submitted to the International Organization for Migration (IOM) and the Inter-American Development Bank (IADB).

253. Diplomatic contacts have also been made with countries of destination of human trafficking for sexual exploitation to seek cooperation and exchanges of information.

254. With regard to criminal prosecution, a number of cases pertaining to human trafficking for sexual exploitation are under investigation in the capital and other parts of the country.

255. In coordination with the Ministry of Internal Affairs, the Ministry of Foreign Affairs is following up the cases of undocumented Paraguayans in Spain who are victims of human trafficking for sexual exploitation.

256. By Act No. 2396 of 28 May 2004, Paraguay ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

### **Short- and medium-term action**

257. Elaboration of a national programme to combat human trafficking for sexual exploitation.

258. Strengthening and expansion of the inter-agency board on human trafficking with a view to promoting programmes for prevention and protection and rehabilitation of victims of human trafficking for sexual exploitation at the national and local level (regional governors' offices and municipalities).

259. Strengthening of bodies involved in the investigation and punishment of the crime of human trafficking for sexual exploitation.

260. It is also important to note the contribution of specialized agencies such as the International Labour Organization (ILO) and the United Nations Children's Fund (UNICEF) to the integrated protection of children through the promotion and encouragement of discussion of issues related to the implementation of labour instruments and instruments on children's rights ratified by Paraguay, and the identification of major problems affecting the basic rights of children and adolescents such as sexual exploitation, labour exploitation and trafficking for exploitation. On the specific issues of child labour (Convention No. 138) and the worst forms of child labour (Convention No. 182), the ILO has promoted research on domestic child labour, the results of which will be duly analysed by the State's specialized agencies. The document also reflects legislative and administrative advances made in implementing the above-mentioned instruments signed and ratified by Paraguay, in particular the enactment of the Childhood and Adolescence Code; the adoption of a National Plan to counter sexual exploitation of children and adolescents and a National Plan for the gradual eradication of child labour; the establishment of a National Commission for the prevention and eradication of child labour and the protection of adolescent employment, as well as other initiatives (see annex on domestic child labour in Paraguay, ILO/IPEC – International Programme on the Elimination of Child Labour).

261. In addition, the Government, in pursuance of its foreign policy on human rights, issued an open and standing invitation at the fifty-ninth session of the Commission on Human Rights to all United Nations special mechanisms and special rapporteurs to visit Paraguay in order to observe the overall human rights situation on the ground. The first visit was that of Juan Miguel Petit, the Special Rapporteur on the sale of children, child prostitution and child pornography, whose report will be presented to the Commission at its sixty-first session and will constitute a working document and a basic advisory instrument for the Government in its ongoing assessment of best practices and effective action to prevent and eradicate child trafficking for sexual exploitation and child and adolescent pornography and to prosecute those involved.

## Article 9

### **Right to liberty and security of person; prohibition of arbitrary arrest or detention**

262. Article 9, paragraph 1, of the Constitution states that “Everyone has the right to protection of his or her freedom and security.” Article 11 stipulates that “No one shall be deprived of his or her physical freedom or tried otherwise than on the grounds and in the circumstances established by this Constitution and the law.” In addition, the first sentence of article 12 of the Constitution states that “No one shall be arrested or detained without a written warrant from the competent authority, unless he or she is caught in the act of committing an offence that carries a custodial sentence.” Anyone so arrested or detained shall be brought before a competent court within 24 hours so that the court may decide what legal action should be taken.

263. In accordance with these provisions of the Paraguayan Constitution, the Code of Criminal Procedure lays down a series of basic requirements aimed at protecting the right to liberty.

264. Criminal legislation deals with six circumstances leading to deprivation of liberty: arrest and detention of an accused person in a criminal case; pre-trial detention of the accused to ensure his or her appearance before the court and the success of the criminal investigation; arrest and detention of witnesses; and detention for purposes of extradition. Article 150 of the Code of Criminal Procedure stipulates: “The criminal court may order the provisional arrest and detention of an extraditable person provided that a conviction or a prison sentence has been handed down, the nature of the unlawful act has been clearly determined and the case is one requiring pre-trial detention pursuant to this Code and the international law in force. In an emergency, provisional detention may be ordered even before the requesting authority has furnished all documents required to proceed with the extradition. Provisional detention may not last for more than 15 days unless a longer period is stipulated in the treaties concerned. A request for provisional detention may be filed through any reliable channel and shall be communicated forthwith to the Ministry of Foreign Affairs.”

265. Article 239 of the same Code stipulates: “The National Police may arrest any person under the following circumstances without a warrant:

- (a) Where a person is caught in the act of committing an offence or is pursued immediately after its commission; flagrancy shall be deemed to exist where the perpetrator of the unlawful act is caught when intending to commit it, during its commission, immediately afterwards, or while being pursued by the police, the victim or a group of individuals;
- (b) Where a person has escaped from a penal institution or any other place of detention; and
- (c) Where there is sufficient evidence of his or her participation in an unlawful act and the case is one entailing pre-trial detention. Furthermore, in the event of flagrancy, anyone may effect an arrest and prevent the punishable act from entailing consequences. The apprehended person shall be handed over forthwith to the nearest authority. A police authority that has arrested a person shall inform the Public Prosecutor’s Office and the court thereof within six hours.”



266. Article 240 stipulates: “The Public Prosecutor’s Office may order the detention of a person in the following circumstances:

- (a) Where the presence of the accused is necessary and there is a reasonable probability that he or she has been the principal or accessory in the commission of an unlawful act and may hide, escape or abscond;
- (b) Where in the early stages of the investigation it proves impossible to identify the culprits and witnesses, and urgent action is needed to protect the investigation by preventing those present from absconding or communicating with each other, and any alteration of the evidence or the scene of the unlawful act; and
- (c) Where a person is required to assist in the investigation of an unlawful act by making a statement and refuses to do so.”

267. In all cases, the arrested person shall be brought before a court within 24 hours so that it may decide, within the same period, on the appropriateness of pre-trial detention, apply alternative measures or order the person’s release for lack of evidence.

268. The arrest warrant shall contain the arrested person’s personal data to ensure the correctness of his or her identity, a brief description of the act giving rise to the warrant and the identity of the authority that ordered the arrest.

269. The National Police may not, under any circumstances, order detention; it shall confine itself to carrying out arrests as provided for in the preceding article and acting on the arrest warrants issued by the Public Prosecutor’s Office or the court. It may decide to release an arrested or detained person when it considers that pre-trial detention will not be requested.

270. Article 242 stipulates: “The court may order pre-trial detention after hearing the arrested person only where such detention is essential and provided that all the following conditions are fulfilled:

- (a) That there is sufficient evidence to indicate that a serious offence has been committed;
- (b) That the presence of the arrested person is necessary and that there is sufficient evidence to reasonably support a finding that he or she has been the principal or accessory in an unlawful act; and
- (c) Where there is sufficient evidence, from an examination of the circumstances of the case, to suspect that there is a risk of absconding or of possible obstruction by the arrested person of a specific measure of investigation.”

271. The Childhood and Adolescence Code provides for other custodial measures, which must be ordered by a court with relevant jurisdiction to deal with circumstances requiring protection and support for a minor. Such measures may involve provision of shelter, placement of a child with a substitute family or placement of a child or adolescent in a home. Shelter is an exceptional and provisional measure taken pending placement with a substitute family or in a home, the aim being to place the child or adolescent in an institution that provides protection and care.

272. There are furthermore three non-criminal circumstances in which persons may be deprived of their liberty: detention during a state of emergency (art. 288 of the Constitution), taking into custody of minors in a state of inebriation (article 5 of Act No. 1642 prohibits the sale of alcoholic beverages to minors and prohibits their consumption on a public highway) and detention of aliens prior to removal (articles 80 and 84 of Act No. 978 on migration). Apart from these cases, no other circumstances permitting the arrest or detention of persons exist in Paraguayan legislation.

### **Communication and notification of the reasons for arrest**

273. Article 12, paragraph 1, of the Constitution states that anyone who is arrested has the right to be informed, at the time of arrest, of the reasons for the arrest, of his or her right to remain silent and of his or her right to defence counsel. At the time of arrest, the arresting authority must produce the written arrest warrant. Moreover, the arrest must immediately be reported to the relatives of or other persons specified by the arrested person.

274. Article 74 of the Code of Criminal Procedure defines an accused person as a person charged with being the principal or accessory in an unlawful act. Article 75 contains a simple list of his or her rights: the accused person shall be assured of the guarantees necessary for his or her defence; informed in clear language of the reason or motive for his or her arrest and of the officer who ordered it; shown the arrest warrant as required; asked to indicate the person, association or entity to be informed of his or her arrest, such information being communicated forthwith; and informed of his or her right to assistance, from the first step in the proceedings, by counsel designated by the accused, his or her spouse, cohabitant or relative within the fourth degree of consanguinity or by adoption, or within the second degree of affinity, and, in the absence of such counsel, by a public defender.

275. Article 17 of the Constitution states that everyone has the right to be informed in advance and in detail of the charge against him or her, and to have copies thereof and adequate facilities and time to prepare his or her defence, communicating freely with counsel.

### **Right to be tried within a reasonable time, pre-trial detention and guarantees**

276. Article 12 of the Constitution lists the rights of detainees. Paragraphs 3, 4 and 5 establish the right to freedom of communication unless a judicial warrant has been issued debarring communication, which shall not apply to defence counsel or exceed the time-limit established by law. Detainees are also entitled to appoint an interpreter and to be brought before the competent judge within 24 hours. Article 256 of the Code of Criminal Procedure stipulates in this regard: "The criminal court may order that the accused be held incommunicado for a period not exceeding 48 hours and only where there are serious grounds to fear that he or she would otherwise obstruct a specific measure of investigation. Those grounds shall be stated in the decision."

277. "This decision shall not prevent the accused person from communicating with his or her defence counsel. He or she shall also have access to books, writing materials and any other articles requested unless they can be used to circumvent the incommunicado order, and may perform civil acts that cannot be postponed unless they reduce his or her solvency or prejudice the proceedings."

278. The Public Prosecutor's Office may order incommunicado detention for a period not exceeding six hours where this is necessary to arrange for the relevant judicial order. These periods may not be extended.

279. In addition, article 7 of the Code of Criminal Procedure states that the accused has the right to the assistance of an interpreter in preparing his or her defence. Where the accused does not understand the official languages and does not exercise the aforementioned right, the court shall designate an interpreter of its own motion, in accordance with the rules governing public defence.

280. Article 16 of the Constitution declares that the right to a defence in legal proceedings is inviolable. Everyone has the right to be tried by competent, independent and impartial courts and judges.

281. Article 2 of the Code of Criminal Procedure stipulates: "Authority to apply the law in criminal proceedings and to ensure enforcement of judgements shall lie exclusively with ordinary courts and tribunals established prior to the enactment of the law. No one may be tried or judged by special courts or tribunals."

282. Article 3 of the same Code stipulates: "Judges shall be independent and shall act without any outside interference, in particular from other members of the judiciary and other branches of government. In the event of interference in the exercise of his or her functions, the judge shall inform the Supreme Court of Justice of the circumstances impairing his or her independence. Where it comes from the Supreme Court of Justice itself or one of its judges, the report shall be submitted to the Chamber of Deputies. In taking decisions, judges shall assess all circumstances pertaining to the accused, both favourable and unfavourable, with absolute impartiality."

283. The provisions of article 6 of the Code should also be mentioned: "The right of the accused to a defence and the exercise of his or her rights shall be inviolable. With regard to the procedural rights of the accused, the proceedings shall begin with an account of any step taken by the prosecutor or any act or step taken after the six-hour time limit has expired. Accused may defend themselves in person or choose counsel whom they trust to defend them at their own expense. If the accused does not appoint counsel, the criminal court shall, of its own motion, appoint a public defender independently of the will of the accused. The right to a defence is unwaivable and any violation of that right shall entail the absolute nullity of the proceedings from the moment it occurs. The rights and privileges of the accused may be exercised directly by the defender, except for those of a personal nature or where an explicit reservation exists in the law or terms of reference."

284. Article 17 of the Constitution refers to procedural rights, providing in its subparagraphs 1, 2, 5, 6 and 10 for the right to presumption of innocence, and the right to a public trial except in cases determined by the court in order to safeguard other rights. The article also provides that the pre-trial phase shall not last longer than is prescribed by law.

285. In accordance with this constitutional provision, article 4 of the Code of Criminal Procedure stipulates: "The accused shall be presumed innocent throughout the proceedings until such time as his or her guilt is declared in an enforceable judgement. No public authority shall depict an accused person as guilty or provide information to that effect to the media. Only objective information regarding the suspicion attaching to the accused, based on the order instituting the proceedings, may be provided. The judge shall regulate the participation of the

media, where mass dissemination may prejudice the normal course of the proceedings or exceed the bounds of the right to receive information.”

286. Article 5 of the same Code states that, in case of doubt, judges shall always take whatever decision is more favourable to the accused.

287. Furthermore, article 368 of the Code of Criminal Procedure lays down the general rule that judicial proceedings shall be held in public. “However, the court may decide, of its own motion, to hold all or part of the proceedings *in camera*, but only where:

- (a) The modesty, private life or physical integrity of one of the parties, anyone summoned to appear or one of the judges is directly affected;
- (b) An official secret, in particular a commercial or industrial secret, is jeopardized;
- (c) A juvenile is being questioned, if the court deems that public proceedings are inappropriate.”

288. “The decision shall be reasoned and shall be set out in the record of the hearing. Once the motive for *in camera* proceedings no longer exists, the public shall be readmitted and the presiding officer shall report briefly on what occurred. The court may bind the parties involved in the proceedings to secrecy regarding the facts they witnessed or of which they obtained knowledge, including a note thereof in the record of the decision.”

289. Article 136 of the Code of Criminal Procedure stipulates: “Everyone has the right to a final judicial decision within a reasonable time. It follows that the maximum duration of all proceedings shall be three years, counting from the first step in the proceedings. This period may be extended by six months in the event of a conviction to allow time for the handling of appeals. In the event of escape or contumacy on the part of the accused, the time limit applicable to the proceedings shall be suspended. When the accused appears or is apprehended, the running of the time limit shall resume.”

290. In accordance with this provision, article 137 of the same Code states: “Once the time limit laid down in the preceding article has expired, the court or tribunal, acting on its own motion or at the request of a party, shall declare the criminal proceedings terminated in accordance with the provisions of this Code. Where criminal proceedings are terminated owing to judicial delay, the victim shall be compensated by the responsible officials and by the State. There shall be a presumption of negligence on the part of the officials involved, barring evidence to the contrary. Where an official is insolvent, the State shall be directly liable, without prejudice to its right to recoup the payment.”

291. Article 138 also addresses this issue. It stipulates: “The duration of the proceedings may not exceed the time period established by the statute of limitations in respect of the criminal proceedings, where it is shorter than the period laid down in this chapter.”

292. Article 139 stipulates: “Where the Public Prosecutor’s Office neither brings charges nor files any other application by the date set by the court, and no request has been filed for an extension or the request is inappropriate, the court shall request the Attorney-General to take whatever steps he or she deems appropriate within 10 days. Once that period has expired without an application being filed by the Public Prosecutor’s Office, the court shall declare the criminal

proceedings terminated, without prejudice to the personal liability of the Attorney-General or the prosecutor handling the case.”

293. Article 140 states: “If the court or tribunal fails to hand down a decision within the time limits laid down by this Code, the person concerned may file an application for prompt disposal of the case. Should no action be taken within 24 hours, he or she may file a complaint of judicial delay. The court or tribunal, reporting briefly on the reasons for the delay, shall immediately refer the proceedings to the authority that is to hear the complaint so that it may take a decision thereon. The court that hears the complaint shall, if possible, rule directly on the matter referred to it, or shall call upon the court or tribunal to do so within 24 hours of returning the proceedings. If the court or tribunal persists in failing to take a decision, it shall be replaced forthwith, without prejudice to its personal liability.”

294. Article 141 stipulates: “Where a precautionary custodial measure is to be reviewed or the decision regarding such a measure has been appealed, and the court or tribunal fails to take a decision within the time limits laid down in this Code, the accused may file an application for prompt disposal. Should no action be taken within 24 hours, he or she shall be deemed to have been released. The court or tribunal that is on the rota to hear the case shall then order his or her release. A fresh precautionary custodial measure may be ordered only at the request of the Public Prosecutor’s Office or the plaintiff, depending on the circumstances.”

295. Article 142 states: “Where the Supreme Court of Justice fails to rule on an application within the time limits laid down in this Code, the solution proposed by the applicant shall be deemed to have been accepted unless it is unfavourable to the accused, in which case the application shall be deemed to have been rejected. If applications have been filed by different parties, the solution proposed by the accused shall be accepted. Where the application refers to the quashing of a conviction, before the foregoing rules are applied a new criminal chamber shall be constituted within three days of the expiry of the time limit to rule on the application within a period of not more than ten days. Judges of the Supreme Court of Justice who have lost jurisdiction on this ground shall be liable for breach of their judicial duties. The State shall compensate the plaintiff if his or her application fails on that ground.”

296. No one can be compelled to testify against himself or herself, his or her spouse or the person with whom he or she maintains a de facto union, or against relatives within the fourth degree of consanguinity or the second degree of affinity (article 18, paragraph 1, of the Constitution). In accordance with this constitutional provision, article 315 of the Code of Criminal Procedure stipulates: “Persons related to the parties by consanguinity or direct line of affinity, or the spouse of a party, even where legally separated, may not be called as witnesses except for the witnessing of signatures or in special cases provided for in other legislation.” Moreover, article 205 of the Code of Criminal Procedure stipulates: “The following may decline to make statements:

- (a) The spouse or cohabitant of the accused;
- (b) His or her relative in the ascending or descending line, by consanguinity or adoption; and
- (c) Minors under 14 years of age and persons who are, de facto, without legal capacity, who may so decide through their legal representative.”

“The aforementioned persons shall be informed of their right to decline to make statements before the beginning of each statement. They may exercise that prerogative even during the statement, also in respect of specific questions. In clause (c) cases, the statement shall be made in the presence of the legal representative.”

297. Article 178 of the Code of Criminal Procedure states: “Persons related to one of the parties by consanguinity or direct line of affinity, or the spouse of a party, even where legally separated, may not be called as witnesses against that party.”

298. With regard to pre-trial detention, article 19 of the Constitution provides that such detention shall be ordered only where essential and shall not be extended beyond the duration of the minimum sentence for the offence concerned, in accordance with the characterization of the offence in the relevant legislation.

299. With regard to the right to be tried promptly, it has been possible, thanks to the new criminal procedure system, to speed up all such proceedings. The following are details provided in the report published by the Institute of Comparative Studies in Criminal and Social Sciences (INECIP) covering the period from the entry into force of the system until 2002: in Asunción alone, 3,452 cases were decided in 2000, 7,368 in 2001 and 1,510 in the first quarter of 2002 in the supervisory courts (*juzgados de garantías*, i.e. courts guaranteeing the rights of the accused). The judiciary report contained in the first Human Rights Report (2002) adopted by the Government is attached as an annex; it describes the criminal proceedings in detail and presents statistics concerning the application of the new criminal procedure system.

300. The following is a list of existing courts of all jurisdictions throughout the country:

#### **Judicial district of the capital**

##### **Asunción**

Appeal court:

Criminal matters	4 divisions
Civil and commercial matters	5 divisions
Labour matters	2 divisions
Matters pertaining to guardianship of minors	1 division
Criminal matters (adolescents)	1 division
Itinerant	4 members

Courts of first instance:

Criminal matters (supervision, disposition and sentencing and enforcement)	14 courts
Civil and commercial matters	6 courts
Matters pertaining to childhood and adolescence	6 courts
Peace courts	6 courts
Itinerant in the capital	3 judges
Itinerant in the capital for criminal matters	12 judges

##### **Paraguari**

Civil and commercial matters, criminal supervision, disposition and sentencing, and criminal matters (itinerant): total of 5 courts

##### **Caacupé**

Civil and commercial matters, criminal supervision, disposition and sentencing: total of 4 courts

**Luque**

Civil and commercial matters, criminal supervision, disposition and sentencing: total of 3 courts

**Lambaré**

Civil and commercial matters, criminal supervision, disposition and sentencing: total of 3 courts

**San Lorenzo**

Civil and commercial matters, criminal supervision, disposition and sentencing, childhood and adolescence, and criminal matters pertaining to adolescence: total of 7 courts

**J. Augusto Saldívar**

Civil and commercial matters, and criminal supervision: total of 2 courts

**Capiatá**

Civil and commercial matters, and criminal supervision: total of 2 courts

**Filadelfia**

Criminal supervision and criminal matters (itinerant): total of 2 courts

**Judicial district of Guairá and Caazapá**

Appeal court for civil, commercial and labour matters: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters (itinerant): total of 20 courts, including the court of San Juan Neponuceno.

**Judicial district of Caaguazú and San Pedro** (Cnel. Oviedo, San Pedro, Caaguazú, San Estanislao)

Appeal court for civil, commercial and labour matters: 2 divisions

Appeal court for criminal matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters pertaining to adolescents, criminal matters (itinerant): total of 25 courts.

**Judicial district of Itapúa** (Encarnación)

Appeal court for civil, commercial and labour matters: 2 divisions

Appeal court for matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters pertaining to adolescents, criminal matters (itinerant): total of 21 courts.

**Judicial district of Alto Paraná and Canindeyú** (Ciudad del Este, Saltos del Guairá, Hernandarias, Curuguaty, Santa Rita, Minga Guazú)

Appeal court for civil, commercial and labour matters: 3 divisions

Appeal court for matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters pertaining to adolescents, criminal matters (itinerant): total of 43 courts.

**Judicial district of Concepción**

Appeal court for civil, commercial and labour matters: 1 division

Appeal court for criminal matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters pertaining to adolescents, criminal matters (itinerant): total of 16 courts.

**Judicial district of Amambay**

Appeal court for civil, commercial and labour matters: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters (itinerant): total of 13 courts.

**Judicial district of Ñeembucú**

Appeal court for civil, commercial, criminal and labour matters, matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters pertaining to adolescents, criminal matters (itinerant): total of 10 courts.

**Judicial district of Misiones (San Juan Misiones and Ayolas)**

Appeal court for civil, commercial and labour matters: 1 division

Appeal court for matters pertaining to childhood and adolescence: 1 division

Courts of first instance: civil, commercial, labour, childhood and adolescence matters, criminal supervision, disposition, sentencing and enforcement, criminal matters (itinerant): total of 8 courts.

301. The following is further information for the Committee regarding the number of prosecutors' offices currently attached to the Public Prosecutor's Office throughout the country:

Office of the Attorney-General (Asunción, Cordillera, Chaco and Central)

Judicial Office

Deputy Prosecutor's Office, Area I (Cordillera, Chaco and Central)

Deputy Prosecutor's Office, Area II (Caaguazú, Guairá and Caazapú)

Deputy Prosecutor's Office, Area IV (Conceptión and Alto Paraguay, Amambay and San Pedro)

Criminal Prosecution Offices: 14 units

Units specialized in:

Intellectual offences

Drug trafficking

Human rights

Economic offences

Offences against the Public Treasury

Automobile registration

Environmental offences

Transitional units: Transitional Units 1, 2 and 3; Transitional Units 4, 5, 6 and 7

Deputy Prosecutor's Office, guardianship matters

Prosecutor's Office, civil and commercial matters

Prosecutors' offices, guardianship of minors

Prosecutors' offices, civil and commercial matters and guardianship of minors

Prosecutor's Office, labour matters

Prosecutor's Office, accounts

Prosecutor's Office, electoral matters

**Provincial prosecutors' offices**

**Central**

1. Zonal Prosecutor's Office, Luque

2. Zonal Prosecutor's Office, San Lorenzo



3. Zonal Prosecutor's Office, Lambaré
4. Zonal Prosecutor's Office, Mariano Roque Alonso
5. Zonal Prosecutor's Office, Limpio
6. Zonal Prosecutor's Office, Capaitá
7. Zonal Prosecutor's Office, J. A. Saldivar
8. Zonal Prosecutor's Office, Ñemby

**Region I**

1. Regional Prosecutor's Office, Caacupé
2. Zonal Prosecutor's Office, Paraguari

**Region II**

1. Regional Prosecutor's Office, Ciudad de Este
2. Zonal Prosecutor's Office, Hernandarias
3. Zonal Prosecutor's Office, Salto del Guairá
4. Zonal Prosecutor's Office, Curuguaty
5. Zonal Prosecutor's Office, San Alberto
6. Zonal Prosecutor's Office, Santa Rita
7. Zonal Prosecutor's Office, Colonia Yguazú

**Region III**

1. Regional Prosecutor's Office, Coronel Oviedo
2. Zonal Prosecutor's Office, Caaguazú
3. Zonal Prosecutor's Office, Vaqueria
4. Zonal Prosecutor's Office, San Estanislao
5. Zonal Prosecutor's Office, Mbutuy
6. Zonal Prosecutor's Office, Santa Rosa del Aguarau

**Region IV**

1. Regional Prosecutor's Office, Encarnación
2. Prosecutor's Office, Edelira
3. Prosecutor's Office, San Pedro del Paraná

**Region V**

1. Regional Prosecutor's Office, Villarrica
2. Zonal Prosecutor's Office, Caazapá
3. Zonal Prosecutor's Office, San Juan Neponuceno

**Region VI**

1. Regional Prosecutor's Office, Pedro Juan Caballero
2. Zonal Prosecutor's Office, Capitán Bado

**Region VII**

1. Regional Prosecutor's Office, San Juan Bautista
2. Zonal Prosecutor's Office, Ayolas

**Region VIII**

1. Regional Prosecutor's Office, Concepción
2. Zonal Prosecutor's Office, Horqueta

**Region IX**

1. Regional Prosecutor's Office, Pilar (Department of Ñeembucu, Alberdi, Villa Franca)

**Region X**

1. Regional Prosecutor's Office, Filadelfia
2. Zonal Prosecutor's Office, Villa Hayes (Presidente Hayes, Pozo Colorado, Benjamín Aceval, Puerto Pinazco and Nanawa)

### **Organization of the judiciary**

302. Article 2 of Act No. 879/81 (Code of Organization of the Judiciary) stipulates that judicial authority shall be exercised by:

- The Supreme Court of Justice;
- The Court of Audit;
- Courts of appeal;
- Courts of first instance;
- Professional justice tribunals for civil and commercial matters;
- Courts of arbitration and arbitrators;
- Justices of the peace.

303. The following judicial bodies were established under the Code of Criminal Procedure, Act No. 1286/98:

- Sentencing courts;
- Supervisory criminal courts;
- Enforcement courts.

304. Furthermore, the Childhood and Adolescent Code (Act No. 1680/01) provided for the establishment of childhood and adolescent courts of first instance and appeal courts, thus ensuring integrated jurisdiction. Before the entry into force of the Code, such matters were dealt with by guardianship and correctional courts for minors.

305. Article 11 of the Constitution states: “No one shall be deprived of his or her physical freedom or tried otherwise than on the grounds and in the circumstances established by this Constitution and the law.” In keeping with this principle, article 124 of the Criminal Code stipulates: “1. Anyone who deprives a person of his or her liberty shall be punishable by imprisonment for a maximum term of 3 years or by a fine. 2. Where the offender (a) deprives a person of his or her liberty for more than one week; (b) severely abuses his or her public office; or (c) takes advantage of the victim’s legal or de facto dependence, he or she shall be punishable by imprisonment for a maximum term of 5 years. Attempts shall also be prosecuted. 3. Where the offender uses deprivation of liberty to coerce a person to do, to refrain from doing or to tolerate something against his or her will, by threatening death or serious bodily harm or by prolonging the deprivation of liberty for more than one week, he or she shall be punishable by imprisonment for a maximum term of 8 years.”

### **Lawfulness of detention and guarantees in the event of unlawful detention**

306. As will be seen from the previous sections, there are a number of legal norms protecting the right to have recourse to a court for a prompt decision on the lawfulness of detention. In addition, Chapter XII of the Constitution relating to constitutional guarantees provides safeguards against

possible arbitrary detention. The remedy of habeas corpus, which was dealt with at length in the first part of the report, is available for this purpose and is regulated by Act No. 1500.

### **Right to compensation**

307. As already mentioned, article 17, paragraph 11, of the Constitution establishes the right to compensation by the State in the event of wrongful conviction. In keeping with this provision, article 273 of the Code of Criminal Procedure states: “Where, following review of the proceedings, a convicted person is acquitted or a less severe sentence is imposed, he or she shall be compensated for the time spent in prison or for the excess time served. This rule shall be applicable analogously to cases in which the review relates to a non-custodial measure. The fine or the sum fined in excess shall be reimbursed.”

308. The right to fair and proper compensation is also referred to in article 39 of the Constitution, which states that: “Everyone is entitled to fair and proper compensation for harm or injury caused to him or her by the State ...” In keeping with this provision, article 276 of the Code of Criminal Procedure stipulates: “The State is required under all circumstances to pay compensation, without prejudice to its right to recoup the sum paid from another obligor. To that end, the court may impose joint and several liability, fully or partially, on those who contributed, wilfully or by gross negligence, to the miscarriage of justice. In the case of unjustly imposed precautionary measures, the court may impose liability, fully or partially, on the complainant or plaintiff who gave false evidence.”

309. As a result of the entry into effect of the Code of Criminal Procedure in March 2001 and the introduction of arrangements for the settlement of disputes other than through judicial proceedings, pre-trial detention is now used only as a last resort. Provision has been made for the application of substitute and/or alternative measures and enforcement courts have been established to monitor the enforcement of sentences. The most important change introduced by the new Code of Criminal Procedure is certainly the establishment of sentence enforcement courts, which take action on all relevant matters within penal institutions, or outside them in the case of non-custodial measures, whether the person concerned has already been convicted or is under investigation. Their functions are thus as follows: (a) to exercise judicial functions in respect of the enforcement of custodial sentences; (b) to act as a monitoring body in respect of prison administration. The Government recently submitted to the Chamber of Senators the Sentence Enforcement Act, which will facilitate progress in prison reform and will replace Act No. 210/70 (see annexed Sentence Enforcement bill).

### **Article 10**

310. The legal provisions governing the treatment of persons deprived of their liberty and the running of prisons are set forth in Act No. 210/70. With the entry into force of the new Criminal Code and the Code of Criminal Procedure, the Paraguayan correctional regime has undergone a sudden transformation from an inquisitorial regime to an adversarial and solidly safeguards-based regime, in which the principle of “the exceptional nature of deprivation of liberty”, which has constitutional status, is protected and consolidated.

311. Article 39 of Act No. 210/70, entitled “Purpose and basis of enforcement”, stipulates:

- “(a) The purpose of custodial penalties is to rehabilitate convicted prisoners and to protect society.

- (b) During enforcement of a custodial penalty, the ability of the prisoner to take responsibility for his or her conduct and to live in freedom without reoffending shall be stimulated. Where the prisoner's personality so permits, the restrictions on his or her liberty shall be reduced. The prisoner's relations with the outside world shall be promoted, provided that they serve the purpose envisaged by the penalty enforced.
- (c) As far as the prisoner's other rights and obligations are concerned, enforcement of the custodial penalty shall be subject to the provisions of prison legislation."

312. The new criminal justice system is based on fundamental principles such as "freedom is the rule and imprisonment the exception" and it guarantees under all circumstances the exceptional nature of "pre-trial detention", a principle already enshrined in article 19 of the Constitution, which states: "Pre-trial detention shall be ordered only where essential for the purposes of the judicial proceedings. Under no circumstances shall such detention be extended beyond the duration of the minimum sentence for the offence concerned, in accordance with the characterization of the offence in the relevant legislation."

313. The Code of Criminal Procedure also incorporates these extremely important constitutional principles. Accordingly, article 242 stipulates: "The court may order pre-trial detention after hearing the arrested person only where such detention is essential and provided that all the following conditions are fulfilled:

- (a) That there is sufficient evidence to indicate that a serious offence has been committed;
- (b) That the presence of the arrested person is necessary and that there is sufficient evidence to reasonably support a finding that he or she has been the principal or accessory in an unlawful act; and
- (c) Where there is sufficient evidence, from an examination of the circumstances of the case, to suspect that there is a risk of absconding or of possible obstruction by the arrested person of a specific measure of investigation."

314. Another article that reflects these principles in the Code of Criminal Procedure is article 245 concerning "Measures applicable as an alternative to or substitute for pre-trial detention". It stipulates: "Wherever the risk of absconding or obstruction may be averted through the application of another measure that has a less restrictive impact on the liberty of the accused, the court shall, of its own motion, impose one of the following alternatives to pre-trial detention:

- (a) House arrest in his or her own home or in that of another person, with or without supervision;
- (b) Placement under the supervision of a specific person or institution, which shall periodically report to the court;
- (c) Obligation to report periodically to the court or an authority designated by the court;
- (d) Prohibition from leaving the country, the area in which he or she resides, or a territorial area specified by the court;

- (e) Prohibition from attending certain meetings or visiting certain places;
- (f) Prohibition from communicating with certain persons unless such prohibition would adversely affect the right to present a defence;
- (g) Posting of an appropriate bond, by the accused or another person, in the form of cash or securities, a pledge or mortgage, property, or surety by one or more appropriate persons.”

315. The court may impose one or several of these alternatives, jointly or separately, depending on the circumstances, adopting such measures as are necessary to ensure compliance. These measures should not be imposed in a manner that is inconsistent with their goal. Where the accused is unable to comply owing to a reasonable material impediment, in particular where the person concerned is manifestly insolvent or enjoys the right to free legal assistance, a pecuniary bond may not be imposed. In all such cases, where it is sufficient for the accused to undertake on oath to appear for the proceedings, a sworn personal recognizance shall be ordered in preference to any of the other measures.

316. Measures ordered as alternatives to pre-trial detention or to mitigate such detention shall be terminated automatically and *ipso jure* two years after their imposition if the trial has not begun during that period.

317. The Constitution, which establishes the framework for prison legislation, states in article 20: “Persons deprived of their liberty shall be incarcerated in appropriate establishments and intermingling of the sexes shall be avoided. Minors shall not be detained with adults. Accused persons shall be detained separately from those serving a sentence.” Article 21 of the Constitution stipulates: “The purpose of custodial penalties shall be to rehabilitate convicted prisoners and to protect society. The penalties of confiscation of property and exile are prohibited.”

318. Article 2 of Act No. 210 stipulates: “These custodial measures and penalties shall be enforced, depending on their duration, in such a way as to promote the social rehabilitation of the detainee.” Article 3 states: “Treatment with a view to the social rehabilitation of the detainee shall be comprehensive and shall be of an educational, spiritual, therapeutic, assistance-oriented and disciplinary character.” Article 4 stipulates: “The detainee shall be required to comply with the prison regime to which he or she is subject. This regime shall be free of any violence, torture, ill-treatment or acts or procedures that involve suffering, humiliation or taunting of the detainee. Any prison officer who orders, perpetrates or tolerates such excesses shall be held responsible and shall be liable to the relevant provisions of the Criminal Code, without prejudice to any disciplinary penalties applicable.”

319. It should be noted that article 40 of the Criminal Code, which regulates the living conditions of prisoners, stipulates: “1. A prisoner has the right to engage in healthy and useful work corresponding as far as possible to his or her capabilities, making it easier for him or her to earn a livelihood through employment on release. 2. A healthy prisoner is obliged to perform the work assigned to him or her pursuant to the preceding clause. 3. The work shall be remunerated. To make it easier for the prisoner to meet his or her obligations in respect of maintenance and compensation and to constitute a fund for returning to normal life on release, not more than 20 per cent of earnings from such work shall be retained to meet prison costs. 4. With regard to

the remainder and, in particular, the form in which the prisoner shall administer the proceeds of his or her work, the provisions of prison legislation shall be applicable thereto.”

320. Article 492 of the Code of Criminal Procedure stipulates “that the court of enforcement shall monitor compliance with the prison regime and respect for the constitutional aims of the penalty; it shall, inter alia, arrange for inspections of penal institutions and may summon prisoners and prison administration officials to appear before it for purposes of oversight and monitoring. Prior to discharge, the appropriate authority shall seek, as far as possible, to resolve any problems that the prisoner will face immediately after release. It shall also collaborate to ensure that the bodies responsible for providing pre- and post-release assistance are able to accomplish their tasks of providing assistance to and support for the prisoners.”

321. A serious problem that needed to be addressed was the lack of attention given by the criminal justice system in the past to the sentence enforcement stage. While the whole criminal process was geared towards reaching a decision and this was frequently achieved through the investment of considerable effort and resources, and while the Constitution focused on establishing the objectives that the penalty should seek to achieve, it was totally incongruous that the enforcement process should then be a mere quasi-administrative procedure and that, in practice, the administration of justice delegated full control over enforcement of the penalty to administrative bodies.

322. The Code of Criminal Procedure seeks to remedy this situation by means of two measures, the first of which is the establishment of the enforcement court, which is responsible for all matters pertaining to enforcement (from assessment of the penalty to conditional release), overall monitoring of compliance with the aims of the criminal justice system and safeguarding of defence rights of the convicted person that continue to exist at this stage. The enforcement court thus operates as an external monitoring body of the prison system, playing a major role in ordering and humanizing the country’s entire correctional regime. The second remedial measure was the introduction of considerably more straightforward enforcement procedures, based on the principles of immediacy and oral hearings, when decisions have to be taken that materially affect the enforcement of the penalty. All these provisions will be consolidated once the Sentence Enforcement Act is adopted and promulgated; a corresponding bill has been submitted by the executive to the legislature for study and consideration.

323. The Government is endeavouring to ensure compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and approved by the Economic and Social Council by its resolutions 553/1957 and 2076/1977. The Minimum Rules have been signed and ratified by Paraguay and are therefore applicable to all detainees subject to a custodial regime in all places of detention.

324. The Minimum Rules must be respected by prison staff and applied to all detainees in prisons run by the Ministry of Justice and Labour. Prison officials who fail to comply with the Rules in the performance of their duties or in their conduct shall be liable to the penalties prescribed in Act No. 1626 concerning Public Service.

325. In view of the importance of implementing and complying with this instrument, prison staff are bound to ensure strict respect for human rights and to honour Paraguay’s international obligations in that regard. The following are some of the most important rules:

**(a) Rights, duties and prohibitions: prisoners**

- Right to life
- Right to dignity and honour
- Right to physical, mental and moral integrity
- Right to protection against torture and cruel, inhuman and degrading treatment
- Right to protection against incommunicado detention
- Right to humane treatment
- Right of untried prisoners to be kept separate from convicted prisoners
- Right to personal safety
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to petition and to receive a reply
- Right to a name and a nationality
- Right to food
- Right to health and to (preventive and therapeutic) medical care
- Right to education
- Right to work
- Right to participate in culture, sports and recreation
- Freedom to participate in culture, sports and recreation
- Freedom of movement within the place of detention
- Right to obtain written information and information broadcast on television or radio
- Right to maintain family contacts and to intimate visits
- Right to private interviews with the prison inspection and sentence enforcement judge, with the prison director and with counsel
- Right to complain to the prison inspection and sentence enforcement judge
- Right to protection against disciplinary measures that adversely affect the prisoner's dignity and health
- Right to enjoy safeguards in respect of the imposition of disciplinary sanctions: the prisoner shall be subjected only to such punishments as are prescribed by law and only on the grounds determined by law; he or she shall be presumed innocent until the contrary has been proved; he or she shall be heard and shall be permitted to present a defence.

**(b) Duties of prisoners**

- To respect the rights of others (prison staff, inmates and visitors)
- To respect the safety of others
- Not to disturb prison order
- To obey the law and the prison regime
- To comply with lawful disciplinary measures
- To work and obtain an education
- To respect the religious, political and cultural beliefs of others

**(c) Prohibitions applicable to prisoners**

- To bear arms

- To consume alcoholic beverages or to take drugs
- To take medical drugs that have been prohibited by the medical staff
- To carry cash in quantities that exceed personal spending needs
- To carry pornographic and violent books or materials

**(d) Rights and prohibitions: prison staff**

- Prison staff enjoy the (civil, political, economic, social and cultural) rights, freedoms and safeguards accorded to every individual by the Constitution, international treaties and secondary legislation, subject to the restrictions imposed by law with respect to the performance of their public duties.

**(e) Prohibitions applicable to prison staff**

- To discriminate against prisoners on grounds of sex, race, religion, social status or political opinion
- To subject prisoners to scientific or other experiments
- To subordinate prisoners to the military or police authorities
- To adopt a military or police regime in penal institutions
- To use prisoners for internal supervisory duties
- To deny the right to a hearing and to presentation of a defence against the imposition of punishments
- To apply collective and indiscriminate disciplinary measures
- To exploit prisoners' needs for commercial gain
- To use force and weapons without respecting legal requirements
- To subject prisoners to torture or to cruel, inhuman or degrading treatment
- To apply measures or penalties restricting legally recognized rights
- To subject prisoners to total incommunicado detention
- To go out on strike and engage in a collective cessation of duties
- To deny or impair prisoners' right to present a defence
- To prohibit or interrupt a private interview with counsel or with the prison inspection judge
- Unlawfully to prohibit or obstruct participation by the community or civil society institutions and associations
- To remove prisoners in a manner that violates their dignity and rights
- To remove prisoners at nighttime
- To authorize special leave permits without fulfilling legal requirements
- To violate prisoners' personal dignity during registration and body searches

326. According to data provided by the Directorate-General of Penal Institutions, the number of prisoners in our country on or around the date of reporting totalled 4,941, of whom 3,270 were adult male untried prisoners and 1,072 convicted prisoners. The number of minor male untried prisoners totalled 305 and the number of convicted prisoners 65. The number of adult women untried prisoners stood at 157 and the number of convicted women prisoners at 75. There were 3 minor female convicted prisoners and 4 untried prisoners.



### **Article 11**

327. Article 13 of the Constitution states, as a general principle: “Deprivation of liberty for debt is not permitted unless ordered by a competent judicial authority for failure to fulfil maintenance duties or in lieu of fines or judicial security.”

328. In keeping with this principle, article 225 of the Criminal Code stipulates: “Anyone who fails to fulfil legally imposed maintenance duties and thereby brings about a deterioration in the beneficiary’s basic living conditions or would have done so if another party had not performed the requisite service, shall be punishable by imprisonment for a maximum term of two years or by a fine.”

329. “Anyone who fails to fulfil maintenance duties laid down in a judicially approved agreement or in a court order shall be punishable by imprisonment for a maximum term of five years or by a fine.”

330. Furthermore, article 56 of the Criminal Code states: “1. A fine that remains unpaid or that cannot be recovered from the property of the convicted person shall be replaced with a custodial penalty. One day-fine shall be equivalent to one day of imprisonment. The minimum substitute custodial penalty shall be one day.”

331. Article 57 of the same Code stipulates: “In addition to a custodial penalty of more than two years, the court may order the payment of a sum of money, the maximum amount of which shall be determined in the light of the perpetrator’s assets. A pecuniary penalty that remains unpaid shall be replaced with a custodial penalty of a minimum of three months and a maximum of three years. The duration of the penalty shall be determined in the sentence.” Apart from the cases just listed, there is no imprisonment for debt.

### **Article 12**

332. In legal terms, article 41 of the Paraguayan Constitution establishes freedom of movement and residence for all inhabitants of the Republic. Aliens may invoke constitutional protection, especially with regard to control of entry into the country, departure, travel within the country and the duration of their stay in Paraguay.

333. This may be inferred from article 41, which reads: “Inhabitants may leave or return to the Republic and, in accordance with the law, import or export their property. Migration shall be regulated by law with due regard for relevant international treaties. Aliens permanently settled in Paraguay may not be obliged to leave it except by virtue of a judicial decision.”

334. One of the Government’s main goals is to encourage the return of Paraguayan nationals who had to leave the country for political and economic reasons. To that end, it adopted Act No. 40/89, which established the National Council for the Repatriation of Nationals.

335. On 10 January 1991, the Government withdrew the geographical reservations that the previous regime (the dictatorship) had entered to the 1951 Geneva Convention relating to the Status of Refugees, thereby enabling any person persecuted for political reasons, irrespective of nationality, to request protection and asylum in Paraguay. With that end in view, Act No. 227/93 established the Development Secretariat for Paraguayan Returnees and Refugees, which has the following mandate:

- (a) To define relevant policies and strategies;
- (b) To supervise the implementation of policies in this regard, to study migration phenomena, to provide feedback for political action, and to suggest operational and management mechanisms;
- (c) To propose guidelines for national and international action on problems in this area.

336. In our positive law, the rights and duties of aliens are set forth in Migration Act No. 978/96 and regulated by Decree No. 18295/97. Article 141 of the Act stipulates: "The executing agency for national migration policy and for the implementation of this Act is the Directorate-General for Migration attached to the Ministry of Internal Affairs."

337. There are, however, impediments to the entry of aliens, inter alia on grounds of national security, public order and health. Article 6 of the Migration Act thus states: "Aliens who wish to enter the national territory as permanent or temporary residents shall not be admitted if any of the following impediments is applicable:

- (a) If they suffer from an infectious, contagious or transmissible disease that could endanger public health;
- (b) If they suffer from a mental illness or impairment that adversely affects their behaviour, depriving them of responsibility for their acts or entailing major family or social difficulties;
- (c) If they suffer from congenital or acquired physical or mental disabilities or from a chronic illness that prevents them from exercising their profession, occupation or trade;
- (d) If they have been sentenced to more than two years' imprisonment for criminal offences;
- (e) If they have a criminal record, except where the offences committed do not imply the existence of a degree of danger that would render their integration into society inappropriate. In making this assessment, account shall be taken of the nature of the offences committed, the sentence imposed, recidivism, and whether the sentence has been served or the criminal proceedings have been terminated;
- (f) If they engage in or profit from prostitution, are involved in unlawful trafficking of human beings or their organs, are addicted to narcotics, are involved in illegal drug trafficking, promote the use of narcotics or profit from their use;
- (g) If they lack a profession, occupation, trade, craft or other lawful means of earning a living, if they engage in begging or are habitually drunk, or if, because of their lack of work habits, vagrancy, begging or habitual drunkenness or because of the moral degradation of the environment in which they live, they are considered likely to commit an offence;
- (h) If they have been expelled or have been expressly prohibited from entering or re-entering the Republic by order of a competent judicial authority."

338. Nevertheless, article 7 states: “Aliens covered by the provisions of the preceding article may be admitted to the national territory in the following cases:

- (a) Those covered by article 6, subparagraphs (a) and (b), when they form part of a migrant family unit or intend to join a unit already established in Paraguay, in which cases the following shall be assessed:
  - (i) The seriousness of the illness from which they suffer;
  - (ii) The economic and moral circumstances and the overall employment capability of the family unit to which they belong; and
  - (iii) The degree of kinship with the family unit and whether the members thereof are of Paraguayan nationality;
- (b) Those covered by subparagraph (c) of the preceding article, where the congenital or acquired physical or mental disability or the chronic illness from which they suffer only partially reduces their ability to exercise their profession, occupation, trade or craft;
- (c) Those covered by subparagraph (d), where the sentence has been served or the time-limit for enforcement has lapsed, where the maximum penalty for the offence committed does not exceed two years’ imprisonment under Paraguayan law, or where an amnesty or pardon has been granted; and
- (d) Drug addicts, when they request admission to the country to be treated for addiction in specialized public or private institutions...”

339. According to article 8 of the Migration Act, aliens may be admitted as residents and non-residents in accordance with the conditions and requirements laid down in the Act.

340. Article 9 recognizes as a resident an alien who establishes his or her residence in the country with a view to pursuing an activity, and who intends to remain there on a permanent or temporary basis. Article 10 states that the category of resident is divided, for immigration purposes, into permanent and temporary residents. Lastly, article 11 states that an alien who enters the country without intending to settle there shall be regarded as a non-resident.

341. The category of permanent resident, according to article 12, is reserved for aliens who enter the country with the intention of settling there permanently and with a view to pursuing some form of activity that the authorities consider useful for the development of the country.

342. According to article 13, activities deemed to be useful for the development of the country are, inter alia, those aimed at:

- (a) Providing qualified human resources for the country’s industrial, agricultural, fisheries, forestry, mining, scientific, technological and cultural development;
- (b) Expanding agricultural land;
- (c) Introducing necessary technology into the country;

- (d) Generating employment for the national workforce;
- (e) Increasing imports of goods and services; and
- (f) Settlement of areas with low population density.

343. Article 14 stipulates that permanent residents may enter the country as:

- (a) Immigrants, who may be spontaneous immigrants, assisted immigrants or immigrants with capital;
- (b) Investors;
- (c) Retirees and pensioners or persons of independent means;
- (d) Foreign relatives of Paraguayan citizens, the term relatives being understood to denote the spouse, minor children or parents.

344. Article 15 states that a spontaneous immigrant is a person who, individually, with his or her family unit or as a member of a group, requests admission and enters the country on his or her own initiative, using his or her own means and covering the costs of transport and of settlement in the national territory.

345. According to article 16, an assisted immigrant is an alien whose entry is promoted by public or private agencies and in respect of whom the State participates directly or indirectly in covering the costs of transport and settlement in the country.

346. Article 17 states: "Persons who import their own property to engage in activities that the national authorities deem to be useful shall be regarded as immigrants with capital."

347. Article 18 stipulates that aliens who make investments and/or transfer financial resources and technology for the development of areas or activities specified by the competent authorities shall be regarded as investors.

348. Under article 19, aliens are deemed to be retirees and pensioners or persons of independent means if they furnish proof of a regular and permanent income from external sources that enables them to live in the country without becoming a social burden for the State; such persons may not engage in remunerated activities on their own account or in a subordinate capacity unless expressly authorized to do so by the Directorate-General for Migration.

349. Article 21 of the Migration Act stipulates in this regard: "Aliens who are authorized to settle definitively in the country as permanent residents" shall enjoy the same rights and shall have the same duties as Paraguayans, in accordance with the provisions and subject to the restrictions laid down in the Constitution and the law. Authorization of permanent residence may be extended to the spouse, minor children and foreign parents of the person covered by and admitted under article 14, subparagraphs (a), (b) and (c).

350. The temporary resident category is regulated by article 25 of the same Act, which stipulates: "A temporary resident is an alien who enters the country with the intention of residing there temporarily while pursuing the activities that give rise to his or her admission. The following shall be considered to belong to this category:

- (a) Scientists, researchers, professionals, academics, technologists and specialized personnel recruited by public or private bodies and domestic or foreign enterprises established or operating in the country in order to work in their field of specialization;
- (b) Entrepreneurs, directors, managers and administrative staff of domestic or foreign enterprises transferred from abroad to perform specific duties in such enterprises;
- (c) Students who enter the country to attend courses, as regular students, at the secondary, tertiary or postgraduate level in public or officially recognized private establishments;
- (d) Journalists, sportsmen and women, and creative and performing artists hired by companies or other entities established in the country to perform activities related to their profession;
- (e) Scholarship and fellowship holders;
- (f) Persons belonging to international organizations recognized by the Government who enter the country to engage in benevolent activities or to provide assistance;
- (g) Members of the clergy of churches, orders or congregations recognized in the country who come to Paraguay to pursue activities related to their faith, to teach or to provide assistance;
- (h) Persons granted political asylum;
- (i) Refugees; and
- (j) The spouse, minor children or parents of the persons mentioned in the preceding subparagraphs.”

351. Article 26 stipulates in this regard: “Aliens who enter the country as temporary residents may engage only in the activities that served as the basis for their admission.”

352. In keeping with this provision, article 28 stipulates: “During the period of validity of their residence permits, aliens admitted as temporary residents, except for political refugees, may leave the national territory and return to it as frequently as they wish, without requiring renewed authorization or a special permit.”

353. Furthermore, article 48 states that aliens admitted as temporary residents may apply to change their status to that of permanent resident.

354. With regard to non-resident migrants, article 29 of the same Act stipulates: “A non-resident is an alien who enters the country without intending to stay and who may be admitted as a member of any of the following sub-categories:

- (a) A tourist, meaning an alien who enters the country for recreation, relaxation or rest and who has sufficient funds for that purpose;
- (b) Participants in public performances hired by public or private bodies to engage in artistic or cultural activities or sports;

- (c) Crews engaged in international transport;
- (d) Transit passengers;
- (e) Neighbouring frontier traffic;
- (f) Emigrant frontier workers who are hired individually or as groups and on a seasonal basis;
- (g) Investors, meaning persons who demonstrate their intention to invest in the country, regardless of the character of such investment provided that its aims are lawful and permitted by Paraguayan legislation;
- (h) Journalists and other media professionals accredited as such, who enter the country to cover a special event and who are not entitled to payment of salaries or fees in the country; and
- (i) Persons coming to Paraguay for medical treatment, who furnish financial proof of their ability to stay in the country.”

355. Article 49 states that aliens admitted as non-residents may apply to change their status to that of temporary resident and, in exceptional cases, to that of permanent resident.

356. The procedure and the documentation required for admission to each category are as set forth in the following articles of the same Act.

357. Article 40: “The procedures for obtaining permanent or temporary resident status may be initiated abroad or within the national territory.”

358. Article 41: “Aliens who apply from abroad for admission to the country as temporary residents:

- (a) May submit their application and supporting documents to the competent Paraguayan consul, who shall forward it to the Directorate-General for Migration for consideration; or
- (b) May submit the supporting documents direct to the Directorate-General for Migration with the assistance of third parties.”

359. Article 42: “Where the Directorate-General for Migration grants permanent or temporary resident status, it shall inform the competent consul of Paraguay so that he or she may take the necessary steps to facilitate entry into the country for the alien granted such status.”

360. Article 43: “An alien applying for permanent or temporary resident status shall submit the following documents to the Directorate-General for Migration or the competent consul, as appropriate:

- (a) A valid passport or equivalent travel document that furnishes reliable proof of identity;

- (b) A criminal and police record certificate from the country of origin or from his or her country of residence covering the preceding five years. Minors under 14 years of age shall be exempt from this requirement;
- (c) A medical certificate issued by a health authority or a doctor recognized by the consulate describing his or her physical condition;
- (d) A birth and civil status certificate or, alternatively, supplementary proof issued in accordance with national legislation;
- (e) The sworn statement mentioned in article 23;
- (f) A professional diploma or certificate in respect of the activity or occupation to be taken into account in granting the entry permit; and
- (g) A certificate or reliable evidence of financial solvency.”

361. These procedures may also be carried out within the national territory. The same supporting documents must be submitted together with proof of entry and residence in the country.

362. As may be seen from the foregoing, no restrictions are imposed on Paraguayan citizens as regards residence, freedom of movement within or outside the territory, return to the territory or the right to free choice of residence, as provided for in article 41 of the Constitution.

363. Thus, an alien has broad freedom to enter the national territory, provided that he or she complies with the requirements laid down in Paraguayan legislation, and also to leave the territory of the State.

364. Lastly, it is important to note under this heading that the Government, with the support of the International Organization for Migration, is in the process of reformulating its migration policy. Progress has been made in this regard through the preparation of a comprehensive assessment contained in the document “Guidelines for a National Migration Policy”, a copy of which is annexed hereto for the Committee’s information (annex 7).

### **Article 13**

365. The regulations governing the entry, stay and departure of aliens are laid down in the Migration Act. Article 41 of the Constitution stipulates: “Aliens permanently settled in Paraguay may not be obliged to leave it except by virtue of a judicial decision.”

366. The relevant articles of the Migration Act are as follows. Article 80 defines expulsion as the legal act ordered by a competent administrative or judicial authority, whereby an alien is removed from the national territory.

367. Article 81 stipulates: “The competent administrative or judicial authority shall order the expulsion of an alien in the following cases:

- (a) Where the alien entered the country illegally;

- (b) Where the alien secured entry into or residence in the country through false statements or the submission of forged documents;
- (c) Where the alien remained in the country after the term of authorized residence expired;
- (d) Where the alien remained in the national territory after cancellation of the residence permit and failed to leave the country within the period specified;
- (e) Where the alien was sentenced to two or more years' imprisonment for an offence perpetrated during the first three years of residence or, where the offence was committed subsequently and the alien was sentenced to five or more years' imprisonment, after the sentence has been served;
- (f) In circumstances where special legislation provides for expulsion; and
- (g) Where the alien manifestly infringes national sovereignty through conduct or acts prohibited by the law and the Constitution, or furthers the commission of acts contrary to national sovereignty.”

368. Article 82 stipulates: “Notwithstanding evidence of any of the grounds mentioned in article 81, the competent administrative or judicial authority may refrain from ordering the expulsion of an alien in the following cases:

- (a) Where he or she has a Paraguayan spouse or Paraguayan children, including an unborn child; and
- (b) Where he or she lawfully and continuously held a residence permit immediately beforehand for more than ten years.”

369. Article 83 states that the Directorate-General for Migration may order the expulsion of an alien in the circumstances set forth in article 81, subparagraphs (a), (c) and (d), in the case of temporary residents. In other circumstances, the expulsion shall be ordered by the competent judicial authority.

#### **Article 14**

##### **Equality before the courts; right to a fair, public and independent trial**

370. The process of judicial reform launched after the adoption of the 1992 Constitution led to the establishment of a justice system in keeping with the principles of a republican, social and democratic regime based on the rule of law. In the criminal justice system, the reform process resulted in the entry into force on 1 March 2002 of a new Code of Criminal Procedure that develops and implements the constitutional guarantees and principles. The basic characteristics of the new Code are as follows:

- (a) Vesting of the Public Prosecutor's Office with investigative powers, authority to direct police investigations, and responsibility for indictment and the burden of proof;
- (b) Establishment of mechanisms to ensure the full exercise of the right to present a material and technical defence;



- (c) Establishment of oral proceedings as an essential part of the procedure;
- (d) Introduction of means of controlling the duration of the proceedings by providing for time limits and personal and procedural penalties;
- (e) Introduction of alternatives to ordinary proceedings such as the principle of discretionary prosecution, conditional suspension of proceedings, conciliation and shortened proceedings;
- (f) Ensuring the exceptional nature, proportionality and limited duration of precautionary measures;
- (g) Making the victim's participation in the proceedings less formal so that he or she can exercise control over final decisions even without having the status of plaintiff;
- (h) Establishment of special procedures tailored to the nature of the criminal dispute (proceedings relating to offences in a private criminal suit), the nature of the penalty (proceedings for the application of measures), and the characteristics of the population involved in the dispute (proceedings relating to unlawful acts involving indigenous peoples).
- (i) As may be seen from the foregoing, the new Code, in addition to placing emphasis on making existing constitutional safeguards operational, established mechanisms to enhance the efficiency of the system of administration of criminal justice. It follows that efficiency and safeguards are the two pillars on which the new criminal procedure is based.

371. The Paraguayan Constitution contains specific provisions safeguarding equality before the courts and the right, during criminal proceedings, to a public hearing by an independent court with all due safeguards.

372. The Constitution provides specifically for the following:

Article 46: "All inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles and factors that maintain or encourage such discrimination. Protective measures adopted in respect of unjust inequalities shall not be regarded as discriminatory but as egalitarian."

373. Article 8 of the Code of Criminal Procedure is in keeping with this article. It stipulates: "The parties shall be guaranteed the full and unfettered exercise of the rights set forth in the Constitution, international law in force in the country and this Code. The courts shall safeguard this principle and remove all obstacles that prevent or hinder its enforcement."

374. Article 47 of the Constitution stipulates: "The State shall guarantee that all inhabitants of the Republic have equal access to justice and to that effect shall remove any obstacles thereto. It shall also guarantee equality before the law."

375. Article 16 of the Constitution states: "The defence of persons and their rights in legal proceedings is an inalienable right. Everyone has the right to be tried by competent, independent and impartial courts and judges." Article 2 of the Code of Criminal Procedure stipulates:

“Authority to apply the law in criminal proceedings and to ensure enforcement of judgements shall lie exclusively with ordinary courts and tribunals established prior to the enactment of the law. No one may be tried or judged by special courts or tribunals.”

376. Article 3 of the same Code stipulates: “Judges shall be independent and shall act without any outside interference, in particular from other members of the judiciary and other branches of government. In the event of interference in the exercise of his or her functions, the judge shall inform the Supreme Court of Justice of the circumstances impairing his or her independence.

Where it comes from the Supreme Court of Justice itself or one of its judges, the report shall be submitted to the Chamber of Deputies. In taking decisions, judges shall assess all circumstances pertaining to the accused, both favourable and unfavourable, with absolute impartiality.”

Article 6 of the Code of Criminal Procedure states: “The right of the accused to a defence and the exercise of his or her rights shall be inviolable.”

377. Article 17 of the Constitution stipulates: “In criminal proceedings or any other proceedings in which a penalty or sanction may be imposed, everyone has the right to a public hearing, except in cases determined by the court with a view to safeguarding other rights.” Article 1 of the Code of Criminal Procedure reflects this principle. It states: “The main principles to be observed in criminal proceedings are that they shall be oral, public, immediate, adversarial, economical and focused.”

378. Article 256, paragraph 1, of the Constitution stipulates: “Judicial proceedings may be oral and public in the manner and to the extent established by law.”

379. In current practice, criminal proceedings and the appeal stage of labour proceedings take the form of oral hearings (in Asunción Court, Second Division).

380. The Constitution guarantees the independence of the judiciary, which has sole authority to hear and adjudicate legal issues. Furthermore, anyone who attacks the independence of the judiciary and of its judges is debarred from holding public office for five consecutive years, in addition to being liable to such penalties as are prescribed by law.

381. Article 286 of the Criminal Code stipulates: “Anyone who, through force or the threat of force, coerces the National Constituent Assembly, the National Congress, the Supreme Court of Justice or the High Court of Electoral Justice to refrain from exercising its powers or to exercise them in a particular way shall be punishable by imprisonment for a maximum term of ten years.”

382. Act No. 1084 of 24 April 1997 concerning the procedure for the prosecution and removal of judges, some articles of which were amended by Act No. 1752 of 1 August 2001, regulates all matters relating to the performance of judicial functions. The Act prescribes the procedure for the appointment of judges, their powers, the composition of the judiciary, the duration of judicial office, judicial procedure, grounds for prosecution and the procedure for removal of judges.

383. Judges are irremovable from their office, seat and rank during their term of appointment. Judges holding office for a five-year term from the date of appointment may not be transferred or promoted without their prior express consent (article 252 of the Constitution). Judges who are confirmed for two successive terms following their initial appointment are irremovable until the age of 75 years.

384. Judges may be prosecuted and removed for the commission of offences or for misfeasance of office as defined by law only by a decision of the Tribunal for the Prosecution of Judges (article 253 of the Constitution).

385. No judge may be indicted or subjected to judicial questioning for opinions expressed in the discharge of his or her office. Arrest or detention is permissible only where a judge is caught committing an offence carrying a custodial sentence. In such circumstances, the authority concerned must place the judge under house arrest and report the matter forthwith to the Supreme Court of Justice, transmitting the case file to the Court.

386. Article 328 of the Code of Criminal Procedure is in keeping with these provisions. It stipulates: "Where the proceedings are barred by impediments based on privileges and immunities set forth in the Constitution, the following steps shall be taken pursuant to the Constitution: when a private accusation or complaint is filed against a judge, an inquiry that does not violate the judge's immunity shall be conducted to compile records of the outcome of investigations that might otherwise be lost or that could not be reproduced subsequently, as well as to determine essential facts in order to substantiate the communication referred to in the following paragraph. If there is a prima facie case for the commencement of proceedings and for prosecution of the judge without issuing an arrest warrant, the criminal judge shall communicate this conclusion, together with a comprehensive record of the proceedings, to the Tribunal for the Prosecution of Judges so that the latter may determine whether there is a case for withdrawal of immunity and prosecution. If the judge was arrested on account of being caught committing an offence carrying a custodial sentence, he or she shall be placed under house arrest and the matter shall be reported forthwith to the Tribunal for the Prosecution of Judges and the competent criminal judge, to whom the facts shall be transmitted as soon as possible."

387. Justices of the Supreme Court may be removed only through impeachment. They retire on reaching the age of 75 (article 261 of the Constitution).

388. Article 196 of the Code of Judicial Organization (Act No. 879/89) stipulates: "Courts shall hold hearings on all working days; the hearings shall be public unless for reasons of morality or decency it is deemed necessary or advisable that they should be held in private." Article 153(b) of the Code of Civil Procedure provides that hearings shall be public unless there is an express judicial decision to the contrary.

389. Article 15 of the Code of Civil Procedure establishes the following duties of judges: (a) to attend hearings of evidence and personally to take the steps for which they are assigned responsibility under this Code or other laws, with the exception of those where delegation of responsibility is authorized; (b) to conduct the proceedings within the limits expressly established by this Code; (c) to concentrate all the steps to be taken, as far as possible, within a single procedure or hearing; (d) to ensure the greatest possible economy of procedure in the handling of a case and to maintain the equality of the parties to the proceedings.

390. An exception to the right to equality before the courts is contained in article 21 of the Criminal Code, which states that persons under the age of 14 are exempt from criminal liability. Accordingly, if they are believed to have committed unlawful acts, they may not be tried and sentenced by the ordinary courts; all such cases are handled by the childhood and adolescence courts and are subject to the rules laid down in Act No. 1680/01.

391. Article 27 of the Childhood and Adolescence Code establishes an exception to the constitutional principle that all trials should be public. It states that “authorities and officials involved in the investigation and adjudication of judicial or administrative matters pertaining to children or adolescents are required to preserve the secrecy of the cases in which they participate or which they hear, such proceedings being strictly confidential and private. Compliance with this norm shall be subject to the penalties laid down in criminal legislation.”

392. Article 28 of the same Code stipulates “that the child and adolescent, his or her parents, guardians and defence counsel, and duly accredited institutions that are conducting investigations for scientific purposes and demonstrate a lawful interest in the case shall have access to the proceedings and the file relating to the child or adolescent, whose identity shall be withheld as and when appropriate.”

393. Article 29 of the Childhood and Adolescence Code prohibits publication by the press, radio or television of names, photographs or data that could lead to the identification of a child or adolescent victim or alleged perpetrator of unlawful acts. Anyone who violates this prohibition shall be punishable under criminal law.

394. Mention should be made in this regard of the safeguards that have been put in place for minor offenders and a high proportion of adolescent offenders, and of the establishment by Decree No. 21006 of 2001 of the Adolescent Offenders Welfare Service (SENAAI) attached to the Ministry of Justice and Labour. This is an advisory body that offers guidance on preventive, comprehensive educational and social integration policies and on the technical oversight and continuous monitoring of national programmes dealing with adolescents accused of breaking the criminal law. It is also responsible for overseeing compliance with the principles governing such matters in domestic legislation and in the recommendations laid down in international instruments in force in the country, especially the provisions of the Constitution, Book V of the Childhood and Adolescence Code – Act No. 1680/01, and Act No. 57/90 adopting and ratifying the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

### **Procedural rights**

395. The presumption of innocence is a constitutional guarantee and is provided for in article 17 in the following terms: “In criminal proceedings or any other proceedings entailing a penalty or punishment, everyone has the right to be presumed innocent.”

396. Everyone has the right to be informed, at the time of arrest, of the reason for his or her arrest (article 12, paragraph 1, of the Constitution). The same article states that in criminal proceedings everyone has the right to be informed of the charge promptly and in detail. The article also stipulates that every arrested person is entitled to be informed of the right to remain silent.

397. Information regarding other procedural rights is contained in the section of the report dealing with article 9 of the Covenant.

### **Procedure applicable to minors**

398. We wish to inform the Committee that, pursuant to article 21 of the Criminal Code, minors under 14 years of age are exempt from criminal liability. Furthermore, article 322 of the same Code stipulates that age shall be deemed an extenuating circumstance in determining criminal liability where the perpetrator is aged between 14 and 18 years.

399. Article 194 of the Childhood and Adolescence Code stipulates: "Criminal liability begins with adolescence, without prejudice to absence of responsibility for an act due to incomplete mental development and other grounds of absence of responsibility set forth in article 23 and concordant articles of the Criminal Code."

400. An adolescent is criminally liable only if, at the time of committing the act, he or she was sufficiently mature in psychosocial terms to appreciate the unlawfulness of the act and to take a decision in the light of that awareness. With a view to protecting and supporting an adolescent who, in the light of the preceding clause, is not criminally liable, the judge may order the following measures:

- (a) Issue of a warning notice to the father, mother, guardian or other custodian;
- (b) Provision of counselling to the child or adolescent and his or her family unit;
- (c) Temporary monitoring of the child or adolescent and his or her family unit;
- (d) Enrolment in a basic education establishment with compulsory attendance;
- (e) Medical and psychological treatment;
- (f) In emergencies, material subsistence support for the child or adolescent;
- (g) Shelter;
- (h) Placement in a substitute family; and
- (i) Placement of the child or adolescent in a home.

401. Article 196 of the same Code stipulates: "Where an adolescents commits an unlawful act, socio-educational measures may be ordered. The unlawful act committed by an adolescent shall be punishable by correctional measures or a custodial measure only where the imposition of socio-educational measures is insufficient. The judge shall waive the measures set forth in the preceding clause (measures of supervision, improvement and safety) where appropriate, in view of the adolescent's confinement in a psychiatric hospital or detoxification establishment."

402. Article 200 of the Code states: "Socio-educational measures are prohibitions and orders that regulate the adolescent's lifestyle with a view to ensuring and promoting his or her development and education. Such rules of conduct may not exceed the bounds of what may reasonably be required in the light of the adolescent's age. The judge may order:

- (a) Residence in specific places;
- (b) Residence with a particular family or in a particular home;

- (c) Acceptance of a particular place of training or employment;
- (d) Performance of particular kinds of work;
- (e) Submission to the support and supervision of a particular person;
- (f) Participation in educational or social training programmes;
- (g) Reparation, within a specific timeframe and to the extent possible, of the damage caused by the unlawful act;
- (h) Action aimed at reconciliation with the victim;
- (i) Avoidance of the company of certain persons;
- (j) Non-frequentation of particular places or places reserved for adults;
- (k) Driving lessons; and
- (l) Submission to socio-medical treatment by a specialist or to a detoxification programme with the consent of the person exercising parental authority or the guardian, as appropriate.”

403. These measures shall be ordered for a specific period not exceeding two years. The judge may amend, waive and extend the measures before expiry of the term ordered, where grounds related to the adolescent’s education so indicate.

404. Furthermore, article 203 states: “An unlawful act committed by an adolescent shall be punishable by a correctional measure where, although a custodial measure is inappropriate, the adolescent needs to be imbued with a strong sense of responsibility for his or her conduct. Correctional measures are:

- (a) A warning; and
- (b) Imposition of specific obligations.”

405. “Correctional measures shall not entail the consequences, in terms of the adolescent’s record, of sentencing to a penalty, without prejudice to the option of compilation of a register of data for state-run educational and preventive activities.”

406. “A warning is an oral admonition by the judge, in terms that are clear and comprehensible, aimed at making the adolescent aware of the unlawfulness of his or her conduct and of his or her duty to abide by the norms of family behaviour and social interaction. Where appropriate, the judge shall invite the parents, guardians or other custodians to attend the proceedings and shall present them with information and suggestions regarding collaboration in preventing future unlawful conduct” (art. 204).

407. The judge may require the adolescent:

- (a) To repair, within a specific timeframe and to the extent possible, the damage caused by the unlawful act;

- (b) To apologize to the victim;
- (c) To undertake specific kinds of work;
- (d) To perform services for the community; and
- (e) To pay a sum of money to a charitable organization.”

408. “These duties shall not exceed the bounds of what may reasonably be required. The judge shall impose the duty to pay a sum of money only where the adolescent committed a petty offence and may be expected to effect payment from his or her own means, or where the intention is to deprive the adolescent of the fruits of the unlawful act.”

409. “The judge may subsequently amend or waive the duties imposed where this is recommendable in the interest of the adolescent’s education.”

### **Procedural remedies against judicial decisions**

410. Persons found guilty of an offence have three avenues available to challenge the decision: the remedy of appeal, which may be a general or specific appeal, the remedy of cassation and the remedy of judicial review.

411. The remedy of general appeal is regulated by article 461 of the Code of Criminal Procedure, which stipulates: “The remedy of appeal shall be available against the following decisions:

1. A stay or dismissal of proceedings;
2. A decision to suspend the proceedings;
3. A decision on an interlocutory or procedural matter;
4. An order determining the merits of a precautionary measure or its replacement;
5. Rejection (of precautionary measures);
6. Rejection of the complaint;
7. An order terminating criminal proceedings;
8. A judgement regarding damages;
9. A judgement in summary proceedings;
10. A decision granting or rejecting conditional release or orders denying the quashing, commutation or suspension of a sentence; and
11. All decisions entailing irreparable damage except those declared unappealable by the Code. An order to commence proceedings shall not be unappealable.”

412. The remedy of specific appeal lies against final decisions by a trial or sentencing court in oral proceedings, when the decision is based on non-observance or the erroneous application of a legal precept. Where the legal precept invoked as not having been observed or having been applied erroneously constitutes a procedural defect, the appeal shall be admissible only if the person concerned filed an application for remedy of the defect in due time or reserved the right to appeal, except in cases of absolute nullity or in the event of irregularities in the judgement (arts. 466 and 467 of the Code of Criminal Procedure).

413. Articles 477 and 478 of the same Code regulate the remedy of appeal in cassation as follows: “The special remedy of cassation lies only against final judgements by the court of appeal or against decisions by that court to terminate the proceedings, to dismiss the action or quash the sentence, or to deny the quashing, commutation or suspension of the sentence.”

414. A special appeal in cassation may be filed solely:

- (a) Where the sentence imposed involves a term of imprisonment of more than ten years and a constitutional norm has allegedly been disregarded or erroneously applied;
- (b) Where the conviction or challenged decision is inconsistent with a previous judgement by a court of appeal or the Supreme Court of Justice; or
- (c) Where the conviction or decision is manifestly unfounded.

415. Article 479 of the Code of Criminal Procedure stipulates: “Where a judgement may be challenged on any of the grounds set forth in the preceding article, the special appeal in cassation may be filed directly. If the Criminal Division of the Supreme Court of Justice rejects the direct application for cassation, it shall transmit the file to the competent court of appeal for a ruling in accordance with the provisions governing special appeals.”

416. Lastly, it should be mentioned that authority to hear such cases lies with the Criminal Division of the Supreme Court of Justice (article 480).

417. With regard to applications for judicial review, the Code of Criminal Procedure stipulates: “Judicial review may be sought against an enforceable judgement, at any time and solely on behalf of the defendant, in the following cases:

- (a) Where the evidence on which the judgement was founded is incompatible with the evidence that formed the basis of another enforceable criminal judgement;
- (b) Where the challenged judgement was based on documentary or oral evidence that was declared to be false in a subsequent enforceable judgement or that is manifestly false although there have been no subsequent proceedings;
- (c) Where the conviction was rendered as a consequence of abuse of authority, bribery or violence or was based on other fraudulent grounds, the existence of which was declared in a subsequent enforceable judgement;
- (d) Where new facts or evidence come to light after the judgement which, either alone or in combination with those already taken into account in the proceedings, make it plain



that the act did not occur, that the defendant did not perpetrate the act, that the act is not unlawful or that a more favourable norm is applicable thereto; or

- (e) Where more lenient legislation or an amnesty is applicable or where the jurisprudence of the Supreme Court of Justice has undergone a change from which the convicted person stands to benefit.”

418. Authority to conduct such a review lies with the Criminal Division of the Supreme Court of Justice (art. 481 of the Code of Criminal Procedure).

### **Compensation for a miscarriage of justice**

419. Article 17, clause 11, of the Constitution expressly stipulates that in criminal proceedings or any other proceedings entailing a penalty or punishment, everyone has the right to be compensated for a conviction due to a miscarriage of justice. In keeping with this provision, article 39 of the Constitution states that everyone is entitled to fair and proper compensation for harm or injury caused to him or her by the State. This right shall be regulated by law.

420. Article 273 of the Code of Criminal Procedure regulates this provision as follows: “Where, following review of the proceedings, a convicted person is acquitted or a less severe sentence is imposed, he or she shall be compensated for the time spent in prison or for the excess time served. This rule shall be applicable analogously to cases in which the review relates to a non-custodial measure. The fine or the sum fined in excess shall be reimbursed.”

421. Article 274 states: “In undertaking the review, the court shall, of its own motion, determine the amount of compensation on the basis of one day-fine being equivalent to one day of unfair deprivation of liberty. If the defendant accepts this compensation, he or she thereby forfeits the right to claim compensation before the civil courts; if the defendant does not accept it, he or she is free to file a claim in accordance with the provisions of civil legislation.” Article 273 further stipulates that: “The State is required under all circumstances to pay compensation, without prejudice to its right to recoup the sum paid from another obligor. To that end, the court may impose joint and several liability, fully or partially, on those who contributed, wilfully or by gross negligence, to the miscarriage of justice.”

422. Article 275 stipulates: “Such compensation is also payable where the acquittal or dismissal of proceedings is founded on the innocence of the defendant and the latter has been deprived of his or her liberty during the proceedings.”

423. Article 17, clause 4, of the Constitution establishes the right not to be tried more than once for the same act. Completed proceedings may not be reopened except for favourable review of judgements in criminal proceedings in the cases provided for by procedural law. In keeping with this constitutional principle, article 8 of the Code of Criminal Procedure states: “No one may be tried more than once for the same act. Completed proceedings may not be reopened except with a view to reviewing a judgement in the convicted person’s favour, in accordance with the rules set forth in this Code already referred to in previous paragraphs.”

### **Article 15**

424. Paraguayan positive law, in keeping with the above-mentioned article, recognizes and guarantees due process in criminal proceedings and specifically enunciates the principle of the

non-retroactivity of the criminal law, except retroactivity that is favourable to the convicted person or the defendant if lighter penalties are established later.

425. Provisions of this kind in our positive law have constitutional status. Article 14 of the Constitution stipulates that: “No law shall have retroactive effect, unless it is more favourable to the accused or convicted person.” This is a clear rule that does not allow any exceptions. Retroactivity is applicable exclusively in criminal cases where a person stands to benefit from laws enacted after commission of the offence which impose lighter penalties than those previously applicable.

426. In keeping with the principle enshrined in the Constitution, article 5 of the Criminal Code stipulates in this regard: “1. Penalties shall be determined by the law in force at the time of commission of the unlawful act; 2. Where the penalty changes during commission of the unlawful act, the law in force on completion shall be applicable; 3. Where the law in force at the time of commission of the unlawful act is amended prior to the rendering of judgement, the more favourable law shall be applicable to the accused; 4. Temporary legislation shall be applicable to unlawful acts committed during its term of validity even if that term has expired.”

427. Mention should also be made of article 10 of the Criminal Code, which stipulates: “The offence shall be held to have been committed at the time the perpetrator or accomplice performed the act or, in the case of an omission, at the time when he or she should have performed the act. The time at which the result ensued shall not be taken into account in this regard.”

428. Another fundamental principle enshrined in the Criminal Code is that of *Nullum crimen, nulla poena sine lege*. Article 2 of the Code states: “1. No penalty shall be imposed in the absence of unlawful conduct; 2. The penalty imposed may not be heavier than that warranted by the seriousness of the criminal offence; 3. No measure shall be ordered unless the defendant has committed, at least, an unlawful act. Preventive measures shall be proportionate to:

- (a) The seriousness of the act or acts committed by the defendant;
- (b) The seriousness of the act or acts that the defendant, depending on the circumstances, is likely to commit; and
- (c) The degree of blame attaching to the commission of the act or acts.”

429. Due process in criminal proceedings, which guarantees that a penalty is imposed justly and without arbitrariness, has constitutional status in the section of the Constitution on procedural rights (article 17). The due process guarantee is also laid down and reinforced in the Code of Criminal Procedure.

430. Article 1 of the Criminal Code stipulates: “No one shall be punishable by any penalty or measure unless the prerequisites for the unlawfulness of the conduct and the penalty applicable thereto are set forth and strictly characterized in a law that was in force prior to the act or omission entailing the penalty.” This article is in keeping with article 17 of the Constitution concerning procedural safeguards.

### Article 16

431. In Paraguay, legal capacity is fully guaranteed from the moment of conception (art. 4 of the Constitution).

432. Article 28 of the Civil Code stipulates: “An individual has legal capacity from the moment of conception to acquire property by donation, inheritance or legacy.” Hence, positive legislation recognizes that everyone has legal capacity unless disability is imposed by a declaration of interdiction or disqualification (art. 36).

433. Paraguayan legislation draws the classic distinction between de facto and de jure capacity, the former being the legal capacity to exercise one's rights oneself, and the latter being the legal capacity to hold certain rights.

434. Article 36 of the Civil Code states that capacity consists of the legal capacity to exercise one's own rights oneself. It follows that anyone who is able to act on his or her own behalf without need of representation, authorization or permission enjoys full de facto legal capacity, which means anyone aged 20 or over who has not been judicially declared legally incompetent.

435. De facto disability may be absolute or relative. Absolute de facto disability disqualifies a person from entering into a legal transaction, so that any such transaction is deemed to be null and void and cannot be conducted under any circumstances. This applies to persons who have no capacity of discretion whatsoever, such capacity being one of the prerequisites for the validity of a transaction. Article 37 of the Civil Code states that unborn human beings, minors under 14 years of age, mentally ill persons and deaf-mute persons who are unable to make themselves understood in writing or by any other means are under an absolute de facto legal disability.

436. Relative de facto disability is subject to confirmation. Minors over 14 years of age and judicially disqualified persons are under a relative de facto disability.

437. The de facto disability of minors ceases: (a) for males and females aged 18, by a ruling of the competent judge who is informed of the person's agreement and that of the parents, or in the absence of both parents, of the guardian, so that they are authorized to engage in trade or any other lawful activity; (b) for males and females aged 16, on marriage; (c) on the award of a university degree.

438. Emancipation is irrevocable (art. 39 of the Civil Code).

### Article 17

439. Article 33 of the Constitution states: “Personal and family privacy as well as respect for privacy are inviolable. The conduct of persons, so long as it does not affect public order as established by law or the rights of third parties, is exempt from public control. The right to protection of one's privacy, dignity and reputation is guaranteed.”

440. Article 34 of the Constitution stipulates: “All private premises are inviolable. They may only be searched or closed down by court order, in accordance with the law. This may be done exceptionally in a case of *flagrante delicto* to prevent the imminent perpetration of an offence, or to prevent harm to individuals or damage to property.”

441. Article 35 states: “Identity documents, permits or certificates may not be seized or withheld by public officials, who may not deprive a person of such documents except in cases determined by law.”

442. Furthermore, article 36 of the Constitution stipulates that a person’s documentary property is inalienable. Records, irrespective of the storage medium, accounts, printed matter, correspondence, written material, telephone, telegraph, cable or other communications, collections or reproductions, testimonials and other items of evidentiary value may not be examined, reproduced, intercepted or seized except by court order in cases specifically provided for by law, and on condition that they are essential for clarification of matters falling within the jurisdiction of the authorities concerned. The law shall lay down special procedures for the examination of business accounts or mandatory legal records. Documentary evidence obtained in breach of the foregoing shall be inadmissible in court. In all cases, material unrelated to the matter under investigation shall remain strictly confidential.”

443. The Code of Criminal Procedure and Chapter VI of the Criminal Code entitled “Unlawful Acts against Living Space and Privacy”, contained in Act No. 1160/97, also afford legal protection in keeping with the provisions of article 17 of the International Covenant on Civil and Political Rights. Article 141 of the Criminal Code stipulates: “(a) Anyone who enters a dwelling, business premises, office or other enclosed space without the consent of the person entitled to allow entry being expressly stated or inferable from the circumstances; or who fails to withdraw from such places despite being directed to do so by the person entitled to exclude him or her, shall be punishable by imprisonment for a maximum term of two years or by a fine. (b) Where the perpetrator acts jointly with another person, seriously abusing his or her public office or using weapons or violence, the penalty shall be imprisonment for a maximum of five years or a fine. (c) Criminal presumption shall be at the discretion of the victim” (an unlawful act punishable by private criminal proceedings).

444. With regard to the protection of personal privacy, article 143 of the Criminal Code stipulates: “(a) Anyone who, before a crowd or through publication as defined in article 14, paragraph 3, violates the privacy of another person, that is to say his or her private and personal sphere, especially his or her family or sexual life or state of health, shall be punishable by a fine. (b) Where, in terms of form or content, the statement does not exceed the bounds of reasonable criticism, it shall not be punishable. (c) Where the statement, in the light of the interests involved and the investigatory duty under the circumstances of the person making the statement, is an appropriate means of protecting lawful public or private interests, it shall not be punishable. (d) Evidence of the veracity of the statement shall be admissible solely where the application of clauses (b) and (c) depend thereon.”

445. With regard to protection of the confidentiality of communications or correspondence, article 146 of the Criminal Code states: “(a) Anyone who, without the owner’s consent: opens a sealed letter not intended for him or her; opens a publication as defined in article 14, paragraph 3, that has been sealed or placed in a sealed cover designed specifically to prevent him or her from obtaining knowledge of the content of the publication; or succeeds by technical means, without opening the seal, in obtaining knowledge of the contents of such publication for him or herself or for a third party, shall be punishable by imprisonment for a maximum of one year or by a fine. (b) Criminal prosecution shall be at the discretion of the victim. The provisions of article 144, paragraph 5 *in fine*, shall be applicable (if the victim dies before expiry of the time limit for

bringing an action without waiving his or her right to do so, the right shall pass to his or her relatives).”

446. The safeguarding of a person’s honour and reputation is regulated by Chapter VIII of the Criminal Code entitled “Unlawful Acts against Honour and Reputation”. Article 150 stipulates: “1. Anyone who falsely and knowingly reports or discloses to a third party, or in the presence of a third party, information relating to another person that may prejudice that person’s honour shall be punishable by a fine. 2. Where the act is perpetrated before a crowd, through the dissemination of publications as defined in article 14, paragraph 3, or repeatedly over an extended period, the penalty may be increased to imprisonment for a maximum term of two years or a fine. 3. The provisions of article 59 shall be applicable in lieu of or in combination with the penalty specified.”

447. Article 151 of the same Code, dealing with “Defamation” also stipulates: “1. Anyone who reports or discloses to a third party, or in the presence of a third party, information relating to another person that may prejudice that person’s honour shall be punishable by 180 day fines. 2. Where the act is perpetrated before a crowd, through the dissemination of publications as defined in article 14, paragraph 3, or repeatedly over an extended period, the penalty may be increased to imprisonment for a maximum term of one year or a fine. 3. The statement or disclosure shall not be punishable where it is made confidentially to a relative or where, in terms of its form and content, it does not exceed the bounds of acceptable criticism. 4. The statement or disclosure shall not be punishable where, in the light of the interests and investigatory duty under the circumstances of the person making the statement or disclosure, it constitutes a proportionate means of safeguarding public or private interests. 5. Evidence of the veracity of the information referred to in clauses 3 and 4 [...] 6. The provisions of article 59 shall be applicable in lieu of or in combination with the penalty specified.”

448. Article 152 of the same Code stipulates: “1. Anyone who: attributes to another person an act that may prejudice his or her honour; or expresses a negative value judgement to another person or to a third party regarding the latter shall be punishable by a maximum of 90 day fines. 2. Where the injurious behaviour takes place before a third party [...]”

### **Article 18**

449. The freedoms laid down in this article are fully recognized and safeguarded in Paraguayan positive law. They have constitutional status and are acknowledged as basic constituents of the domestic justice system of the democratic regime.

450. These principles are set forth in article 24 of the Constitution which states: “Freedom of religion, worship and ideology is recognized, with no limitations other than those established in this Constitution and by law ...”. “... No religion shall enjoy official status.”

451. Although the constitutional norm in article 24 enshrines three different freedoms from those of the Covenant, provision is also made for freedom of expression (art. 25), demonstration (art. 32) and dissemination of thought and opinion (art. 26). These freedoms are also protected during states of emergency.

452. With regard to the existence of other religions, it may be noted that article 24 *in fine* of the Constitution guarantees the independence and autonomy of churches and religious

denominations, with no limitations other than those established by the Constitution itself and by law.

453. Article 91(c) of the Paraguayan Civil Code states that churches and religious denominations are legal persons. As a result, all religions enjoy equal status in terms of their legal personality.

454. Another provision of the Constitution that is consistent with the provisions of the Covenant is that contained in article 74 (*in fine*), which states: "... Freedom to teach is also guaranteed with no requirements other than appropriateness and ethical integrity, as well as the right to religious education and to ideological pluralism."

455. The last paragraph of article 24 guarantees that persons shall not be harassed, investigated or obliged to testify on account of their beliefs or ideology, which means that the exercise of such freedoms is effectively safeguarded.

456. The relevant provision of the Criminal Code is article 233, which characterizes the "offence against the profession of beliefs" as follows: "Anyone who, in a manner likely to disturb harmonious relations between people, insults another person on account of his or her beliefs at a public meeting or through publications as defined in article 14, paragraph 3, shall be punishable by imprisonment for a maximum term of three years or by a fine." This provision affords full protection for freedom of ideology.

### **Conscientious objection**

457. This is fully guaranteed by article 37 of the 1992 Constitution, which provides for conscientious objection in general on ethical and religious grounds in the circumstances permitted by domestic or international law. However, the only context in which specific mention is made of conscientious objection is in connection with compulsory military service in article 129, which lays down the general principles governing the procedures involved, such as the simple declaration, the exclusive or exclusionary jurisdiction of civilian bodies, exemption from punishment and establishment of obligations for those who declare themselves to be objectors.

458. Articles 24 and 33 referred to above establish progressive standards that guarantee the right to conscientious objection in a manner consistent with the interpretation given by the United Nations Human Rights Committee, which views conscientious objection as a legitimate exercise of the right to freedom of thought, conscience and religion.

459. In view of the lack of regulatory legislation, the Human Rights Committee of the Chamber of Deputies agreed in 1994 to receive declarations from conscientious objectors and to approve their registration on a provisional basis, thereby exempting the objectors from military service until such time as the law established a public body to take responsibility for organizing alternative service.

460. Although there is still no regulatory legislation, the Constitution stipulates that the lack of such legislation may not be invoked to impair or deny any right or guarantee.

461. In 2003 a bill regulating conscientious objection and establishing alternative civilian service was sent by the Chamber of Deputies to the Chamber of Senators for consideration and adoption. The Chamber of Senators rejected the bill on the ground that some articles were at variance with constitutional principles, and consideration of the possibility of introducing regulations governing

the fundamental right of conscientious objection was definitively shelved. By October 2002, the annual number of declared conscientious objectors stood at 15,511, bringing the cumulative total since the first conscientious objectors made their declaration in 1993 to 101,679.

462. Article 53 of the Constitution stipulates: “Parents have the right and the duty to care for, feed, educate and protect their minor children. Parents who fail to fulfil their duty of care shall be prosecuted.”

463. Articles 10 and 71 of the Childhood and Adolescence Code regulate this constitutional provision as follows.

464. Article 10 stipulates: “The father and mother shall exercise parental authority over their children on an equal footing. Parental authority entails, in particular, the right and the duty to care for, feed, educate and counsel their children.”

465. Article 71 states that parental authority entails the duty to supervise children’s education and their training for employment.

466. Article 3 of the same Code may also be cited: “Any measure affecting the child or adolescent shall be founded on his or her best interests. The goal of this principle is to ensure the integrated development of the child or adolescent and the full exercise and enjoyment of his or her rights and guarantees.”

467. “In determining the best or paramount interests, the family ties, education and ethnic, religious, cultural and linguistic origin of the child or adolescent shall be respected. Account shall also be taken of the views of the child or adolescent, the balance between his or her rights and duties, and his or her status as a developing human being.”

### **Article 19**

468. The rights set forth in article 19 of the Covenant also have constitutional status in our positive legislation. Accordingly, the Constitution guarantees freedom of expression and freedom of the press, as well as the dissemination of thoughts and opinions without any form of censorship and with no limitations other than those laid down in the Constitution; it follows that no law may be passed that might restrict or hinder them. There are no press offences as such, but only ordinary offences committed through the press.

469. Everyone has the right to generate, process or disseminate information and the right to use any lawful medium to achieve those goals, in accordance with article 26 of the Constitution.

470. As the functioning of the mass media is a matter of public interest, they may not be closed down or suspended (art. 27 of the Constitution).

471. The same article prohibits discriminatory practices in respect of the provision of material for the press, such as interference with radio frequencies or obstructing the free movement, distribution and sale of periodicals, books, magazines and other publications with responsible management or authorship.

**Right to information**

472. The Constitution recognizes the right to receive truthful, responsible and impartial information. Public information sources are free for everyone. Anyone who has been harmed by the circulation of false, distorted or ambiguous information has the right to demand corrections or explanations through the same medium of circulation and under the same conditions of disclosure, without prejudice to any other rights to compensation (art. 28 of the Constitution).

473. Article 29 guarantees freedom to practise any form of journalism without prior authorization. In practising their profession, journalists working for the mass media may not be forced to act against the dictates of their conscience or to reveal the source of their information. Columnists have the right to publish signed opinion pieces without censorship in the medium in which they work. Management may waive liability by declaring its dissent.

474. The Constitution also deals with electromagnetic communication signals and stipulates that the broadcasting and propagation of such signals are in the public domain, which should promote their full use. It requires the law to ensure free and equal access to the electromagnetic spectrum and electronic media for the gathering and processing of public information, with no restrictions other than those imposed by international regulations and technical standards. The authorities are required to ensure that these facilities are not used to undermine individual or family privacy and the rights laid down in the Constitution.

475. Notwithstanding the broad civil liberties guaranteed by our legislation in terms of press freedom and broadcasting, it should be noted that this is not an absolute right and that restrictions have been imposed, some of which are mentioned below.

476. Article 143, paragraph 1, of the Criminal Code states that anyone who, before a crowd or through publication, violates the privacy of another person, that is to say his or her private and personal sphere, especially his or her family or sexual life or state of health, shall be punishable by a fine.

477. Paragraph 2 of the same article states: "Where, in terms of form or content, the statement does not exceed the bounds of reasonable criticism, it shall not be punishable." And paragraph 3 stipulates: "Where the statement, in the light of the interests involved and the investigatory duty under the circumstances of the person making the statement, is an appropriate means of protecting lawful public or private interests, it shall not be punishable."

478. Furthermore, article 144 of the Criminal Code states: "Anyone who, without the consent of the person concerned, uses technical devices to listen to, technically records or stores, or makes accessible to a third party by means of technical equipment, the words of another person that the perpetrator was not intended to hear and that were not spoken in public, shall be punishable by imprisonment for a maximum term of two years or by a fine."

479. The same penalty shall be applicable to anyone who, without the consent of the person concerned, produces or transmits images of another person within his or her private premises, within the private premises of another, or outside his or her private premises if the right to respect for his or her privacy is thereby violated.

480. Furthermore, article 150 of the Criminal Code stipulates: "Anyone who falsely and knowingly reports or discloses to a third party, or in the presence of a third party, information



relating to another person that may prejudice that person's honour shall be punishable by a fine. Where the act is perpetrated before a crowd, through the dissemination of publications or repeatedly over an extended period, the penalty may be increased to imprisonment for a maximum term of two years or a fine."

### **Article 20**

481. Since the promulgation of the 1992 Constitution, Paraguay has made significant headway towards establishing international relations based on the building of a supranational order that guarantees peace, non-violent conflict resolution and the eschewal of wars of aggression as an instrument of international policy.

482. In keeping with this principle, Paraguay utterly rejects the idea of a war of aggression. Article 271 of the Criminal Code states that anyone who prepares a war of aggression in which the Republic is the aggressor shall be punishable by imprisonment for a maximum term of 10 years. In such cases, attempts shall also be punishable.

483. In addition, article 46 of the Constitution stipulates that all inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles and factors that maintain or encourage such discrimination. These are the provisions of domestic legislation enacted to punish offences related to advocacy of war and of national hatred.

484. The question of discrimination has been dealt with in greater detail in the general part of this report and also in other contexts throughout the document.

### **Article 21**

485. In keeping with democratic principles, the right to peaceful assembly is laid down in article 32 of the Constitution, which stipulates that everyone has the right to meet and demonstrate peacefully, without weapons and for lawful purposes, without requiring authorization. The right not to be compelled to participate in such events is also guaranteed.

486. The same article of the Constitution stipulates that the law may only regulate the exercise of this right in public places, at specific times, and to safeguard the rights of third parties and public order as established by law.

487. Act No. 1066/97 was adopted to regulate the exercise of this right. Article 2 thereof defines what should be understood as public assembly, i.e. meetings held in public places such as squares, streets, parks or places open to the public such as churches, theatres or sports grounds.

488. Article 3 of the Act states that, in the city of Asunción, the right of peaceful assembly may be exercised from 7 p.m. to midnight on working days and from 6 a.m. on Sundays and holidays until the same time the following day. Article 4 specifies the permanent places for public meetings in the city of Asunción, i.e. the squares located within the perimeters formed by Eligio Ayala, México, 25 de Mayo and Antequera streets; by 14 de Mayo, Paraguayo Independiente and Alberdi streets; and by Estrella, Nuestra Señora de la Asunción, Oliva and Independencia Nacional streets. The event may not continue for more than 12 hours without interruption from the time at which the assembly began.

489. Article 6 stipulates that the National Police shall take such preventive measures as are necessary to protect public order, individuals and the rights of third parties. It shall also ensure strict compliance with public order regulations by the demonstrators, preventing provocation of third parties. The organizers or authorities responsible for the meetings or demonstrations shall collaborate with the National Police in preventing offences, disturbances and acts that may undermine the peaceful nature of the meeting or demonstration.

490. Article 7 states that notice of meetings or demonstrations shall be communicated to the National Police no less than 12 hours in advance. The communication shall contain: (a) the first name and family name of at least two leaders of the organization convening the meeting, their home address, and their signatures and identity document numbers; (b) assembly points and the route to be followed by the demonstrators; (c) the date and time of the event; and (d) the purpose of the demonstration.

491. Article 9 stipulates that the relevant police authority may object to the holding of the meeting within not more than six hours after submission of the communication by the organizers. The police decision shall be valid only where the reasons given in writing and received by the organizers relate to the right of third parties who previously requested the holding of a similar public event at the same time and in the same place, in which case the organizers may opt for a different date, time and place and different routes. Any such refusal may be appealed to the Ministry of Internal Affairs, or an application for *amparo* may be filed with the competent court. Where the refusal was unfounded, liability for damage and injury shall lie with the competent judicial authority.

492. Article 12 states that participants in the event who carry edged weapons, firearms or blunt instruments capable of causing injury shall be divested thereof by the competent authorities and brought before the ordinary courts where appropriate. Participants in meetings and demonstrations who commit acts defined and punishable under criminal legislation may be arrested and brought before the ordinary courts.

493. Article 14 expressly prohibits the holding of public meetings and demonstrations outside the Palacio de Gobierno (seat of the executive) or military and police headquarters. However, political, trade union, social or cultural delegations of not more than 50 persons may meet peacefully outside the Palacio de Gobierno during the day in order to draw up or submit petitions to the executive. No public meeting or demonstration may block bridges, railway lines or public roads or highways (art. 15).

494. Lastly, article 16 states that the following are absolutely free and are not subject to the provisions of the Act: (a) religious processions; (b) meetings held by political parties and other groups on their own premises or on enclosed premises for their own purposes; (c) meetings held in private homes and social, religious, sports or cultural centres; and (d) meetings or demonstrations involving not more than 50 persons.

## Article 22

495. Article 42 of the Constitution provides for freedom of association with others as follows: "Everyone is free to form an association or a union with lawful aims, and no one may be compelled to belong to a particular association. The establishment of secret and paramilitary associations is prohibited."

496. According to article 91, “the following are legal persons:

- (a) The State;
- (b) Departmental governments and municipalities;
- (c) Churches and religious denominations;
- (d) Independent, autonomous, semi-public and other public-law entities which, pursuant to the relevant legislation, have capacity to acquire property and to contract;
- (e) Universities;
- (f) Benevolent associations;
- (g) Registered associations with restricted capacity;
- (h) Foundations;
- (i) Public limited companies;
- (j) Cooperatives; and
- (k) Other companies regulated in Book Three of this Code.”

497. The legal persons listed under (c), (e), (f), (h) and (j) above come into existence as soon as they are authorized to operate by the law or the executive. Administrative decisions granting or denying recognition may be appealed in the courts.

498. The Constitution also upholds the freedom of citizens freely to form political parties or movements in order to participate democratically in the election of the authorities established by the Constitution and by law, and in the formulation of national policy.

499. Under article 126 of the Constitution political parties and movements are prohibited from receiving financial support, orders or instructions from foreign organizations or States, from establishing structures that are conducive to the use or advocacy of violence as a means of attaining political goals, and from adopting as an objective in their statutes the violent overthrow of the regime based on freedom and democracy or jeopardizing the existence of the Republic.

500. The Constitution made a great step forward by granting public-sector workers the same right as private-sector workers to form trade unions and to strike in the event of a labour dispute with their employers.

501. Article 96 of the Constitution thus guarantees the right of both public- and private-sector workers to form trade unions without prior authorization. To be recognized as a trade union, the sole requirement is registration with the relevant administrative body. In the election of officials and in their operating procedures, unions shall respect the democratic practices established by law, which shall also provide for stability of union leadership.

### **Legislation on freedom of association**

502. Article 283 of the Labour Code stipulates that all workers and employers, without distinction as to sex or nationality and without prior authorization, are free to establish organizations whose purpose is to study, defend, promote and protect their occupational interests and to improve the social, financial, cultural and moral circumstances of their members. This right extends to public-sector workers, who enjoy the right to join or resign from their trade union.

503. Trade union organizations have the right to draw up their administrative statutes and regulations, to elect their officials and representatives freely, and to organize their administration and lawful activities. Government authorities shall refrain from any interference aimed at restricting this right or hampering its exercise (art. 285 of the Labour Code).

504. Article 289 classifies trade unions as follows:

- (a) Company unions, composed of workers in various professions, trades, occupations or fields of specialization, who are employed in the same establishment or institution;
- (b) Professional associations, composed of workers in the same profession, trade or field of specialization;
- (c) Industrial trade unions, composed of workers employed by different companies in the same branch of industry.

505. Article 292 of the same Code stipulates: "Associations of employers may not be constituted with fewer than three members. Workers' unions may not be constituted with fewer than 20 founding members in the case of a company union, 30 in the case of a professional association and 300 in the case of an industry."

506. The following may belong to trade unions:

- (a) Paraguayan or foreign workers of either sex, aged over 18;
- (b) All workers who do not act as company representatives;
- (c) A worker may only join the trade union of his or her company, industry, profession or trade;
- (d) Members of the organization's executive board must be of legal age as well as active members of the trade union (art. 293).

507. Registration of a trade union vests the union with legal capacity for all legal purposes in conformity with current legislation. It may thus:

- (a) Enter into individual or collective agreements on working conditions, and assert rights and perform acts deriving from the terms of such agreements or the law;
- (b) Report to the proper authorities any acts that are prejudicial to the collective interest of the occupation it represents;

- (c) Register its trade-marks in accordance with the relevant legal provisions and claim exclusive ownership thereof;
- (d) Acquire property in general;
- (e) Obtain exemption from any State or municipal tax on its funds or its placement agencies or employment exchanges;
- (f) Constitute federations or confederations; and
- (g) Perform any lawful act conducive to achievement of the aims set forth in labour law (arts. 301 and 303 of the Labour Code).

508. Trade unions may not:

- (a) Participate in party political affairs or electoral movements and in religious affairs;
- (b) Use coercion to deny freedom of employment or trade or industrial freedom;
- (c) Promote or support campaigns or movements aimed at de facto infringement, either individually or collectively, of legal norms or the decisions of competent authorities;
- (d) Promote or defend, without stating any reasons or grounds, the de facto infringement of legal norms or contractual rules that are binding on members;
- (e) Order, advocate or defend any acts of violence against the authorities or against employers or third parties (art. 304 of the Labour Code).

509. The rights of trade unions and associations include the right to strike and the right of lock-out. These rights are set forth in the Constitution and the Labour Code. Article 98 of the Constitution establishes the right of public-sector workers to strike in the event of a conflict of interests. The right to strike and the right of lock-out do not extend to members of the armed forces or the police.

510. The only limitations on this right are those laid down in articles 361 and 362 of the Paraguayan Labour Code. Article 361 states that the right to strike shall be peaceful and involve a suspension of service by workers without occupation of their workplaces. Article 362 stipulates that workers who provide essential community services such as water and electricity supply and hospital workers must continue to supply essential services for the population in the event of a strike. Hospitals must maintain first aid and other essential services so as not to endanger human life. Lastly, article 369 safeguards the right to work of those who do not wish to join the strike.

### **Article 23**

511. All rights and guarantees needed to protect and ensure the advancement of the families that constitute the Paraguayan people are set forth in the Constitution. Accordingly, article 49 stipulates that: "The family is the basis of society and shall enjoy comprehensive protection. Such protection shall cover the stable union between a man and a woman, their children and the community made up of either of the parents and his or her descendants."

512. Article 50 states that everyone has the right to constitute a family and that women and men have the same rights and duties in respect of its formation and development. Article 51 stipulates that the law shall establish the formalities and requirements for contraction of marriage between a man and a woman, the grounds for separation or dissolution and the consequences thereof, and the regime governing the administration of property and other rights and duties of the spouses. De facto unions between a man and a woman between whom there are no legal impediments to the contraction of marriage, which fulfil the conditions of stability and exclusiveness, entail effects similar to marriage, subject to the conditions established by law.

513. Act No. 1/92 entailing a partial reform of the Civil Code contains provisions regulating the principles laid down in the Constitution. Article 1 of the Act stipulates that men and women have equal capacity to enjoy and exercise their civil rights, whatever their marital status.

514. Article 2 of the same Act stipulates that family unity, the welfare and protection of minor children and the equal status of the spouses shall be recognized as fundamental principles for the purpose of implementing the legislation. Article 6 states that in the home, men and women have equal duties, rights and responsibilities, regardless of their financial contribution to the upkeep of the joint home. They owe each other mutual respect, consideration, fidelity and assistance.

515. Article 4 defines marriage as a union freely entered into by a man and a woman with legal capacity to marry for the purpose of living together and solemnized in accordance with the law. No marriage shall be entered into without freely expressed consent. The circumstances, manner or term of the consent shall not be determinative.

516. Article 13 states that the spouses shall decide freely and responsibly on the number and spacing of their children and shall have the right to obtain scientific guidance in state-run institutions.

517. Under article 15, both spouses have the duty and the right to participate in running the household. They have equal responsibility for deciding jointly on questions pertaining to the household economy.

518. Article 17 states that the following are prohibited from contracting marriage:

- (a) Minors of either sex under 16 years of age, unless they obtain a special dispensation in extraordinary circumstances after attaining the age of 14 and with the permission of the childhood and adolescence court judge;
- (b) Persons still bound by the ties of matrimony;
- (c) Persons suffering from a chronic contagious and hereditary disease, except in cases of marriage *in extremis* or for the benefit of the joint children;
- (d) Persons suffering from chronic mental illness that deprives them of the use of reason, even if only temporarily;
- (e) Deaf and dumb persons, blind and dumb persons, and blind and deaf persons who are incapable of unequivocally expressing their will.

519. Article 18 states that the following persons may not marry each other:

- (a) Blood relatives of the direct matrimonial or extra-matrimonial line and collateral relatives of the same class to the second degree;
- (b) Persons related by direct line of affinity;
- (c) An adoptive parent and his or her descendants may not marry adopted children and their descendants. Adopted children may not marry the spouse of the adoptive parent nor may the latter marry the spouse of the former. Adopted children of the same adoptive parent may not marry each other nor may they marry the adoptive parent's biological children;
- (d) A person convicted as the perpetrator, instigator or accessory to the wilful, attempted or thwarted homicide of one of the spouses may not marry the other spouse;
- (e) An abductor may not marry the abducted person during the period of abduction or until three months after the violent abduction has ceased.

520. Pursuant to article 19 the following may not marry:

- (a) A guardian and his or her under-age or legally disqualified ward until such time as he or she is no longer the guardian and the record of his or her guardianship has been approved, or in the case of a legally disqualified person until the latter's legal capacity has been restored and the record of the guardianship approved. Anyone who breaches this rule shall lose any payment to which he or she is entitled, without prejudice to any liability incurred as a result of improper performance of his or her duties;
- (b) A widow may not marry until three hundred days after her husband's death, unless she previously gives birth; the same provision is applicable where a marriage is annulled. The only penalty that may be imposed on a woman who infringes this provision is loss of any property received from her husband free of charge;
- (c) A widower or widow who fails to furnish proof of having drawn up a legal inventory, with the participation of the guardianship office, of the property administered by him or her and belonging to his or her under-age children, or, where this is not applicable, fails to make a sworn statement that his or her children possess no property or that he or she has no children under his or her parental authority. Any breach of this rule shall entail loss of statutory usufruct over the property of the children.

521. Article 11 of Act No. 45/91, the Divorce Act, stipulates that spouses with minor children who have filed for divorce or are faced with an emergency shall apply to the childhood and adolescence court for a provisional ruling on the following:

- (a) Designation of the person or persons to be given custody of the children;
- (b) Provision for the children's needs;
- (c) The amount to be paid as child support;
- (d) The provisional arrangements for visits; and

- (e) Award of the marital home. In the event of a dispute, the matter shall be decided by the judge.

522. Article 2 of the Act stipulates in this connection: “Where a single dwelling is jointly owned by the marital community, the spouse with custody of the children during their minority may object to its liquidation and sharing.”

523. Article 20 states that divorce entails the dissolution *ipso jure* of the marital community and the termination of the mutual inheritance rights of the divorced parties. The spouse who is not declared the guilty party shall retain his or her right to receive maintenance from the other party; however, this right shall lapse if he or she remarries, cohabits with another person, or inflicts serious harm on the other spouse. A divorced woman shall not use the family name of her former husband.

#### **Article 24**

524. The Paraguayan Constitution and the law contain detailed provisions relating to the right of children to protection, both by the family and by society and the State. The Constitution stipulates that “the family, society and the State have the duty to guarantee the child's full and harmonious development and full enjoyment of his or her rights, and shall protect him or her against neglect, malnutrition, violence, abuse, trafficking and exploitation. Everyone has the right to demand that the competent authority fulfil these guarantees and punish those who violate them. In the event of conflict, the rights of the child shall be paramount” (art. 54).

525. This constitutional principle is regulated by numerous articles of the Childhood and Adolescence Code, Act No. 1680/01, among which the following may be cited:

- (a) Article 1: “This Code establishes and regulates the rights and duties of children and adolescents.”
- (b) Article 3: “Any measure affecting the child or adolescent shall be founded on his or her best interests. The goal of this principle is to ensure the integrated development of the child or adolescent and the full exercise and enjoyment of his or her rights and guarantees. In determining the best or paramount interests, the family ties, education and ethnic, religious, cultural and linguistic origin of the child or adolescent shall be respected. Account shall also be taken of the views of the child or adolescent, the balance between his or her rights and duties, and his or her status as a developing human being.”
- (c) Article 4: “Biological and adoptive parents or anyone who has guardianship or custody of adolescent children as well as the other persons mentioned in article 258 of the Civil Code (brothers and sisters, grandparents, parents-in-law, brothers-in-law, sisters-in-law, etc.) have the duty to guarantee the child's full and harmonious development and full enjoyment of his or her rights, and shall protect him or her against neglect, malnutrition, violence, abuse, trafficking and exploitation. Where they fail to do so, the State is required to perform this duty in their stead. Everyone has the right to demand that the competent authority compel the principal bearers of responsibility and the State to fulfil their duties.”



- (d) Article 5: “Anyone who obtains knowledge of a violation of the rights and guarantees of the child or adolescent shall immediately report it to the Municipal Council for the Rights of Children and Adolescents (CODENI) or, failing that, to the Public Prosecutor’s Office or the Ombudsman. The duty to report is binding, in particular, on persons who, as health workers, educators, teachers or professionals in other branches, are responsible for the supervision, education or care of children or adolescents.”

526. With regard to the health of minors, article 9 of the Childhood and Adolescence Code stipulates: “Unborn human beings shall be protected through the provision of care for pregnant women from conception until 45 days after delivery. Such care shall be the responsibility of the biological father and, in his absence, of persons with subsidiary responsibility as prescribed by this Code (see article 4).”

527. Under article 10 the State is assigned responsibility for:

- (a) Providing facilities for pregnant women without financial means in the form of housing, food and medical drugs as necessary;
- (b) Providing care for pregnant indigenous women while fully respecting their culture;
- (c) Drawing up plans to provide specialized protection for pregnant adolescents; and
- (d) Promoting breastfeeding.

528. Pregnant women are entitled to assistance measures under article 10 even where the child is stillborn or in the event of neonatal death. Article 11 of the same Code states that every pregnant woman requiring emergency attention shall be admitted to the healthcare facility closest to her location. The patient’s lack of financial means or the lack of beds or other facilities may not be invoked by the healthcare facility to transfer or turn away a pregnant woman in labour or requiring emergency medical attention without first providing her with preliminary emergency assistance.

529. Lack of financial means and the need for emergency attention shall not entail discrimination in terms of care and assistance compared with other patients. Article 12 of the Code stipulates that failure to pay for medical services shall not, under any circumstances or on any ground, warrant retention of the child or the mother in the medical facility where the delivery took place.

530. Article 13 states that the child or adolescent has the right to physical and mental health, to receive medical attention where necessary and to equal access to services and activities involving healthcare promotion, information, protection, early diagnosis, timely treatment and recuperation. If the child or adolescent belongs to an ethnic group or an indigenous community, the medical and healthcare practices and customs of the community shall be respected provided that they do not endanger the life and physical and mental integrity of the child or adolescent or third parties. In emergencies, doctors are obliged to provide them with the professional care they require; such care may not be denied or the duty to provide it shirked on any ground.

531. Article 14 requires the State, with the active participation of society and, in particular, of parents and relatives, to guarantee integrated healthcare and sex education services and

programmes for children and adolescents, who have the right to be informed and educated in a manner consistent with their evolving capacities, their culture and their family values. Services and programmes for adolescents shall provide for professional secrecy, free consent and all-round personality development, while respecting the rights and duties of parents or guardians.

532. Article 15 requires the State to provide free medical and dental care, drugs, prostheses and other aids needed for the treatment, recovery or rehabilitation of needy children or adolescents.

533. Moreover, article 16 requires the State to implement continuous programmes aimed at preventing unlawful tobacco use and the unlawful consumption of alcoholic beverages and narcotic or psychotropic substances. It must also implement programmes for the rehabilitation of children or adolescents who are addicted to these substances.

534. Article 17 stipulates: “Public or private healthcare facilities shall obtain appropriate authorization from parents, guardians or other legally responsible persons when hospitalization, surgery or other treatment is needed to save the life or preserve the health of the child or adolescent. In the event of opposition from the father, mother, guardians or other legally responsible persons on cultural or religious grounds, or in the absence of those persons, the medical professional shall require authorization. In exceptional circumstances, where a child or adolescent requires emergency surgery because his or her life is in danger, the medical professional shall adopt the scientifically indicated course of action, and shall immediately communicate this decision to the childhood and adolescence court.”

### **Right to an identity**

535. Article 18 of the Childhood and Adolescence Code states that children and adolescents have the right to Paraguayan nationality in accordance with the conditions laid down in the Constitution and the law. They also have the right to a name which shall be entered in the appropriate registers, to know and live with their parents, and to pursue such judicial investigations as they deem necessary to determine their origin.

536. Article 19 of the Code requires the State to preserve the identity of the child and adolescent. Public or private healthcare facilities are required to keep a register of live births, with the fingerprints of the mother and the palm print of the newborn child, as well as data corresponding to the type of document involved. A copy of the entry in the register shall be dispatched, free of charge, for incorporation in the Civil Register and another copy shall be sent to the appropriate health authorities. The State shall provide the mother, free of charge, with the top copy of the birth certificate.

### **National System for the Protection and Promotion of Childhood and Adolescence**

537. The Childhood and Adolescence Code established a large number of agencies to oversee compliance with the rights and guarantees contained in the Code. Article 37, for instance, states: “There is hereby established a National System for the Protection and Promotion of Childhood and Adolescence, hereinafter referred to as ‘the System’, which shall formulate and supervise implementation of the national policy aimed at ensuring full enforcement of the rights of children and adolescents. The System shall regulate and coordinate programmes and activities at the national, departmental and municipal level.”

538. Article 39 provides for the establishment of the National Secretariat for Childhood and Adolescence, hereinafter referred to as “the Secretariat”, with ministerial status, attached to the executive. The National Secretariat shall be headed by an executive secretary of proven experience in the area concerned, who shall be appointed by the executive.

539. The functions of the Secretariat, as set forth in article 41, are:

- (a) To implement the policies formulated by the System;
- (b) To implement the plans and programmes elaborated by the System;
- (c) To constitute the National Council and support the departmental and municipal councils on childhood and adolescence;
- (d) To facilitate the linkage and coordination of the different councils forming part of the System;
- (e) To administer technical and financial assistance received from national and international institutions;
- (f) To authorize, register and supervise the functioning of shelter services; and
- (g) To register non-governmental organizations dealing with childhood and adolescent issues.

540. Article 42 stipulates that the National Council on Childhood and Adolescence shall be convened by the executive secretary and shall be composed of a representative of:

- (a) The National Secretariat for Childhood and Adolescence;
- (b) The Ministry of Public Health and Social Welfare;
- (c) The Ministry of Education and Culture;
- (d) National non-profit-making non-governmental organizations that serve the public good;
- (e) The Ministry of Justice and Labour;
- (f) The Public Prosecutor’s Office;
- (g) The Ministry of Public Defence; and
- (f) The departmental councils.

541. It shall perform the following functions:

- (a) Formulate policies for the promotion, monitoring and protection of the rights of children and adolescents;

- (b) Adopt and oversee implementation of the individual plans and programmes drawn up by the Secretariat.

542. Article 44 states that the departmental councils on childhood and adolescence in each department shall be composed of a representative of:

- (a) The governor;
- (b) The departmental board;
- (c) The departmental secretaries for health and education;
- (d) Children's organizations in the department;
- (e) Non-profit-making non-governmental organizations in the department that serve the public good and perform activities of relevance to this Code; and
- (f) The municipal councils.

543. Article 45 states that the departmental councils shall perform the following functions:

- (a) Adopt plans and programmes for the department and support their implementation;
- (b) Support the department's municipalities in implementing their respective programmes.

544. Article 46 of the same Code states that the municipal councils on childhood and adolescence in each municipality shall be composed of a representative of:

- (a) The mayor;
- (b) The municipal board;
- (c) Non-profit-making non-governmental organizations in the municipality that serve the public good and perform activities of relevance to this Code;
- (d) Community committees or municipality development committees; and
- (e) Children's organizations.

545. Article 47 describes their functions as follows:

- (a) To direct their efforts primarily towards developing direct protection and integrated promotion of the rights of children and adolescents in their municipality;
- (b) To coordinate programmes and activities undertaken by public institutions and with private institutions on behalf of children and adolescents;
- (c) To submit the annual budget for programmes on behalf of children and adolescents to the municipality.

546. In addition, article 48 of the Childhood and Adolescence Code established the Municipal Council for the Rights of Children and Adolescents (CODENI) to provide continuous services for the protection, promotion and defence of the rights of children and adolescents.

547. Article 49 stipulates that CODENI shall be headed by a director and employ professional lawyers, psychologists, social workers and specialists in other disciplines, as well as local staff with recognized experience in providing services to the community. Article 50 describes its mandate as follows:

- (a) To take preventive action where children's or adolescents' rights are at risk or violated, except in the case of judicial intervention, presenting options for the resolution of conflicts;
- (b) To provide specialized counselling to families in order to avert crises;
- (c) To authorize public and private bodies to run shelter programmes and to close them down where such action is warranted;
- (d) To refer cases, where appropriate, to the judicial authorities;
- (e) To keep a register of children and adolescents engaged in economic activities with a view to promoting family protection and support programmes;
- (f) To support alternative measures to imprisonment;
- (g) To coordinate training programmes for working adolescents with vocational training establishments;
- (h) To provide nursery, day-care and kindergarten facilities for children whose father or mother is employed outside the home.

548. Article 92 of the Code stipulates: "The child or adolescent has the right to live with his or her parents unless living together is detrimental to his or her interests or inconvenient, a question which shall be determined by a judge in accordance with the law. In the event of a dispute, the judge shall hear the views of the child or adolescent and assess them in the light of his or her maturity and stage of development."

549. In keeping with this provision, article 93 states: "Where parents are separated and the custody of the child is in dispute, the judge shall hear the views of the child or adolescent and take his or her age and higher interests into account in reaching a decision. Where the child is under five years of age, he or she shall preferably remain in the custody of the mother. Nevertheless, agreements reached between the parents shall be taken into account."

550. Article 94 stipulates: "Where one of the parents snatches the child from the other, the latter may request a judge to return the child by means of a summary ruling based on a sworn statement regarding the alleged facts. The court shall summon the parents to a hearing, to be held within three days, and shall order that the child or adolescent be produced, on pain of a ruling to return him or her to the home where he or she was living. The parties shall attend the hearing, with their witnesses and other evidence, and the judge shall rule without further proceedings, such ruling being appealable without suspensive effect."

551. “With a view to safeguarding the right of a child or adolescent to maintain contact with the other members of the family with whom he or she is living, judicial regulations shall be applicable where warranted by the circumstances. The contact regime established by the court may extend to relatives up to the fourth degree of consanguinity and the second degree of affinity, as well as to third parties who are not relatives, where the interests and needs of the child so warrant” (art. 95).

552. Repeated non-compliance with the judicially established contact regulations may entail changes to or a temporary suspension of the child’s living arrangements (art. 96).

553. Article 25 of the Code stipulates: “Children and adolescents have the right to be protected from all forms of exploitation and from performing any activity that may endanger or hamper their education, or may be injurious to their health or their harmonious and integrated development.” Article 27 states: “Authorities and officials involved in the investigation and adjudication of judicial or administrative matters pertaining to children or adolescents are required to preserve the secrecy of the cases in which they participate or which they hear, such proceedings being strictly confidential and private. Any violation of this rule shall be subject to the penalties laid down in criminal legislation.”

#### **Others measures of protection on behalf of children and adolescents**

554. Article 31: “The use of children or adolescents in commercial sexual transactions and in the preparation, production or distribution of pornographic publications is prohibited. Giving children or adolescents access to the exhibition of pornographic publications or to pornographic performances or tolerating such access is also prohibited.”

555. It should be mentioned in this connection that the National Council on Childhood and Adolescence adopted the National Plan to Eliminate the Sexual Exploitation of Children and Adolescents, a copy of which is attached for the Committee’s information as annex 8. It should further be noted that the Government issued an invitation to the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, whose report will be submitted to the Commission on Human Rights at its sixty-first session.

556. Article 32: “The sale or supply of the following to children or adolescents is prohibited:

- (a) Weapons, ammunition and explosives;
- (b) Alcoholic beverages, tobacco and other products containing ingredients that may entail, even through their improper use, physical or psychological dependence;
- (c) Fireworks or pyrotechnic devices;
- (d) Pornographic journals and material;
- (e) Videogames classified as detrimental to the child’s integrated development; and
- (f) Free or unfiltered Internet access.”

557. These measures are protected by security arrangements supervised by CODENI.

558. Article 33: “Children or adolescents are prohibited from entering gambling halls. The exhibition in premises to which children or adolescents have access of videos containing incitement to commit acts characterized as unlawful in the Criminal Code is prohibited. CODENI shall establish a system of classification of premises covered by this article and shall exercise the necessary oversight to that end.”

559. Article 34: “Where the circumstances of the child or adolescent are such as to require the provision of protection or support, the following protection and support measures shall be applied:

- (a) Notification of the father, mother, guardian or other responsible person;
- (b) Counselling of the child or adolescent and of his or her family group;
- (c) Temporary monitoring of the child or adolescent and of his or her family group;
- (d) Enrolment of the child in a basic educational establishment with duty of assistance;
- (e) Medical and psychological treatment;
- (f) In emergencies, provision for the material sustenance of the child or adolescent;
- (g) Shelter;
- (h) Placement of the child or adolescent with a substitute family; and
- (i) Placement of the child or adolescent in a home.”

560. The measures of protection and support referred to in this article may be ordered separately or jointly. They may also be changed or replaced if the higher interests of the child so require. The measures of protection and support shall be ordered by CODENI. In the case of a measure under subparagraphs (g) to (i) of this article, the order shall require judicial authorization.

561. Mention should be made of the existence of homes in Paraguay that provide temporary shelter for adolescents facing problems of sexual abuse within and outside the family environment. These homes, which operate on very slender means in terms of human and financial resources, are: María Reina in Asunción and Santa Eufracio in the city of Caacupé. Their budgets are controlled by the Ministry of Justice and Labour.

## **Article 25**

562. The Paraguayan Constitution recognizes the right of all citizens, regardless of sex, to take part in public affairs. Access by women to public office shall be encouraged (art. 117).

563. The right to vote is also recognized in the Constitution. Under the terms of article 3: “The people shall exercise public authority by suffrage.” Article 1 of Act No. 834 establishing the Paraguayan Electoral Code defines suffrage as the voter's right, duty and public responsibility to participate in the establishment of elected authorities and in referendums through parties, political movements or alliances in conformity with the law.

564. Article 2 of the Electoral Code states that all Paraguayan citizens who are resident in the national territory and all foreigners who are permanent residents, and who are over 18 years of age, shall be entitled to vote provided that they meet all the requirements of the law and are enrolled in the Permanent Civil Register.

565. Article 3 of the same Code stipulates: “No one may impede, restrict or disrupt the free exercise of the vote. The authorities shall safeguard the freedom and transparency of the ballot and shall facilitate the exercise of the vote. Offenders shall be punishable in accordance with the law.”

566. Article 4 states that the ballot shall be “universal, free, direct, equal, secret, individual and non-transferable. Where doubt exists regarding the interpretation of this Code, it shall be construed in a manner conducive to the validity of the vote, the preservation of the democratic, representative, participatory and pluralist regime on which it is based, and the expression of the genuine will of the people in a public ballot, subject to scrutiny, in a system of proportional representation.”

567. Article 101 of the Constitution states that “all Paraguayans have the right of access to public office and employment”. The president and vice-president of the Republic shall be elected together and directly by the people, by a simple majority of votes cast in a general election held 90 to 120 days before the end of the current constitutional term. Article 228 of the Constitution establishes the requirements for candidates for the office of president or vice-president of the Republic. They must be:

- (a) Of Paraguayan nationality by birth;
- (b) At least 35 years of age; and
- (c) In full possession of their civil and political rights.

568. Similarly, the governors of departments and members of departmental boards must be elected by the citizens resident in the respective departments, in elections held at the same time as the general elections. Article 162 establishes the requirements for candidates for the office of governor or member of a departmental board. They must be:

- (a) Paraguayan citizens by birth;
- (b) At least 30 years of age; and
- (c) A native of the department and resident there for at least one year. Where a candidate is not a native of the department, he or she must have been resident there for at least five years.

569. The other branch of government that must be elected by the people is the legislature. Article 182 of the Constitution stipulates that legislative power shall be exercised by the Congress, which is composed of a Chamber of Senators and a Chamber of Deputies. The members and alternate members of both chambers shall be elected directly by the people in accordance with the law. The members of the legislature shall also be elected at the same time as the presidential elections and, as in the case of the president of the Republic, the vice-president, governors and the members of departmental boards, they shall serve a five-year term of office.



Candidates for the office of deputy must be Paraguayan citizens by birth and be at least 25 years of age; candidates for the office of senator must have Paraguayan nationality and be at least 35 years of age.

570. The right to vote is exercised in person and individually in the district in which the voter is registered and in the appropriate polling station. No one may vote more than once in the same elections (art. 89 of the Electoral Code).

571. Article 91 of the code stipulates: “The following may not vote:

- (a) Those declared to be under a legal disability;
- (b) Deaf-mute persons who cannot make themselves understood in writing or by any other means;
- (c) Conscripts, officers of the armed forces and the police and students at the military and police training institutes;
- (d) Detainees or those deprived of their liberty by order of a competent court;
- (e) Those sentenced to imprisonment or penalties entailing disenfranchisement;
- (f) Those declared to be in contempt of court in an ordinary or military criminal case.”

572. Article 95 of the same Code stipulates: “Paraguayan citizens of at least 18 years of age who do not come within the scope of any of the grounds of ineligibility set forth in the Constitution and the law are eligible for election to any elective office. Naturalized citizens are also eligible, albeit with the restrictions laid down in the Constitution. Aliens resident in the country are eligible for municipal office.”

573. Article 96 of the Electoral Code states that the following may not hold elective office:

- (a) Judges and members of the Public Prosecutor’s Office;
- (b) Cabinet ministers, deputy ministers, secretaries-general of units of government offices, governors, presidents, managers or managing directors of independent or autonomous bodies and bi-national entities and members of their management boards and boards of directors, and other officials employed by the State, governors’ offices or municipalities; and
- (c) Heads of diplomatic missions, diplomats and consuls.

574. While voting in elections is the principal means of expression of the sovereign will of the people, it is not the only one, since article 121 of the Constitution provides for the holding of referendums: “A referendum on legislative matters, decided by law, may be binding or non-binding.” The following may not be put to a referendum: “international relations, international treaties, conventions or agreements; expropriations; national defence; restrictions on immovable property; questions relating to fiscal, monetary and banking regimes; contracting of loans; the national budget; and national, departmental and municipal elections”.

575. Moreover, article 123 of the Constitution grants voters the right to propose bills to Congress by means of a people's initiative. "The form in which such proposals shall be presented and the number of voters' signatures required shall be determined by law."

576. The general elections for the period 2003-2008 were held on 27 April 2003. The elections were characterized by transparency, high voter turnout and the absence of any serious incidents. Furthermore, it is important to mention that an electronic voting system was used for the first time successfully in almost 50 per cent of constituencies. The following statistical data were provided by the Higher Court of Electoral Justice:

(a) Electoral universe:

Eligible to vote:	2,405,108
Votes recorded:	1,546,192
Blank ballots:	22,977
Invalid ballots:	24,015

(b) Participation rate: 64.29 per cent

(c) Percentages obtained by the different political parties or movements in the presidential elections:

- List 1 (Asociación Nacional Republicana – ANR) obtained 574,322 votes, representing 37.14 per cent;
- List 2 (Partido Liberal Radical Auténtico – PLRA) obtained 370,348 votes, representing 23.95 per cent;
- List 5 (Partido Humanista Paraguayo – PHP) obtained 1,196 votes, representing 0.08 per cent;
- List 6 (Partido Patria Libre – PPL) obtained 4,559 votes, representing 0.29 per cent;
- List 8 (Movimiento Patria Querida – MPQ) obtained 328,916 votes, representing 21.28 per cent;
- List 9 (Partido Encuentro Nacional – PEN) obtained 8,745 votes, representing 0.57 per cent;
- List 10 (Partido Unión Nacional de Ciudadanos Éticos – UNACE) obtained 208,391 votes, representing 13.47 per cent;
- List 12 (Partido Frente Amplio – PFA) obtained 1,443 votes, representing 0.09 per cent;
- List 50 (Movimiento Fuerza Democrática Independiente – MFDI) obtained 1,370 votes, representing 0.09 per cent.

(d) Governorships obtained by the various political parties and movements:

- Asociación Nacional Republicana (ANR): 12
- Partido Liberal Radical Auténtico (PLRA): 4
- RAC: 1

(e) Membership of departmental boards:

<i>Department</i>	<i>ANR</i>	<i>PLRA</i>	<i>UNACE</i>	<i>MPQ</i>	<i>PEN</i>
Concepción	4	5	1	-	-
San Pedro	6	5	2	-	-
Cordillera	6	5	1	1	-
Guairá	5	3	2	-	-
Caaguazú	7	6	2	1	-
Caazapá	5	2	2	-	-
Itapúa	7	4	3	2	-
Misiones	4	2	1	1	-
Paraguarí	7	3	2	-	-
Alto Paraná	5	6	5	2	-
Central	8	7	2	4	-
Ñeembucú	4	2	-	1	-
Amambay	3	4	1	-	-
Canindeyú	3	3	2	-	-
Alto Paraguay	5	1	-	-	1
Boquerón	4	-	-	-	2

### Article 26

577. Article 46 of the Constitution stipulates: “All inhabitants of the Republic are equal in dignity and rights. No discrimination shall be permitted. The State shall remove obstacles and factors that maintain or encourage such discrimination. Protective measures adopted in respect of unjust inequalities shall not be regarded as discriminatory but as egalitarian.”

578. Article 47 of the Constitution stipulates: “The State shall guarantee that all inhabitants of the Republic enjoy:

- (a) Equal access to justice and to that effect shall remove any obstacles thereto;
- (b) Equality before the law;
- (c) Equal access to non-elective public office, with no requirement other than ability; and
- (d) Equality of opportunity to enjoy the benefits of nature, material benefits and culture.”

579. In matters relating to equality before the law, the judiciary has paramount authority to hear disputes among individuals and between individuals and the State, adopting a balanced approach and ensuring respect for the equal status of the parties.

580. With regard to civil and commercial disputes, article 15(F) of the Code of Civil Procedure stipulates that the judge shall ensure respect for the equal status of the parties to the proceedings. Failure to comply with this obligation shall entail civil liability.

581. To ensure that lack of financial means does not impede access to the courts, article 589 of the same Code stipulates: "Persons without means may file a request, also during the course of the proceedings, for permission to litigate without payment of fees or costs."

582. With regard to criminal matters, article 9 of the Code of Criminal Procedure states this principle in the following terms: "The parties shall be guaranteed the full and unfettered exercise of the rights set forth in the Constitution, international law in force in the country and this Code. The courts shall safeguard this principle and remove all obstacles that prevent or hinder its enforcement."

583. The same principle is applied in labour legislation. Article 9 of the Labour Code stipulates: "No discrimination shall be permitted between workers on the basis of physical impairment, race, colour, sex, religion, political opinion or social status." Article 229 of the same Code states: "Rates of remuneration may not provide for inequality on grounds of sex, physical impairment, nationality, religion, social status and political or trade union preference. Equal remuneration shall be provided for work of equal type, value, duration and efficiency."

584. Article 13 of Act No. 1626/00 regulates another aspect of the guarantee of equality as follows: "Anyone who fulfils the requirements laid down in this Act shall have the right to compete, on an equal footing, in the process of selection of candidates for access to public office."

585. In addition, article 48 of the Constitution guarantees the equality of men and women in terms of civil, political, economic and cultural rights. The State is required to promote conditions and create appropriate mechanisms to ensure that there is real and effective equality and to facilitate the participation of women in all spheres of national life.

586. Act No. 1/92 provides for full equality between men and women. Article 1 stipulates: "Men and women have equal capacity to enjoy and exercise their civil rights, whatever their marital status."

587. Moreover, article 35 of the Labour Code states: "Persons of either sex who have reached the age of 18 as well as married women shall have full capacity, without prior authorization, to conclude employment contracts, to receive remuneration and to perform on their own account such activities as are laid down in the contract or by law."

588. By virtue of these and other provisions, all norms that had previously subordinated women to men have been repealed and women now possess full legal capacity, on an equal footing with men, for all civil purposes.

589. There has been a gradual increase in the number of women candidates seeking access to elective office. According to statistical data provided by the Higher Court of Electoral Justice on

the elections held on 27 April 2003, 5 women senators, 8 deputies and 27 members of departmental boards were elected. Moreover, for the first time in history, a women was elected to the office of governor in the Department of Concepción.

590. It is to be hoped that more women candidates will feature in future polls held to elect the representatives of the people.

## **Article 27**

### **Ethnic groups**

591. Paraguay is a multi-ethnic country, with an indigenous population that survived the conquest and colonization of Paraguay. From the founding of Asunción in 1537, Spaniards and Guaraní Indians constituted the nucleus of Paraguay's population. But following an intense process of miscegenation, the rudiments of a new nationality characterized by bilingualism and a blend of the two cultures came into being.

592. There are 17 ethnic groups in Paraguay belonging to 5 indigenous linguistic families. With the promulgation of Act No. 904/81, the “Indigenous Communities Statute”, the National Indigenous Institute was established and assigned responsibility for monitoring the rights of indigenous peoples.

### **Report on ethnic rights**

593. The indigenous population of Paraguay belongs to 5 linguistic families and 17 peoples. According to the 1992 national census, the indigenous population numbered 19,437. However, according to the most recent national census, conducted in 2002 and based on a geo-referenced count of indigenous dwellings and communities conducted by indigenous people themselves after receiving technical training, the indigenous population may be estimated at 120,000, which represents roughly 2 per cent of the national population (see annex 9 – Second National Indigenous Census 2002 DGEEC).

594. Some 13 peoples live in the western region or Chaco (where they are the majority population) and 4 per cent live in the eastern region. In recent years, especially since the advent of democratically elected governments, the policy of the State towards indigenous peoples has gradually improved.

595. Over the past two decades, the rights of indigenous peoples have been recognized in the national legal system. Mention should be made of the 1992 Constitution (Chapter V, arts. 62-67) and the provisions of International Labour Organization Convention No. 169, one of the most progressive instruments in this regard, which was ratified by Act No. 234/93, not to mention Paraguay's clear affirmation of indigenous rights in Act No. 904/81, an instrument compatible with Convention No. 169 that served as a model for other Latin American countries.

596. These enactments include legal recognition of the indigenous peoples “as cultural groups that existed prior to the establishment and organization of the Paraguayan State”. The incorporation of legislation on indigenous rights in Paraguayan positive law has entailed amendments to ordinary procedures. Book Two, Title 6, contains special rules and provides for participation by the technical adviser in proceedings related to unlawful acts involving indigenous peoples. The activities of the Office of the Adviser on Ethnic Rights are based on article 111 *in*

*fine* of the Code of Criminal Procedure. The Public Prosecutor's Office is required to appoint its advisers directly without judicial nomination. The success achieved in this regard has been attributable to the joint efforts of the Prosecution Units Specializing in Ethnic Rights as well as the application of customary law in criminal cases, together with the proposals and opinions of the Office of the Adviser on Ethnic Rights.

597. The Government of Paraguay accepts and promotes the right of indigenous peoples to preserve their cultural identity, and there are no legal restrictions on such groups enjoying their own culture, professing and practising their own religion or using their own language.

598. Chapter V of the Constitution deals explicitly with indigenous peoples. Article 62 states that the Constitution "recognizes the existence of indigenous peoples, defined as cultural groups that existed prior to the establishment of the Paraguayan State".

599. Article 63 recognizes and guarantees the right of indigenous peoples to their own habitat and to maintain and develop their ethnic identity. They also have the right to operate, without let or hindrance, their own political, social, economic, cultural and religious systems, as well as voluntarily to submit to the customary rules that regulate their communal life, provided that such systems are not at variance with the fundamental rights laid down in the Constitution. Customary indigenous law shall be taken into account in legal disputes.

600. Article 64 of the Constitution establishes the right of indigenous peoples to communal ownership of land, the area and quality of which must be adequate for the preservation and development of their characteristic way of life. It also states that the land shall be made available by the State free of charge and shall not be subject to seizure; it shall be indivisible, non-transferable and inalienable and may not be used as security for contractual obligations or be leased. It is furthermore exempt from taxation. Moreover, indigenous peoples may not be displaced or resettled without their express consent.

601. Article 65 guarantees indigenous peoples the right to participate in the economic, social, political and cultural life of the country in accordance with their practices and customs, the Constitution and national laws.

602. Lastly, article 67 states that members of indigenous peoples shall be exempt from social, civil or military service, and from legally established public obligations.

### **Religious groups**

603. The Roman Catholic apostolic religion has ceased to be the official religion of the Republic of Paraguay since the promulgation of the 1992 Constitution, although article 82 states that "the predominant role of the Catholic Church in the historical and cultural shaping of the nation is recognized". Notwithstanding this provision, the separation of church and State is now final.

604. Article 24 of the Constitution stipulates: "Freedom of religion, worship and ideology is recognized, with no limitations other than those established by the Constitution and by law. No religion shall enjoy official status. State relations with the Catholic Church shall be based on independence, cooperation and autonomy. The independence and autonomy of churches and religious denominations are guaranteed, with no limitations other than those laid down by the Constitution and by law. No one may be harassed, investigated or obliged to testify because of his or her beliefs or ideology."

605. The right of religious minorities to profess and practise their religion is fully respected in Paraguay, as evidenced by the conversion of a sizable proportion of former Catholics to other religions and/or philosophies. However, Roman Catholicism continues to be the majority religion in the country.

### **Linguistic groups**

606. Spanish has traditionally been the official language of the country but since the promulgation of the 1992 Constitution the situation has changed somewhat. Article 140 of the Constitution stipulates: "Paraguay is a multicultural and bilingual country. Its official languages are Spanish and Guaraní. The law lays down the circumstances in which each language shall be used. Indigenous languages and those of other minorities form part of the nation's cultural heritage."

607. Although Paraguay is bilingual and both languages are used, it may be noted that 41 per cent of the population speak only Guaraní, 48 per cent speak both languages and just 7 per cent speak only Spanish. These figures clearly indicate the importance and widespread use of the native language.

608. In the light of this circumstance, article 77 of the Constitution states: "Instruction in the early stages of schooling shall be in the pupil's official mother tongue. The pupil shall also be taught and learn to use both of the official languages of the Republic. Ethnic minorities whose mother tongue is not Guaraní can opt for either of the two official languages."

609. In order to give effect to this provision of the Constitution, the curricula currently in force provide for bilingual education from the earliest years of compulsory schooling with a view to achieving the following aims:

- (a) To make the education system more democratic by ensuring equality of opportunity for children from rural and urban areas;
- (b) To reduce the illiteracy, drop-out and repeat rates;
- (c) To achieve acceptable language proficiency in Spanish and hence better educational performance, avoiding the risk of producing functional illiterates by ensuring literacy in Guaraní alone;
- (d) To foster the harmonious and integrated educational development of children in rural and low-income urban areas whose mother tongue is Guaraní;
- (e) To ensure coordinated bilingualism so that children are fluent in both Guaraní and Spanish and are able to separate the structures of the two languages;
- (f) To expand and enrich Paraguayan bilingualism by providing tuition in both languages;
- (g) To foster school-community relations, especially in rural areas;
- (h) To strengthen the identity of rural children in Paraguay through knowledge of the native language.

610. The coexistence of Spanish and Guaraní in Paraguay is a stable and pervasive linguistic phenomenon throughout the national territory.

**“Mundo Guaraní” – foreign policy**

611 “Mundo Guaraní” (Guaraní World) is a major international project involving seven countries, with Paraguay as its epicentre. Financed by the Inter-American Development Bank, it is being implemented by the National Tourism Secretariat, the Ministry of Foreign Affairs, other public authorities and private companies. The basic idea is to turn Mundo Guaraní into a sort of international trademark that will provide all categories of Paraguayan services, products and communications with a distinctive profile.

612. As part of this project, a new major tourism sub-project known as Tapé Avirú has been launched. The name refers to the Tapé Avirú or pre-Hispanic great trail of the Guaraní people. This short-term project will be converted into a kind of “Road to Santiago de Compostela” but for the South American continent. In ancient times the Tapé Avirú trail set out from Asunción heading eastwards as far as the Atlantic and in a north-easterly direction to Bolivia, joining the Inca Trail. It was the route followed by the early inhabitants of Paraguay in their quest for the “Land without Evil”. The project is run by the National Tourism Secretariat.

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