



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports of States parties under  
article 29 of the Convention**

**Reports of States parties under article 29, paragraph 1, of the  
Convention that are due in 2012**

**Paraguay\***

[28 August 2013]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.



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## **I. General information**

### **A. Participants involved in the preparation of the report**

1. This initial report was prepared by the Human Rights Directorate of the Ministry of the Interior, in coordination with the Human Rights Unit of the Ministry of Foreign Affairs and in accordance with the guidelines on the form and content of reports to be submitted by States parties (document HRI/GEN/2/Rev.6, chap. I). Technical assistance was also received from the field presence in Paraguay of the Office of the United Nations High Commissioner for Human Rights.
2. The Human Rights Directorate of the Ministry of the Interior coordinated and arranged the information supplied by various competent national bodies. The Supreme Court of Justice and the Public Prosecution Service, through their Human Rights Directorates, were also involved in the preparation process.
3. Special assistance was received from the Human Rights Network of the Executive Branch, coordinated by the Ministry of Justice and Labour, in validating the report. The various departments of the executive branch also cooperated in the process, including the national Secretariat for Paraguayan Returnees and Refugees, the National Secretariat for Children and Adolescents, and the Ministry of Defence, through its Directorates of Human Rights and International Humanitarian Law.
4. The Ombudsman's Office provided information through the Directorate-General for Truth, Justice and Reparation.

### **B. Method of preparation of the report**

5. The relevant public institutions were invited to participate in the preparation of the report, namely those which are part of the Human Rights Network of the Executive Branch, but also the judiciary, the Public Prosecution Service and the Ombudsman's Office.
6. Furthermore, civil society organizations working on the issue of enforced disappearance and wishing to contribute to the preparation of the report were invited to do so. Civil society organizations that made contributions were the Celestina Pérez de Almada Foundation and the Mesa Memoria Histórica (Historical Memory Forum).

## **II. General legal framework under which enforced disappearances are prohibited**

7. The Republic of Paraguay provides for protection from the enforced disappearance of persons, in article 5 of its Constitution, and for the non-applicability of statutory limitations.
8. Other laws include:
  - (a) Act No. 3977/2010 ratifying the International Convention for the Protection of All Persons from Enforced Disappearance;
  - (b) Act No. 933/96 ratifying the Inter-American Convention on Forced Disappearance of Persons;
  - (c) Act No. 1663/01 ratifying the Rome Statute of the International Criminal Court;

(d) Act No. 3458/08 ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

(e) Act No. 1160/97 on the Paraguayan Criminal Code, establishing enforced disappearance as an offence, as amended by Act No. 4614/12 amending articles 236 and 309 of Act No. 1160/97 on the Criminal Code. Under this Act, enforced disappearance is considered to be an ordinary, rather than a political, offence in Paraguay;

(f) Act No. 1286/98 on the Code of Criminal Procedure;

(g) Act No. 838/96<sup>1</sup> on the compensation of victims of human rights violations committed during the dictatorship of 1954 to 1989, as amended, under which claims for compensation submitted by victims of the dictatorship are handled by the Ombudsman's Office. One of the paragraphs of the Act provides for compensation for acts of enforced disappearance.

### III. Information in relation to each substantive article of the Convention

#### Article 1

9. In 1992, the Paraguayan State established in the Constitution the non-applicability of statutory limitations to enforced disappearance.<sup>2</sup> Nevertheless, until the establishment, under Act No. 4288/2011, of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment as an autonomous and independent body, with the powers thereby conferred on it, it could be argued that there were no specific administrative oversight mechanisms that guaranteed the right not to be subjected to an enforced disappearance as a result of unlawful or arbitrary deprivation of liberty; it should be noted that the Paraguayan legal framework provides for the protection of the right to life and physical integrity, the prohibition of enforced disappearance — also punishable under criminal law — and compliance with the commitments undertaken on ratification of various international human rights instruments.

10. Furthermore, it should be mentioned that the Republic of Paraguay ratified the Inter-American Convention on Forced Disappearance of Persons in 1994 and the International Convention for the Suppression of Acts of Nuclear Terrorism in 2008, and that it adopted the Act Punishing Crimes of Terrorism, Association for Purposes of Terrorism and the Financing of Terrorism in 2010.<sup>3</sup> Under the state of emergency declared in 2010 and 2011, the Ministry of the Interior promoted the drafting of a directive on the scope of the state of emergency and the development of an operational protocol for the security forces consistent with international human rights standards. The State also monitored the activities undertaken during this period.

<sup>1</sup> Adopted on 29 March 1996 by the National Congress.

<sup>2</sup> Constitution, article 5. Torture and other offences

Nobody shall be subjected to torture or cruel, inhuman or degrading punishment or treatment. Genocide and torture, and enforced disappearance of persons, kidnapping and politically motivated homicide shall not be subject to the statute of limitations.

<sup>3</sup> Act No. 4024 Punishing Crimes of Terrorism, Association for Purposes of Terrorism and the Financing of Terrorism, adopted on 10 June 2010.

## Article 2

11. Since its ratification of the International Convention for the Protection of All Persons from Enforced Disappearance in 2010, Paraguay has made efforts to align its criminal legislation with the Convention through the adoption of Act No. 4614/12 amending articles 236 and 309 of the Criminal Code (Act No. 1160/97), on 22 May 2012, to comply with the definition of enforced disappearance in the Convention (see annex I).

## Article 3

12. Under its constitutional framework, Paraguay has established the non-applicability of statutory limitations to enforced disappearances for political reasons, and has reaffirmed this commitment by ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.<sup>4</sup> Moreover, with the recent amendments to the Criminal Code to bring it into line with the Convention, criminal prosecution has been extended to include not only disappearance for political reasons.

13. Regarding the prosecution of acts defined in article 2 of the Convention, the State of Paraguay has a duty to investigate punishable offences considered to be enforced disappearances through the relevant agencies.<sup>5</sup> To that end, in 2011, the Public Prosecution Service set up a Special Unit for Human Rights Offences with exclusive jurisdiction over human rights offences.

## Article 4

14. As part of its efforts to bring its legislation into line with article 2 of the Convention, Paraguay recently amended its Criminal Code.<sup>6</sup> The definition of enforced disappearance provides that it could be perpetrated by the State, or by public officials or employees with State authorization, or by individuals. It should be noted that the definition of the offence facilitates its qualitative distinction from other punishable offences related to enforced disappearance.

## Article 5

15. In the 1990s, in accordance with international human rights and humanitarian law, Paraguay adopted the concept of crimes against humanity, and this is reflected in the Constitution. It also ratified the Rome Statute of the International Criminal Court,<sup>7</sup> thereby recognizing the concept of crimes against humanity as embodied in that instrument, which includes enforced disappearance.

16. As a result, in light of the provisions of international law, the non-applicability of statutory limitations, is established in the Constitution, and there is a 5-year minimum criminal penalty for persons found guilty of enforced disappearance.

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<sup>4</sup> Act No. 3/2008 ratifying the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 2008.

<sup>5</sup> The judiciary and the Public Prosecution Service.

<sup>6</sup> Act No. 4614/12 of 22 May 2012 amending articles 236 and 309 of Act No. 1160/97 on the Criminal Code.

<sup>7</sup> Act No. 1663 of 17 April 2001.

## Article 6

17. As part of its obligation to establish a criminal liability regime, Paraguay brought the definition of the offence of enforced disappearance into line with that of the Convention through the above-mentioned Criminal Code amendment.

18. The legislation applicable to enforced disappearance in Paraguay is recent. Thus members of military and police forces are exempt from obeying orders that violate the Constitution, the law or human rights,<sup>8</sup> though not specifically in respect of enforced disappearances; however, there is an established mechanism of recourse to a higher authority. The judiciary has not received any complaint or accusation regarding this type of offence and therefore has no case law on the subject.

19. As to the position of the State on the concept of “due obedience” as a defence in criminal law and whether it has any impact on the effective application of the prohibition, the Supreme Court of Justice has established in key cases its settled case law that due obedience is not applicable in cases of enforced disappearance or torture, whereas, in the past, sentences were based on the closest similar legal concept.<sup>9</sup>

## Article 7

20. The Paraguayan Criminal Code establishes a 5-year minimum sentence for the crime of enforced disappearance.<sup>10</sup> The maximum sentence provided for in the Criminal Code is 30 years, and the defendant may be subject to security measures for a period of up to 10 years. With regard to possible mitigating or aggravating circumstances arising from the

<sup>8</sup> Act No. 1115/97 on the Status of Military Personnel: “Armed forces personnel are exempt from obeying any order that undermines the constitutional, democratic and representative system or lawfully constituted authorities, or that seriously violates fundamental human rights” (art. 20). Article 10 of the National Police Organization Act (Act No. 222/93) sets out the following rights, obligations and prohibitions for police personnel in post: “Obeying orders and instructions from their superiors, pursuant to the Constitution, laws and regulations. Manifestly unconstitutional or unlawful orders and instructions shall not be subject to the duty of obedience.”

<sup>9</sup> Case law on the non-applicability of due obedience in cases of enforced disappearance and torture: the case of the Ramírez Villalba brothers (Alberto Cantero, Lucilo Benítez, Camilo Almada, Juan Martínez, Eusebio Torres Romero, a Mr. Belotto, Benito Guanes Serrano and Alfredo Stroessner Matiauda, accused of kidnapping, unlawful deprivation of liberty, abuse of authority, torture and double homicide); the case of Mario Schaerer Prono (ruling No. 25 of 21 May 1992, issued by the Second Circuit Criminal Court, with Luis María Benítez Riera presiding, and ruling No. 206 of 7 May 1999, issued by the Criminal Chamber of the Supreme Court of Justice); and other cases such as: (a) ruling No. 585, issued on 31 December 1996, regarding an application for constitutional review in the case of Modesto Napoleón Ortigoza, accused of the alleged homicide of Cadet Alberto Anastasio Benítez; ruling No. 195, issued on 5 May 2008, in relation to Basilio Pavón, Merardo Palacios, Osvaldo Vera and Walter Bower, accused of causing bodily harm in the exercise of public duties.

<sup>10</sup> Criminal Code. Article 236. Enforced disappearance

(1) Any person acting as a State official or officer or any person or group of persons acting with the authorization, support or acquiescence of the State, and who arrests, detains or abducts one or more persons or in any way deprives them of their liberty and refuses to provide information on their whereabouts or to acknowledge the deprivation of liberty, or conceals the fate or whereabouts of the disappeared person, thereby placing them outside the protection of the law, shall be punished by no less than 5 years’ imprisonment;

(2) The provisions of paragraph 1 of this article shall apply even when the offender’s status as a public official is not legally established or when the offence is committed by a person who is not an official.

behaviour of the offender or offenders, article 65 of the Criminal Code<sup>11</sup> sets out general criteria, although it does not refer to the circumstances set out in article 7, paragraph 2, of the Convention.

## Article 8

21. The non-applicability of statutory limitations to enforced disappearance is established in the Constitution. Article 102, paragraph 3, of the Criminal Code states that “statutory limitations shall not apply to punishable offences set out in article 5 of the Constitution ...”. Effective remedy in relation to the statute of limitations has been reaffirmed by the case law of the Constitutional Chamber of the Supreme Court of Justice, according to which statutory limitations do not apply to crimes against humanity.<sup>12</sup>

## Article 9

22. National legislation gives Paraguayan judges jurisdiction over acts of enforced disappearance committed in any territory under its control and offences committed abroad against Paraguayan legal interests, in accordance with article 7 of the Paraguayan Criminal Code.<sup>13</sup> Furthermore, article 8 of the Code states: “Paraguayan criminal law shall also apply to the following offences committed abroad: ... punishable offences that the Republic, pursuant to an international treaty, has an obligation to prosecute even when they have been committed abroad ...”.

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<sup>11</sup> Article 65 of the Criminal Code lays the basis for determining the length of sentences as follows: (i) The length of the sentence shall be determined on the basis of the culpability of the offender, which shall also be a limiting factor; the impact of the sentence on the offender’s future life in society shall also be taken into consideration. In determining the sentence, the court shall take into account all the general circumstances for and against the offender and, in particular: the motive and purpose of the offence; the offender’s attitude to the law; the level of criminal intent involved in the commission of the offence; the seriousness of the violation of the duty not to act or, where the offence is one of omission, the duty to act; the *modus operandi*, the means used, the extent of the damage and danger, and the consequences attributable to the offence; the life of the offender prior to the offence and their personal and financial circumstances; their behaviour after committing the offence and, in particular, the efforts made to redress the harm caused and to achieve reconciliation with the victim.

<sup>12</sup> Case law of the Supreme Court of Justice on the non-applicability of statutory limitations to crimes against humanity: “Basilio Pavón, Merardo Palacios, Osvaldo Vera and Walter Bower accused of causing bodily harm in the exercise of official duties.”

<sup>13</sup> Criminal Code. Article 7. Offences committed abroad against Paraguayan legal interests

Paraguayan criminal law shall apply to the following offences committed abroad:

- (1) Punishable offences committed against the existence of the State, as defined in articles 269 to 271;
- (2) Punishable offences against the constitutional order, as set out in article 273;
- (3) Punishable offences against constitutional bodies, as set out in articles 286 and 287;
- (4) Punishable offences against witness testimony, as defined in articles 242 and 243;
- (5) Punishable offences against the security of persons in situations of collective risk, as set out in articles 203, 206, 208, 209 and 212; and
- (6) Punishable offences perpetrated by a Paraguayan public official in the exercise of their duties.



## Article 10

23. With regard to the detention of persons present in Paraguay and in respect of which an investigation must be conducted by the Paraguayan judicial authorities, the procedures laid down in articles 239, 240 and 242 of the Code of Criminal Procedure would be applied in cases of enforced disappearance.<sup>14</sup>

24. In all cases, the detainee shall be brought before a judge within 24 hours so that the judge may rule, within the same period, whether provisional detention is justified, whether to apply alternative measures or whether to order the release of the accused for lack of evidence. It should also be mentioned that the National Police may not, under any circumstances, order detention; it shall confine itself to carrying out arrests and executing arrest warrants issued by the Public Prosecution Service or the court. It may also order the release of an arrested or detained person when it considers that provisional detention will not be requested.

25. When a foreign State requests the extradition of a person in Paraguay who has allegedly committed a punishable act of enforced disappearance in that State's territory, the provisions of the Code of Criminal Procedure must be taken into account, particularly article 150,<sup>15</sup> which provides that provisional detention cannot exceed 15 days, except

<sup>14</sup> Code of Criminal Procedure. Article 239. Arrest

The National Police may arrest any person under the following circumstances, even without a warrant:

(1) Where a person committing a punishable offence is caught in flagrante delicto or is pursued immediately after committing the offence; flagrante delicto shall be deemed to have occurred when the perpetrator is caught attempting to commit, committing, or immediately after committing, a punishable offence, or while being pursued by the police, the victim or a group of persons.

Article 240. Detention

The Public Prosecution Service may order the detention of a person in the following circumstances:

(1) Where the presence of the accused is necessary and there is a reasonable probability that that person has committed or participated in the commission of a punishable offence and may hide, escape or abscond;

(2) Where it proves impossible to identify the suspects and witnesses in the early stages of the investigation and urgent action is required 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 offence; and

(3) Where a person is required to assist in the investigation into a punishable offence by making a statement and refuses to do so.

Article 242. Provisional detention

The judge may order provisional detention after hearing the accused, only where such detention is necessary and provided that all the following conditions are fulfilled:

(1) That there is sufficient evidence to demonstrate that a serious punishable offence has been committed;

(2) That the presence of the accused is necessary and that there is sufficient evidence to reasonably believe that that person has committed or participated in the commission of a punishable offence; and

(3) Where an examination of the circumstances of the case provides sufficient evidence to suggest that the accused might abscond or obstruct a specific measure of investigation.

<sup>15</sup> Code of Criminal Procedure. Article 150. Precautionary measures

The criminal court dealing with the case may order the provisional arrest and detention of an extraditable person provided that a sentence or detention order has been handed down, the nature of

where treaties establish a longer period. Although this article sets out a specific period for provisional detention, nothing precludes the application of the period provided for in the Convention, since article 137 of the Constitution establishes that international treaties duly ratified by Congress take precedence over the law.<sup>16</sup>

26. With regard to the procedures in place to guarantee that a person under investigation for allegedly committing enforced disappearances can receive consular assistance, in the case of foreign citizens, attention should be drawn to the provisions of article 36 of the 1963 Vienna Convention on Consular Relations, as ratified by Act No. 91 of 26 August 1969.<sup>17</sup> It establishes that the competent authorities of the receiving State shall, without delay, inform the competent consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Paraguay has been a staunch defender of the right of detainees to consular assistance. This is illustrated by the Breard case in the United States.

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the offence has been clearly determined and the case is one requiring pretrial detention pursuant to this Code and the international law in force. In an emergency, provisional detention may be ordered even before all the documents required to proceed with the extradition have been furnished. Provisional detention may not last for more than 15 days unless a longer period is stipulated in the relevant treaties. A request for provisional detention may be filed through any reliable channel and shall be communicated immediately to the Ministry of Foreign Affairs.

<sup>16</sup> Constitution

Article 137. Supremacy of the Constitution

The Constitution is the supreme law of the Republic. The Constitution, the international treaties, conventions and agreements that have been approved and ratified by Congress, the laws adopted by Congress and other related legal provisions of lesser rank form the body of positive law in Paraguay, in the above order of precedence. Any attempts to change that order other than through the procedures set forth in the Constitution shall constitute offences prohibited and punishable by law. The Constitution shall remain in force and shall continue to be observed notwithstanding any acts of force or derogation by any means other than those provided therein. Any provisions or acts of authority contrary to the provisions of this Constitution shall be null and void.

<sup>17</sup> Vienna Convention on Consular Relations. Article 36

Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

## Article 11

27. In accordance with its legislation and its international commitments, in cases of enforced disappearance Paraguay would apply the penalty provided for in the Criminal Code, through the national courts. The State has also ratified international treaties and agreements, and has accepted the competence of international judicial bodies such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the International Criminal Court (1998 Rome Statute of the International Criminal Court).

28. Paraguayan legislation provides for the exercise of universal jurisdiction over the punishable offence of enforced disappearance of persons given that article 8 of the Criminal Code provides that Paraguayan law is also applicable to punishable offences that the Republic — pursuant to an international treaty — has an obligation to prosecute even when they have been committed abroad. Paraguayan criminal law may also apply to nationals who have allegedly committed an enforced disappearance abroad and have returned to the national territory, in accordance with the provisions of article 9 of the Paraguayan Criminal Code.<sup>18</sup>

29. The authorities competent to investigate and prosecute those allegedly responsible for enforced disappearances are the Public Prosecution Service and the judiciary.<sup>19</sup> Furthermore, the Ministry of Foreign Affairs has jurisdiction over issues relating to extradition proceedings. Under the Act on the Status of Military Personnel, the military authorities are not competent to investigate and prosecute persons accused of enforced disappearance.<sup>20</sup>

30. The National Constitution confers on the Public Prosecution Service the competence to investigate and to initiate public criminal proceedings, and, in accordance with the

<sup>18</sup> Criminal Code. Article 9. Other acts committed abroad

- (1) Paraguayan criminal law shall apply to other acts committed abroad only when:
  1. The act is punishable under criminal law in the place where it is committed; and
  2. At the time of the commission of the act, the perpetrator
    - (a) Had Paraguayan nationality or acquired it after the commission of the act; or
    - (b) Lacking nationality, was in the national territory and their extradition was refused even though, given the nature of the act, extradition was legally admissible. The provisions of this subparagraph shall also apply when no criminal jurisdiction existed in the place where the act was committed.
- (2) The provisions of article 5, paragraph 2, shall also apply in this respect.
- (3) The penalty may not be heavier than that established in the current legislation of the place where the act is committed.

<sup>19</sup> Code of Criminal Procedure. Article 37. “A punishable offence committed abroad that has consequences in the Republic shall be tried by the courts of the judicial district of the capital, even when the accused has been arrested in another judicial district of the country.”

<sup>20</sup> Act No. 1115/97 on the Statute of Military Personnel. Article 174. “Military courts shall prosecute only military offences or misdemeanours, as defined by law and committed by military personnel on active service. Their rulings may be appealed before the ordinary courts.” “An offence prohibited and punished both under ordinary criminal law and military criminal law shall not be considered as a military offence, unless it was committed by a military official on active service, in the performance of military duties. In the event of doubt as to whether an ordinary or military offence has been committed, it shall be considered as an ordinary offence. Military courts shall have jurisdiction over civilians and retired military personnel only in the event of an international armed conflict and as provided for by law.”

Paraguayan legal framework on measures to guarantee the standard of evidence required for nationals and foreigners to be prosecuted and convicted equally, assumes that the law will be applied without distinction.

31. The procedural safeguards of due process are set out in the Constitution, without distinction of any kind in the effective judicial protection available to nationals and foreigners: that protection is guaranteed to every person under the national territorial jurisdiction. Paraguay also has mechanisms in place for communicating the reasons for detention, providing legal assistance from the start of proceedings and, in the case of foreigners, ensuring communication with their respective consulates, access to justice and presumption of innocence, and so forth.

## Article 12

32. The State investigates cases of enforced disappearance through the Public Prosecution Service. In that connection, in 2011, it established the Special Unit for Human Rights Offences,<sup>21</sup> which has national jurisdiction and is responsible for handling the investigation of the various punishable offences involving human rights violations, including enforced disappearance (Criminal Code, art. 236). Pursuant to the provisions of article 18 of the Code of Criminal Procedure, “the Public Prosecution Service has the obligation to initiate public criminal proceedings in respect of punishable offences brought to its attention, provided that there is sufficient factual information to support their existence”. Accordingly, if it gathers sufficient evidence of such offences, it brings charges before the State courts. The National Police has an Anti-Abduction Unit which is responsible, under the supervision of the Public Prosecution Service, for searching for persons who have allegedly disappeared.

33. Complaints of enforced disappearance may be filed with the National Police, the Public Prosecution Service, the Ombudsman’s Office or other agencies that will subsequently refer the complaints to bodies competent to investigate them. These institutions have legal capacity to access places of detention, while they would need a search warrant to enter private premises.

34. Mechanisms in place to protect complainants include Act No. 4083 of 20 May 2011, which established the Assistance and Protection Programme for Witnesses and Victims in Criminal Proceedings, which supports and protects persons exposed to a serious risk or danger for testifying in criminal proceedings, or victims of an offence. The Programme is implemented through the Attorney-General’s Office, which has set up a Directorate for the Assistance and Protection Programme for Witnesses and Victims in Criminal Proceedings.

35. With regard to specific instruction and training in the investigation of cases of enforced disappearance, there is no specific programme, though both the National Police and the Public Prosecution Service have very competent officials to investigate kidnappings, human trafficking and other offences related to enforced disappearance.

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<sup>21</sup> The Special Unit on Human Rights Offences was established by Attorney-General’s Office resolution No. 52 of 13 January 2011 and public prosecutors were assigned exclusive functions; the preamble to the resolution states that: “In view of the need to effectively combat punishable human rights offences, the Public Prosecution Service, as the body responsible for instituting public criminal proceedings, must have a structure designed to provide a specific response based on concrete action, in order to prosecute such offences and all related offences, and to obtain an appropriate penalty for those who violate the applicable legislation in that regard.”

36. According to the Truth and Justice Commission, established by Act No. 2225/03,<sup>22</sup> 425 persons disappeared or were executed during the dictatorship, comprising 337 victims of enforced disappearance, 59 victims of extrajudicial killings and 29 cases deemed unsubstantiated. This total number of victims has been broken down into 12 groups in an attempt to provide a timeline.

37. There was a total number of 337 cases of enforced disappearance, of which 88 per cent (297) were men and 12 per cent (40) were women. Furthermore, there was a total number of 59 cases of extrajudicial killings, of which 88 per cent (52) were men and 12 per cent (7) were women.

38. For the purpose of the investigations, data was collected from the detention centres throughout the country and in border towns, based on victim testimony and the information yielded by research into the repressive system established under the dictatorship. The cases of enforced disappearance being handled by the Public Prosecution Service are at the investigation stage.

### Article 13

39. Paraguay has no specific legislation governing extradition processes other than the provisions of the Code of Criminal Procedure. There would be nothing to prevent the extradition of a person who was wanted for the offence of enforced disappearance, bearing in mind that a person may be extradited for the purposes of participating in criminal proceedings or to serve a sentence.

40. The State has also signed a series of extradition treaties with the countries with which it maintains diplomatic relations. Although enforced disappearance is not generally mentioned expressly as one of the grounds for extradition in these treaties, extradition for that reason is possible since enforced disappearance is one of the acts classified under domestic law as a crime punishable by imprisonment, with a maximum sentence of not less than 1 year. In addition, many of these treaties provide for the possibility of ordering extradition if the offence is covered by a multilateral agreement in force for both parties, unless there are grounds for exceptions. Paraguay has also ratified the Rome Statute of the International Criminal Court of 1998, which establishes enforced disappearance as a crime against humanity. The preliminary bill to implement that Statute is currently under consideration by Congress.

41. In the past two years the authority responsible for receiving extradition requests — the Directorate of Legal Affairs of the Ministry of Foreign Affairs — has not registered any extraditions related to enforced disappearance.

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<sup>22</sup> Act No. 2225/03. Article 1. “The Truth and Justice Commission, hereinafter referred to as ‘The Commission’, is hereby established. It shall be responsible for investigating acts that constituted or may have constituted human rights violations committed by State officials or parastatal bodies between May 1954 and the promulgation of the Act, and for recommending the adoption of measures to prevent their recurrence, in order to strengthen a democratic and social State governed by the rule of law with full respect for human rights and to promote a culture of peace, solidarity and harmony among Paraguayans.”

42. Extraditable offences must be offences that are punishable in both the requesting State and the requested State. This requirement is known as “double criminality” and is consistent with the principle of legality in criminal proceedings.<sup>23</sup>

43. On the other hand, some treaties concluded at the beginning of the last century set out exactly which offences are extraditable. In such cases, in accordance with the Convention, enforced disappearance must be recognized as an extraditable offence.

44. By way of example, in an extradition case with Belgium, although an extradition treaty had been concluded, it did not provide for drugs trafficking as an extraditable offence. That problem was overcome by referring to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which includes trafficking in narcotics as an extraditable offence. There have been no similar cases in relation to the offence of enforced disappearance.

45. Under domestic legislation, the offence of enforced disappearance is classified as an ordinary offence, in accordance with the Convention. As a result, enforced disappearance is considered an ordinary offence and not a political offence in Paraguay.

46. With regard to the authority responsible for deciding whether to grant extradition requests, it should be noted that all extradition requests are brought before the courts responsible for procedural safeguards in the capital.<sup>24</sup> Final jurisdiction lies with the Criminal Division of the Supreme Court of Justice.

47. In addition to those mentioned above, the basic criteria — in the event that a person’s extradition has been requested for the purpose of appearing in criminal proceedings — include first of all ensuring that the minimum penalty is more than 1 year and, where there has been a conviction, that the penalty imposed was more than 4 months, depending on the applicable treaty.

48. In addition, the statute of limitations for the offence must not have expired. The extradition request must include a reference to the applicable legislation, a summary of the acts in relation to which extradition is requested and a proper identification of the wanted person.

49. In addition, in accordance with the principle of speciality, a person who has been surrendered to the requesting State may not be arrested or prosecuted for an offence other than the original extraditable offence. Furthermore, a person may only be re-extradited to a third State with the consent of the State that granted the original extradition.

## **Article 14**

50. With regard to legal assistance to be afforded in connection with criminal proceedings in cases of enforced disappearance, not only the guarantees established in the Convention but also the provisions of the Inter-American Convention on Forced Disappearance of Persons are applicable and subject to judicial oversight in Paraguay. In addition, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity has been ratified by Act No. 3/2008, and this permits judicial

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<sup>23</sup> Criminal Code. Article 1. Principle of legality. No one shall be punished by any penalty or measure unless the prerequisites for the unlawfulness of the conduct and the applicable penalty are expressly and fully described in a law that was in force prior to the act or omission entailing the penalty.

<sup>24</sup> Code of Criminal Procedure. Article 149. Passive extradition. If a foreign State requests the extradition of an accused or convicted person, the relevant criminal court in the capital of the Republic will have jurisdiction.

cooperation between States. In addition, as previously mentioned, under domestic law the courts have jurisdiction over cases of enforced disappearance committed in any territory under their control.

51. By way of specific example of this kind of cooperation, mention can be made of the various cases of torture and enforced disappearance brought in relation to Operation Condor, which was implemented during the military dictatorship and affected several countries in the Southern Cone.

52. In addition, the Supreme Court of Justice has begun the process of developing human rights indicators, in accordance with the methodology designed by the Office of the United Nations High Commissioner for Human Rights, with a view to evaluating the extent to which the judiciary fulfils its international obligations in the area of human rights, which cover those violations considered to be the most serious in national and international criminal law, such as enforced disappearance.

## Article 15

53. With regard to affording the greatest measure of assistance possible, assisting victims of enforced disappearance and searching for and ascertaining the fate of disappeared persons, the State's investigations were done by the Truth and Justice Commission and resulted in a final report on disappeared persons during the military dictatorship (1954–1989).

54. In addition, in 2009 the Ombudsman's Office established the Directorate-General for Truth, Justice and Reparation, whose remit is to continue investigations and the ongoing search for persons who disappeared or were extrajudicially executed during the military dictatorship, to form a forensic anthropology team and to set up a genetic databank for this task. Accordingly, under Decree No. 1875/09, the report of the Truth and Justice Commission, its dissemination and the implementation of the recommendations contained therein, instructing the organs of the State to offer the necessary assistance in achieving the objectives of the Directorate-General for Truth, Justice and Reparation, are declared to be in the national interest.

55. With regard to the internal procedure for searching for and locating disappeared persons, the National Police initiates investigations, either on the basis of complaints submitted by third parties, or *ex officio*, and in cooperation with the Public Prosecution Service. The details are entered into the police computer system so that police headquarters in the interior of the country can provide assistance. If there are indications that the victim is outside the country, the Public Prosecution Service requests INTERPOL Paraguay to enter the details into the international search system.

## Article 16

56. The obligations with respect to the extradition of persons in relation to acts of enforced disappearance have been incorporated into the domestic legal order by Act No. 1663/01 on ratification of the Rome Statute of the International Criminal Court, and the principle of *aut dedere aut punire* prevails, meaning that persons may only be extradited if they are going to be tried and sufficient guarantees are in place to protect their lives, failing which the person must be tried in the territory in which they were arrested.

57. The extradition process is regulated in accordance with the provisions of chapter IV, section II, on foreign authorities and extradition, of the Paraguayan Criminal Code.<sup>25</sup>

58. The Supreme Court of Justice has ordered extradition for crimes of enforced disappearance committed during Operation Condor. In that connection, the Paraguayan Government cooperated in relation to the extradition order for military doctor Atilio Bianco, issued by judge Gustavo Amarilla in 2009, for trial in Argentina for alleged participation in the illegal deprivation of liberty, abduction, retention and concealment of minors and deletion of civil registry records when he was serving as medical captain of the military hospital in the military garrison of Campo de Mayo in the province of Buenos Aires between 1977 and 1978.

59. Although, as has been mentioned, there is no specific legislation on extradition, it should be noted that under no circumstances will a person be surrendered to another State if there are substantial grounds for believing that they would be in danger of being subjected to enforced disappearance. The expulsion of foreign citizens is regulated by the Migration Act (Act No. 978/96).

60. The prohibition of the expulsion, return, surrender or extradition of a person to another State where there are substantial grounds for believing that they could be the victim of enforced disappearance is also covered in the extradition treaties concluded by Paraguay. On the basis of these treaties, States have the option of delaying the surrender of a person whose extradition has been requested if they believe that this could put the person's life at risk or that there is the possibility that the person will be subjected to torture or cruel,

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<sup>25</sup> Paraguayan Criminal Code. Article 146. Letters of request. Requests made of foreign judges and authorities shall be communicated by letter of request and shall be processed in accordance with current international law, domestic laws and international practices. However, urgent communications may be transmitted to any foreign judicial or administrative authority in advance of a request being made or of a reply to a request being received. The provisions relating to letters of request contained in the Code of Civil Procedure shall be applied where appropriate.

Article 147. Extradition. The extradition of an accused or convicted person shall be subject to current international law, domestic laws or international practices, or to rules on mutual assistance in the absence of applicable norms.

Article 148. Active extradition. Requests for the extradition of accused persons will be ruled on by the criminal court, at the request of the Public Prosecution Service or the plaintiff, in accordance with the previous article, and will be processed through diplomatic channels. Extradition may not be requested if a personal precautionary measure has not been ordered, as provided for in book IV of this Code. Requests for the extradition of convicted persons will be ruled on ex officio by the enforcement courts.

Article 149. Passive extradition. If a foreign State requests the extradition of an accused or convicted person, the relevant criminal court in the capital of the Republic will have jurisdiction. Judgements denying extradition requests will, in all cases, be referred to the Criminal Division of the Supreme Court of Justice, which will decide on the matter within 15 days of receipt of the proceedings. If the person whose extradition is sought is in detention, his or her release will not be ordered until the Criminal Division of the Supreme Court of Justice has handed down its judgement. If it does not do so within the prescribed deadline, immediate release will be ordered and a new detention order may not be issued.

Article 150. Precautionary measures. The criminal court dealing with the case may order the provisional arrest and detention of an extraditable person provided that a sentence or detention order has been handed down, the nature of the offence has been clearly determined and the case is one requiring pretrial detention pursuant to this Code and the international law in force. In an emergency, provisional detention may be ordered even before all the documents required to proceed with the extradition have been furnished. Provisional detention may not last for more than 15 days unless a longer period is stipulated in the relevant treaties. A request for provisional detention may be filed through any reliable channel and shall be communicated immediately to the Ministry of Foreign Affairs.



inhuman or degrading treatment or punishment, which are generally closely linked to enforced disappearance.

61. Non-refoulement is one of the basic principles of refugee law set out in the 1951 Convention relating to the Status of Refugees and regulated in Paraguay through the Refugee Act (Act No. 1938/2002), the implementation of which is the responsibility of the National Commission for Refugees.

## Article 17

62. There are 15 detention centres under the Directorate of Prisons and Corrections of the Ministry of Justice and Labour, and these are officially recognized in accordance with article 17.

63. The National Constitution<sup>26</sup> and criminal legislation contain provisions prohibiting secret or unofficial detention, and establish the procedural rights of all those prosecuted for an offence. Under the Paraguayan penal system, the Public Prosecution Service directs investigations into offences and files criminal charges, and the courts responsible for procedural safeguards ensure compliance with procedural safeguards and oversee investigations. In addition, the enforcement judges are responsible for the enforcement of sentences, compliance with the aims of custodial sentences and the constitutional purposes of criminal penalties, and the defence of the rights of convicted persons.

64. With regard to measures taken to ensure that persons deprived of their liberty can communicate with their families and have access to lawyers and doctors from the moment of their arrest, in accordance with the regulations in force, the National Police informs the person indicated by the person under arrest and informs the duty prosecutor, duty public defender or competent judge of the grounds for the detention. In addition, if the person is a foreigner, the National Police informs the relevant consulate. Some prisons have telephone booths for persons deprived of their liberty to communicate with their families.

65. Domestic legislation does not stipulate specific conditions for communication with persons deprived of their liberty, but it does guarantee it. Prisons have special visiting hours for family members and lawyers, for example; consular visits are carried out regularly and without restriction.

66. The State institutions responsible for the supervision of detention centres are the Ministry of the Interior, which through the Human Rights Directorate monitors conditions in places of police custody, the Public Prosecution Service and the judiciary. There is also the Inter-Agency Commission on Monitoring and Visits to Juvenile Detention Centres.

67. Independent bodies with a mandate to visit places of detention are the Ombudsman's Office and the national mechanism for the prevention of torture, established under Act No. 4288 of 20 April 2011.

68. With regard to the guarantee that all persons are entitled to take proceedings before a court to determine the lawfulness of the deprivation of liberty, habeas corpus is used and is carefully regulated in the National Constitution, with three modalities for giving effect to

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<sup>26</sup> Constitution. Article 12. "Detention and arrest: No one shall be detained or arrested without a written order issued by a competent authority, except for those caught in flagrante delicto in relation to a crime punishable with a prison sentence. All arrested persons have the right: (1) To be informed at the time of their arrest of the grounds for their arrest and of their right to remain silent and to be assisted by a counsel of their choice. At the time of the arrest, the official must produce an arrest warrant; (2) to have their family or the persons of their choice immediately informed of their arrest ..."

the rights to physical liberty and personal security, unlike in previous constitutions. Attention should be drawn in particular to general habeas corpus, which is intended to put a stop to conditions that aggravate the detention of persons. Act No. 1500/99 governing the constitutional guarantee of habeas corpus establishes the procedure for this.

69. With regard to up-to-date official registers of persons deprived of liberty in prisons, there is a system to record admission and procedural status *inter alia*. In addition, the National Police has set up a system to register persons deprived of their liberty, as a mechanism for prevention and respect of human rights. This system keeps standardized records of communications with the competent authorities on the detention or arrest of all persons and their first appearance before a judge or prosecutor, also guaranteeing free access to the services of a lawyer. The law also establishes the obligation to keep a record of the medical examination of persons deprived of their liberty. In this regard, the Ministry of the Interior applied to the Special Fund of the Optional Protocol to the Convention against Torture, administered by the Office of the United Nations High Commissioner for Human Rights, for the implementation of a project to systematize police custody records and set up a single registration mechanism for all police stations in the country.

### **Article 18**

70. In accordance with article 17 of the Convention, the State has a registration system in all prisons, with a focus on the procedural details of the detainee. Any person with a legitimate interest may access the data, without restriction. In accordance with article 135 of the National Constitution, all persons may use the remedy of habeas data to access information or data about themselves.

### **Article 19**

71. As recommended in the report of the Truth and Justice Commission, the State has provided the necessary resources for searches. In this context, by virtue of Presidential Decree No. 7101/11, a national team to investigate, search for and identify persons detained and disappeared or extrajudicially executed during the dictatorship in Paraguay from 1954 to 1989 has been formed. Article 2 of this Decree has been partially amended, and provides that “coordination will be the responsibility of the Directorate for Reparation and Historical Memory, attached to the General-Directorate for Human Rights of the Office of the Deputy Minister of Justice and Human Rights in the Ministry of Justice and Labour”.

72. With regard to the use of the medical or genetic data of disappeared persons, under SG Resolution No. 348 of the Ministry of Public Health and Social Welfare, a genetic databank was set up for the purpose of identifying disappeared persons. It should be noted that all information is collected in the framework of investigations led by the Public Prosecution Service, in line with article 19, paragraph 1.

73. With respect to genetic data, a more detailed response will be provided in paragraphs 92 to 97.

### **Article 20**

74. Under Paraguayan legislation, access to information on persons deprived of their liberty is not restricted. All persons who have a legitimate interest have constitutional guarantees of access to this information, either by means of habeas corpus or habeas data, neither of which may be suspended under any circumstances, including in a state of emergency.

75. The remedies available in the event of refusal to provide information on persons deprived of their liberty or personal information about them held by the State are, as mentioned above, habeas corpus or habeas data, both of which are constitutional guarantees to give effect to rights enshrined in the preambular part of the Constitution.

## Article 21

76. With respect to the prison system, the Paraguayan State is guided by Prisons Act No. 210/70; in order to ensure the reliable verification of the release of prisoners, the judicial authorities notify the Ministry of Justice and the prison where the person is being held. The National Police is then informed and its Legal Department checks fingerprints and takes photographs, for example, in order to properly register and identify the person being released. The release is also entered in the prison logbook. The National Police's IT department is responsible for entering both arrest warrants and release orders in the computer system once they have been notified by the judicial authorities.

77. Under national legislation, the bodies responsible for supervising the release of prisoners are the judiciary, the Ministry of Justice and Labour and the National Police.

## Article 22

78. The remedy available to any person deprived of their liberty to test the lawfulness of deprivation of liberty, or to any other person with a legitimate interest, is habeas corpus,<sup>27</sup> governed by Act No. 1500/99.

79. As to measures to prevent the unlawful deprivation of liberty, reference should be made to the project on the registration of detainees in police stations in Paraguay implemented by the Ministry of the Interior and the National Police, through which a

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<sup>27</sup> National Constitution. Article 133. Habeas corpus. "This safeguard may be invoked 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.

Habeas corpus may be:

1. 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.

2. 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.

3. 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. This safeguard may also be invoked 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 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."

register has been developed and systematized, in accordance with the recommendations of the Subcommittee on Prevention of Torture.

80. With regard to administrative disciplinary sanctions, the Ministry of the Interior and the National Police, in cooperation with the International Committee of the Red Cross (ICRC), have worked on the introduction of the human rights perspective into the Disciplinary Regulations, as a result of which the following sanctions have been applied to serious disciplinary offences committed in institutional service: (a) serious failure to comply with specific duties or obligations in the discharge of functions as set out in legislation and regulations, will be subject to a penalty of 5 to 15 days' detention (art. 41, para. 1); (b) denying or complicating in any way the processing of any appeal, claim or petition covered by laws or regulations, will be subject to a penalty of 5 to 10 days' detention (para. 3); (c) illegally deleting, amending or altering data in the computer records of the institution will be subject to suspension (para. 6).

81. In the prison system, if the prison official does not record the exact details of the prisoner's deprivation of liberty, they may be found to have committed an administrative offence and may face an administrative inquiry. The prison official also has the obligation to properly and accurately inform their immediate superiors; if the information is not provided properly, the official is liable to administrative penalties.

### **Article 23**

82. With regard to training programmes to prevent the involvement in enforced disappearances of civil, police or military law enforcement personnel, medical personnel, public officials and other persons involved in the custody of persons deprived of liberty, training programmes for the military and commissioned and non-commissioned national police officers include content on human rights and the need for in-service training in this area is accepted.

83. In this connection, the Ministry of the Interior has promoted an education programme on international human rights standards for police, at each headquarters in the interior of the country and directed at operational staff, and, in cooperation with ICRC, has developed courses and incorporated human rights as a cross-cutting topic in the curriculum of the police academy and police training college. The Ministry of Justice and Labour regularly promotes training courses for prison officials.

84. As a preventive measure, the Ministry of Defence has begun drafting a manual on human rights and international humanitarian law in the Armed Forces, which will include the provisions of the Convention, to be used in all training programmes for military personnel.

85. As mentioned previously, Paraguayan legislation in relation to enforced disappearance is recent, and therefore, in the case of the military and police institutions, provisions refer to being exempt from obeying any order that is in violation of the Constitution, legislation and human rights,<sup>28</sup> and do not specifically refer to enforced disappearances, although a mechanism of recourse to a higher authority is in place.

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<sup>28</sup> Act No. 1115/97 on the Status of Military Personnel: "Armed forces personnel are exempt from obeying any order that undermines the constitutional, democratic and representative system or lawfully constituted authorities, or that seriously violates fundamental human rights" (art. 20). Article 10 of the National Police Organization Act (Act No. 222/93) sets out the following rights, obligations and prohibitions for police personnel in post: "Obeying orders and instructions from their superiors,

## Article 24

86. The definition of victim in national legislation includes the disappeared person as well as all natural persons who have directly suffered harm. As previously mentioned, the Paraguayan State has brought the definition of the crime of enforced disappearance in line with the definition in the Convention. Article 236 of the Criminal Code provides that any person working as a State official or any person or group of persons acting with the authorization, support or acquiescence of the State, and who arrests, detains or abducts one or more persons or in any way deprives them of their liberty, and refuses to provide information on their whereabouts or to acknowledge the deprivation of liberty, or conceals the fate or whereabouts of the disappeared person, thereby placing them outside the protection of the law, shall be punished by no less than 5 years' imprisonment. In addition, Act No. 838/96, on payment of compensation to victims of human rights violations during the dictatorship of 1954 to 1989, provides for compensation in cases of enforced disappearance for political or ideological reasons. One article of that Act provides that the right to compensation may be claimed by the surviving spouse or blood relatives up to the first degree.

87. With regard to mechanisms for investigations, as has been mentioned, there is a Special Unit for Human Rights Offences in the Public Prosecution Service, which is responsible for conducting the relevant investigations and, if there is enough evidence, filing charges before the national courts. This Special Unit deals with complaints of enforced disappearance (Criminal Code, art. 236). Complaints may be filed free of charge with the Criminal Complaints Offices of the Public Prosecution Service, without the need for a lawyer; complaints may also be lodged with the Human Rights Directorate or during the Directorate's visits to places of detention. In addition, the operational priorities of the Ministry for Women clearly include comprehensive support in cases of violence against women, including those who might be victims of enforced disappearance.

88. Comprehensive support includes legal, psychological, social and medical assistance as well as monitoring of victims' reintegration into society. A special nationwide helpline, SOS Mujer 137, was set up in 2011 to provide guidance, support and referrals to women affected by violence and is available 24 hours a day, including on weekends and public holidays. The helpline can be accessed free of charge from any landline or mobile phone. In addition, the Mercedes Sandoval shelter for women affected by violence, which is the country's first such shelter and located in the Central department, has places for 50 persons, including children, and has been specially designed to be accessible to women with disabilities.

89. As part of the strategy to decentralize public policy on prevention, and on support and protection for women affected by violence and trafficking in persons, four regional centres run by the Ministry for Women have been built and fitted out in the departments bordering Argentina and Brazil (Alto Paraná, Canindeyú and Amambay) and in the Paraguayan Chaco (Boquerón), where there is a sizeable indigenous population.

90. Attention should be drawn to the establishment in 2009 of the special division for victims of gender violence in the National Police, with the technical support of the Ministry for Women. To date, six police stations have been assigned police staff specially trained to receive complaints and take immediate action to protect women in situations of violence: two in the interior of the country (2009), three in the metropolitan area (2010) and one in

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pursuant to the Constitution, laws and regulations. Manifestly unconstitutional or unlawful orders and instructions shall not be subject to the duty of obedience.”

the Central department (2010). Along with the four new regional centres, police stations are to be created in the same cities, including in Chaco.

91. Concerning measures to establish mechanisms guaranteeing the right to know the truth regarding the circumstances of an enforced disappearance and the fate of the disappeared person, through the Truth and Justice Commission (Act No. 2225/03) the Government established a historical investigation mechanism. At the end of the Commission's mandate, the Directorate-General for Truth, Justice and Reparation was set up under the Ombudsman's Office, to continue investigations and the ongoing search for persons who disappeared or were extrajudicially executed during the dictatorship of 1954–1989.

92. By Decree No. 7101 of 11 August 2011, the national team to investigate, search for and identify persons detained and disappeared or extrajudicially executed from 1954 to 1989 was formed, and it is now coordinated by the Directorate for Reparation and Historical Memory, under the Ministry of Justice and Labour, in accordance with Decree No. 10970 of 18 April 2013. The team is composed of the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Public Works, the Ministry of Defence, the Ministry of Public Health and Social Welfare, the Ministry of Justice and Labour, the Public Prosecution Service, the Civil Cabinet of the Office of the President of the Republic, the Counsel-General's Office, the Ombudsman's Office and the National Secretariat for Culture.

93. For the purpose of the investigations, data was collected from detention centres around the country and in border towns, based on victim testimony and the information yielded by research into the repressive system established by the dictatorship from 1954 to 1989. The testimonies of relatives of persons reported as having been forcibly disappeared, and of expert witnesses who approached both the Truth and Justice Commission and the Directorate-General for Truth, Justice and Reparation, were crucial to the success of the excavations and the discovery and exhumation of skeletal remains.

94. The most remarkable results include the discovery of 21 such remains exhumed in coordination with the Public Prosecution Service and the Ministry of the Interior: 3 were discovered during the mandate of the Truth and Justice Commission, 13 were discovered on the premises of the Special Branch of the National Police between 2009 and 2012, and 5 were exhumed from a mass grave in the locality of Carlos A. López (department of Itapúa) in early 2011. In the course of the excavations carried out at the Special Branch (in the Stroessner period, the Security Guard) emptied mass graves and small skeletal remains such as fingers and teeth were discovered.

95. The first excavations and exhumations were carried out with the cooperation of the Argentine Forensic Anthropology Team with the technical assistance of the Argentine Fund for Horizontal Cooperation. Cooperation with the Fund was begun in 2006 by the Truth and Justice Commission and continued with the Directorate-General for Truth, Justice and Reparation once the Commission's mandate had expired. A project on technical assistance in searching for persons who were detained and disappeared or extrajudicially executed during the period of State terrorism in the dictatorship from 1954 to 1989 has been approved and is awaiting implementation.

96. Later excavations and exhumations, including in the locality of Carlos A. López, were carried out entirely by members of the Directorate-General for Truth, Justice and Reparation in coordination with the Public Prosecution Service and the Ministry of the Interior, through the Criminalistics Department of the National Police, but were in line with the guidelines provided on an ongoing basis by the Argentine Forensic Anthropology Team, who conduct regular missions in Paraguay in order to keep abreast of progress of finds and ensure the continuity of the process of identifying human skeletons discovered to date, by means of laboratory and genetic analyses. This is in compliance with the

provisions of the Convention on the need for cooperation between States that contributed to the same situation, in this case Operation Condor. It also addresses the fact that Argentine prisoners were detained and disappeared in places of detention in Paraguay.

97. Progress achieved includes the determination of the full genetic profile of three human skeletons, which now needs to be compared with possible relatives in order to establish their identities in a scientifically rigorous manner. As the creation of the genetic databank is a recent development, it is still in the process of being implemented. With the support of the Argentine Forensic Anthropology Team, 88 samples have been collected. In addition, the Public Prosecution Service has set up a forensic laboratory, and the second stage of implementation will involve preparing the laboratory for the arrival of a Chemical Unit, which will have the necessary technology for DNA analysis.

98. The Government has begun the process of establishing reparation and memory policies; to that end, by Decree No. 5619 of 15 December 2010, the executive set up the Inter-Agency Commission for the Establishment of a Network of Historic Sites of Conscience of the Republic of Paraguay, the main objective of which is to recover the memory of these sites, establishing a connection between their history, its present-day implications and the construction of the historical memory of the recent past. In addition, an advisory council is being formed, with representatives of civil society, victims and families of detained and disappeared persons and human rights organizations.

99. The final report of the Truth and Justice Commission contained a list of more than 60 places of detention. In addition, civil society organizations working in this area have identified more than 200 sites that were used as places of detention during the dictatorship. In this connection, in 2011 the following 10 places of detention and torture were listed as historic sites of conscience: the Presidential Escort Battalion; the Investigations Department of the National Police; the Third Police Precinct; Buen Pastor women's prison; the Special Branch of the National Police; infantry regiment RI 14; the national prison of Tacumbú; the Emboscada concentration camp; and the Abraham Cué concentration camp.

100. In this connection, the Ministry of the Interior, by virtue of Resolution No. 118/11, authorized the establishment of Museums of History, as part of the Network of Historic Sites of Conscience, in the following units of the National Police: (a) the Criminal Investigation Department, where the Metropolitan Police Investigation Department (now the Intelligence Department) used to operate; (b) the Third Metropolitan Police Precinct; (c) the Special Branch of the National Police; and (d) the First Precinct in San Juan Bautista Misiones (formerly Abraham Cué).

101. The following sites have already been set up: the Criminal Investigation Department, where the Metropolitan Police Investigation Department (now the Intelligence Department) used to operate; the Special Branch of the National Police (formerly the Security Guard); and the First Precinct in San Juan Bautista Misiones (formerly Abraham Cué). Officials from the Directorate-General for Truth, Justice and Reparation are working at these sites, welcoming visitors and providing detailed information about each one.

102. In addition, by Resolution No. 079-007/11 of 27 September 2011, the Social Security Institute approved a project on historical memory in the Institute, under which plaques referring to the Stroessner regime are being removed from all Social Security Institute buildings. Paragraph 3 of the resolution provides that the Parque de la Salud Department and the Infrastructure Directorate should be asked to coordinate the creation of a memorial site for victims of the dictatorship.

103. As to measures taken to give effect to the right to prompt, fair and adequate compensation, the Paraguayan State has developed two options: (a) to bring cases before the ordinary courts, established under ordinary laws and covered in the various legal instruments governing this area: the Criminal Code (arts. 57 and 59); the Code of Criminal Procedure (arts. 439–448); the Civil Code: (arts. 1833–1845); (b) to go through administrative channels, which can be used by persons who were victims of the Stroessner

dictatorship from 1954 to 1989. In such cases it is the Ombudsman's Office that is responsible for applying the law, under Act No. 838/96, as amended by Acts Nos. 1935/02, 3075/06, 3603/08 and 4381/11.

104. Article 2 of Act No. 838/96 provides that: "The following human rights violations on political or ideological grounds are subject to compensation under this Act: (a) enforced disappearance; (b) summary or extrajudicial execution; (c) torture resulting in serious and manifest physical or psychological consequences; and (d) unlawful deprivation of liberty for more than 1 year without an order from the competent authority or on the basis of proceedings or a sentence in application of Act No. 294 of 17 October 1955 and Act No. 209 of 18 September 1970." Claimants had 30 months from the enactment of the legislation to file for compensation with the Ombudsman's Office. The maximum amount of compensation was set at 3,000 times the minimum daily wage for non-specified activities.

105. Successive reforms aimed to extend the time allowed for claiming compensation and also the number of those eligible in respect of some of the above-mentioned violations, although the maximum amount of 3,000 times the minimum daily wage was maintained. It should be noted that the compensation provided for in the successive special Acts mentioned above is independent of any financial harm incurred for political reasons during the period in question; to obtain compensation in that respect the person concerned must prove to the ordinary courts the amounts involved and show that they were politically motivated acts.

106. To date, the Ombudsman's Office has granted compensation in a total of only nine cases of enforced disappearance.

107. With regard to the return of remains, the Secretariat for Paraguayan Returnees and Refugees of the Office of the President of Paraguay adopted Resolution No. 247/2011, which, inter alia, establishes a procedure under expenditure item 846, subsidies and social assistance for persons and families in the private sector, and also includes a protocol for the handover of remains and the return of Paraguayan nationals.

108. With respect to the guarantees of non-repetition and with a view to preventing secret detention, Act No. 4288/11 on the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment<sup>29</sup> was passed in 2011; the mechanism was set up recently and has started work. In addition, as part of the implementation of the register of prisoners, the Ministry of the Interior has organized training on the prevention of torture, with a focus on promoting best practices.

109. The Human Rights Network of the Executive Branch, coordinated by the Office of the Deputy Minister of Justice and Human Rights, of the Ministry of Justice and Labour, was established by Decree No. 2290/09 with the objective of coordinating and developing policies, plans and programmes from the executive with a view to improving mechanisms for the promotion, protection and realization of human rights.

110. The Network has started work on the first national human rights plan, approved by Presidential Decree No. 10747 of 3 March 2013; it was amended in part by Decree No. 11324 of 28 June 2013. The plan addresses the issue of transitional justice (see annex II).

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<sup>29</sup> Article 1. Objective. This Act creates the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment pursuant to Act No. 2754 of 27 September 2005 ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The mechanism created by virtue of the Act will form part of the international system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.



## Article 25

111. The National Secretariat for Children and Adolescents, as the lead agency in this area, supervises compliance with policies and plans guaranteeing the full enjoyment of the rights of children and adolescents. In this connection, there are social policies for the special protection of children and adolescents separated from their families and for the prevention of cruel, inhuman or degrading treatment of juvenile offenders. The Secretariat also has a coordinating unit for prevention, and for assistance to children and adolescents who are the victims of trafficking or sexual exploitation. The Secretariat has been designated the central authority for international return of children and access rights and also has other protection programmes that are of tangential relevance to the issue.

112. With regard to cooperation between States in searching for and identifying disappeared persons, the Directorate-General for Truth, Justice and Reparation, under the Ombudsman's Office, runs a project on technical assistance in the search for disappeared and detained or extrajudicially executed persons during the period of State terrorism in the dictatorship of 1954 to 1989, in the framework of the Argentine Fund for South-South and Triangular Cooperation, mentioned above.

113. The best interests of the child are dealt with in the Code on Children and Adolescents (Act No. 1680/2001), article 3 of which provides: "Any measure taken concerning children or adolescents shall be based on their best interests, with the aim of ensuring their overall development and the full enjoyment of their rights and guarantees."

114. With regard to the international return of minors, the following legal instruments apply: (a) the Convention on the Civil Aspects of International Child Abduction, ratified by Act No. 983/96; (b) the Inter-American Convention on the International Return of Children, ratified by Act No. 928/96; (c) the Convention on the Rights of the Child; and (d) the Code on Children and Adolescents (Act No. 1680/01).

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