

Presentation to the Committee against Torture

Alternative Report to the fourth, fifth and sixth periodic reports due in 2003, 2007 and 2011, submitted in reply to the list of issues (CAT/C/PRY/Q/4-6). Paraguay

Document prepared by the Paraguayan Human Rights Coordinating Committee (Coordinadora de Derechos Humanos del Paraguay – (CODEHUPY), the Paraguayan Chapter of the Inter-American Platform for Human Rights, Democracy and Development (Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo – PIDHDD)

Presentation

1. This report was prepared by the Paraguayan Human Rights Coordinating Committee (CODEHUPY), Paraguayan Chapter of the Inter-American Platform on Human Rights, Democracy and Development (PIDHDD), a network of human rights organizations that work to promote, monitor and protect human rights in Paraguay, along with the Paraguayan chapter of the “28 de setiembre” Campaign for the decriminalization of abortion in Latin America and the Caribbean¹, and the “Abre Puertas” Campaign against sexual exploitation of children and adolescents²..
2. CODEHUPY has a permanent legal team to provide legal aid and litigate human rights violations cases, both nationally and with inter-American and global agencies. This team continually registers complaints of human rights violations perpetrated nationally.
3. Codehupy has been publishing annual reports on the situation of human rights since 1995³..
4. This report was prepared by consulting internal documents, as well as official documents from international organizations and other civil society organizations and universities.
5. This report follows the format of the report submitted by Paraguay in response to the list of issues (CAT/C/PRY/Q/4-6) transmitted to the State party in accordance with the optional reporting procedure (A/62/44, paragraphs 23 and 24).

¹ An initiative of the regional feminist movement. In Paraguay it is composed of the Coordination of Women of Paraguay (CMP)- made up of Aireana, Alter Vida, Base Educativa y Comunitaria de Apoyo (BECA), Research and Documentation Centre (CDE), Circle of Women Lawyers of Paraguay, Colectivo de Mujeres 25 de Noviembre, Paraguayan Center of Sociological Studies, Kuña Roga and Women for Democracy, and the Campaign for an Inter-American Convention on Sexual and Reproductive Rights, Catholics for Choice (CDD - Paraguay), Committee on Latin America and the Caribbean for Defense of the Rights of Women (CLADEM - Paraguay), the Feminist Communication Team, Luna Nueva y Las Ramonas Group.

² An initiative of INECIP – PY e INECIP – Argentina with support from the EU.

³ http://www.codehupy.org/index.php?option=com_docman&task=cat_view&gid=18&Itemid=21

Article 1 and 4

1. The most recent legislative changes to the criminal system show that amending the definition of torture as a criminal offense in accordance with international instruments, the judgment of the Inter-American Court of Human Rights⁴, recommendations by the Truth and Justice Commission⁵ and United Nations bodies⁶ is not a priority for the Paraguayan Government.

4 Case of Goiburúet al. v. Paraguay. Judgment of September 22, 2006. "although the definition of the offenses of torture and "forced disappearance" in force in the Paraguay Penal Code would allow certain conducts that constitute acts of this nature to be punished, their analysis reveals that the State has defined them less comprehensively than the applicable international norms. International law establishes a minimum standard with regard to the correct definition of this type of conduct and the minimum elements that this must observe, in the understanding that criminal prosecution is a fundamental way of preventing future human rights violations. In other words, the States may adopt stricter standards in relation to a specific type of offense to expand its criminal prosecution, if they consider that this will provide greater or better safeguard of the protected rights, on condition that, when doing so, such standards do not violate other norms that they are obliged to protect. Also, if elements considered irrevocable in the prosecution formula established at the international level are eliminated, or mechanisms are introduced that detract from meaning or effectiveness, this may lead to the impunity of conducts that the States are obliged to prevent, eliminate and punish under international law". In view of this finding, The Inter-American Court of Human Rights set out among the remedial measures (Measures of satisfaction and guarantees of non-repetition) the Adaptation of crimes of torture and forced disappearance of persons to international law, and that "As indicated with regard to the nature of the penal definitions of torture and forced disappearance of persons contained in the Paraguayan Penal Code in force (*supra pars.* 91 to 93) and bearing in mind the State's obligations arising from the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and Article 2 of the American Convention, the Court deems it pertinent to order the State, as a guarantee of non-repetition of the facts of the case, to adapt, within a reasonable time, the definition of the offenses of "forced disappearance" and torture contained in Articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law. Thus, item the operative paragraph 12 states that: The State must adapt, within a reasonable time, the definition of the crimes of torture and "forced" disappearance of persons contained in Articles 236 and 309 of the current Penal Code to the applicable provisions of International Human Rights Law, in the terms of paragraph 179 of this Judgment.

⁵ The Truth and Justice Commission (CVJ), an official institution established pursuant to Act N° 2225/03 to investigate violations of human rights committed during the dictatorship of Alfredo Stroessner, and part of the democratic transition, ended its mandate in 2008 by delivering its Final Report called "Aniva hagua oiko" (not to happen again) to the three branches of the State. In its conclusions and recommendations on "Measures to promote the constitutional and legal reforms to adapt the regulatory framework of human rights to international law" recommends: Adapt Article 309 of the current Criminal Code to the international definition of torture, encompassing mental and physical injure, and include specific reference to "other cruel, inhuman or degrading treatment" as required by international law which Paraguay is a party. Also, it

2. The National Commission for the Study of Criminal and Prison System Reform⁷ was created under Act N° 2403/04, to review necessary amendments to the Criminal Code, the Code of Criminal Procedure and the Prison Code. With regard to the Criminal Code, the amendments deemed as necessary by the Commission were promulgated as Act N° 3440/08, without modifying the poor definition of torture as a criminal offense.
3. Civil society was invited to submit proposed amendments to prison system laws. CODEHUPY submitted several proposals, including a proposal to amend Article 309 in accordance with international standards. However, despite lobbying done before the Commission and before sessions of both the Chamber of Deputies and the Senate, the amendments were not approved.
4. With regards to the proposed amendment to Article 309 of the Criminal Code, referred to in items 5 and 6 of the State party Report, it is an isolated initiative, not a policy of Congress, which was introduced by Senator Carlos Filizzola after approval of the amendments to the Criminal Code, without the inclusion of torture as a criminal offense. Mr. Filizzola was the only senator who stood up for the amendment of Article 309, when the reform was before the Senate.
5. Senator Carlos Filizzola stated the following reasons, *“Congress passed amendments to the Criminal Code making no changes whatsoever to Articles 236 and 309, despite having informed the Inter-American Court of Human Rights, that it did so, during the oversight of the judgment of the Goiburú case and others”*

Article 2

6. The Paraguayan State, in response to paragraphs 7 to 40, makes no reference to the application, in practice, of legal safeguards against torture mentioned in national legislation, as there is no mechanism to make application possible. Actions by police, prosecutors and judges are far from what is legally mandated, particularly as

should not include injury as a necessary factor.

⁶ Concluding observations on the third periodic report of Paraguay to the Committee against Torture, A/55/44, par. 150 b) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading punishment, Manfred Nowak, Mission to Paraguay, A/HRC/7/3/Add.3, par. 17.

⁷ This Commission was composed of members of the Chamber of Deputies and Senators, the Executive Branch, the Judiciary Branch, and the Attorney General.

concerns detention, oral proceedings, the presence of defense counsel at the time of the testimony and judicial control of detention and preventive detention⁸..

7. Torture is still practiced systematically, mainly by members of the National Police⁹, either to obtain confessions and/or simply as punishment. Torture mainly occurs at the time of arrest and/or between arrest and transfer to a police station¹⁰..

8. The main method used is stripping detainees naked and handcuffing their hands and feet. They are forced into a kneeling position and their hands and feet are bound with rope. Then a plastic bag is placed over their heads and their testicles are squeezed until they lose consciousness. This method, which is carried out during the night and early hours of the morning, is clearly designed to leave few visible marks. A number of detainees informed the Special Rapporteur that they managed to bite through the first bag enabling them to breathe, but that when they did so, more bags were placed over their heads. A number of detainees also informed the Special Rapporteur that they were repeatedly subjected to the same procedure for periods of up to four days¹¹..

9. During the reporting period, CODEHUPY registered numerous cases of torture and cruel, inhuman and degrading treatment, which were made known to the appropriate authorities, without those cases being investigated with due diligence, or to date, those responsible being punished. The following is a transcription of some cases, based on the type of violations that occurred.

⁸ A clear example of this is the existence of resolution N° 176 of 10 February 2010, which contains instructions from the Office of the National Police Commander for the establishment of a registration system of the sort recommended by the Subcommittee. The Ministry of the Interior informed the Subcommittee that these instructions have not yet been carried out. CAT/OP/PRY/2. Para. 45

⁹ In its previous report, the Subcommittee identified the police as responsible for acts of torture and other ill-treatment of detainees and made a series of recommendations, which included the auditing of the building structure of the police stations, training for police personnel, the establishment of a complaints system and a new registration system, and improved working conditions of police personnel. CAT/C/PRY/2 Para. 24.

¹⁰ On the basis of visits to places of detention, numerous private interviews held with victims and witnesses, as well as forensic medical evidence, the Special Rapporteur concludes that torture is still widely practiced during the first days of police custody in order to obtain confessions. A/HRC/7/3/Add.3 Par. 44.

¹¹ A/HRC/7/3/Add.3 Par. 45 A/HRC/7/3/Add.3 Par 45

10. After being arrested around 1:00 pm on Sunday, January 11, 2009, detainees were taken to a military detachment in Tacuatí, department of San Pedro, and locked in a prison cell. They then were blindfolded, and taken a few meters away, where they were stripped in the presence of police and military. At intervals of about an hour, plastic bags were placed over their heads to give them the sensation of being asphyxiated and their testicles were squeezed, while they were forced to implicate rural leaders in the burning of the military detachment which occurred on December 31, 2008, among them Demetrius Alvarenga. The case was reported to Paraguayan President Fernando Lugo and the Minister of Interior Rafael Filizzola on January 19, 2009¹².
11. The community of “Comuneros”, located 30 Km from Minga Guazú, in the Department of Alto Parana, was established in 2006 and today there are 96 families living in an area of 130 hectares. As lands in the community are not sufficient and there are many landless families in this area, the community plans to expand the community, and about 200 people camped on lands owned by Olinda S.A., which according to community leaders, belong to INDERT. On Tuesday, July 21, 2009, at 11:30 am, people were evicted from the camp located on land adjacent to “Comuneros”. The eviction was done by members of the Special Unit of Environmental and Rural Police (APER), led by Deputy Commissioner William Duarte, without the presence of prosecutors and without showing a court order or badges. According to members of the community, the police suddenly emerged from a forest near the camp, firing gunshots into the air. During the intervention a knife was stuck into a community member’s thigh. **Two community members were taken to the forest and tortured; a gun was put into the mouth of one of them, while the other one suffered multiple cuts on his arm with a knife; then they both were forced to eat raw cassava and corn. Other police officers went to a stream where Rosa María Mereles was. When she saw that the police had one of her daughters, she rushed to defend her, and was brutally hit by the police. They put her foot on a board with nails and one of policemen trod heavily her foot with his boot. the blows she received to her abdomen caused hematomas in her uterus.** Andrés Aquino (19) and Benedicto Rodríguez (40), the two rural community members tortured in the forest, were taken to the local police station and released a few hours later¹³.

¹² Case of Crispín Fernández, Alcides Martínez and Americo Fernandez Case, reported by Codehupy to the Attorney General, the Ministry of Interior, April 4, 2010.

¹³ The “Comunero” Case was reported in the Public Hearing, convened by the Human Rights Commission of the Senate on 4 December 2009. To date there is no person tried.

12. On Friday August 21, 2009, in the town of Guayaibi, Department of San Pedro, at 5:00 pm, Police Chief Virginia Villar Burgos, accompanied by two police officers from the Police Station in Guayaibi, headed toward Emiliana Quiñonez's home, where she was working. The Chief addressed Emiliana arrogantly, "jaha che ndive caracha" (Come with me, bug!). At the police station, the Chief stated that there was a report of a theft and she was the accused, forcing her to confess to the alleged theft. The Police Commissioner Virginia then ordered that a black plastic bag be put over her over, hit her neck, punched, kicked and insulted her as well, taking the plastic bag off her head every so often. The Chief then stripped her naked and took her to the police station yard where she was sprayed with cold water¹⁴. After that, the Police Chief grabbed a nightstick that had nails in it and threatened to put it in Emiliana's vagina if she did not confess. After several hours of torture Emiliana Quinonez lost consciousness and was taken to the Emergency Medical Center by order of the local Police Headquarters, where she stayed for several days.¹⁵
13. A group of prisoners in the Special Group was beaten on the night of March 1, 2009, when one of them asked a prison guard for a soda because of the intense heat, and other prisoners had asked the same. The prisoners were accused of attempting to riot and handcuffed in a cell and then beaten with nightsticks and kicked by riot police. The victims were Luis Rojas, Flaminio Acosta, Ovidio Ramírez and José González. Rojas was admitted to the Rigoberto Caballero Police Hospital in critical condition, while Flaminio Acosta, Ovidio Ramirez and José González, suffered serious injuries. José Gonzalez was moved to the punishment cell for 8 days. After the complaints, Rojas was transferred to Tacumbú National Prison¹⁶ ..
14. On July 1, 2008, after violently breaking up a rural camp located next to Engineer Camperchioli's property in the community of Calle 6 in the District of Horqueta, Department of Concepcion, police officers, led by Police Chief Ricardo Chaparro, subjected about 65 members of rural communities to torture and cruel, inhuman and degrading treatment. The police officers, with the consent of Chief Chaparro, forced community members to lie face down, with their hands behind their neck, while being walked and/or jumped upon and kicked in several areas of their body (stomach, ribs, testicles, head, legs, arms; and, generally all over); allowing the butts

¹⁴ Pouring water from a hose connected to a faucet.

¹⁵ To date, the perpetrator was dismissed, but without undertaking any investigation required by this type of crime, and, on the sole basis of the victim's statement. Codehupy has information that she received threats to backtrack on her first complaint against the perpetrator.

¹⁶ The complaint was reported by Codehupy, on March 3, 2009, before the Human Rights Commission of the Prosecutor-General's Office, in charge of Fátima Britos. It is filed as Case N° 1-1-02-0001-2009-1534.

of guns to drop on heads and necks; they were urinated on and forced to eat dirt. They were threatened with being executed and/or burned alive before the Public Prosecutor, Dora Irrazábal, arrived and that they would say it was a confrontation with the police. Women, who complained about such ill-treatment, were told that they were only worried only about being without their men¹⁷.

15. As for the investigation of torture cases¹⁸, the Public Prosecutors Office's Special Unit for Human Rights, which is responsible for the criminal investigation of these cases, has neither an Investigation Protocol nor do they apply the Istanbul Protocol. Codehupy has information and documentation that confirms that complaints that are filed are not investigated.

16. Arrest records are not commonly found in the 1300 police stations across the country, except in capital cities of the Departments and some cities in Greater Asunción. In this regard, the Subcommittee on Prevention of Torture "*regrets to note, once again, that no substantial improvement has been made in the system for registering detainees. The system remains unsatisfactory, since it does not permit proper monitoring of the arrivals and departures of detainees or of procedural guarantees*"¹⁹.

17. This creates a situation particularly open to acts of torture and other cruel, inhuman and degrading treatment of detainees, since, according to testimonies of detainees and members of the National Police, there are police officers that use the Police Station as a place of detention for extortion and blackmail, mostly with petty criminals. If they do not go along with what is expected, detainees are physically pressured and deprived of their liberty within the Police Stations. The SPT interviewed unregistered detainees.²⁰

Article 3

¹⁷ These facts were reported to the Prosecutor-General's Office, on July 7, 2008. It is under Case N° 04-01-01-02-2008-232.

¹⁸ CAT/C/PRY/Q/4-6 Para. 5.

¹⁹ CAT/OP/PRY/2. Report on the follow-up visit to the Republic of Paraguay from 13 to 15 September 2010. Par. 43

²⁰ Report on the follow-up visit to the Republic of Paraguay from 13 to 15 September 2010. Par. 44.

18. The Republic of Paraguay grants extradition without assessing whether an extradited individual might be subjected to treatment prohibited by the Convention against Torture, in the country requesting extradition, as it has no mechanism to assess the risks.

19. In the reporting period, several people were extradited to the United States, in violation of the terms of Article 3 of CAT. They are mainly from the Middle East or Lebanon, ethnic groups that face stigmatization in the country²¹.

20. Currently, they are others facing requests for extradition, that the Paraguayan justice system needs to address²².

Article 4

21. In practice, a number of offenses that pursuant to the Convention are acts of torture, but are not registered in the justice system according to this criminal definition, but generally as bodily injury in the exercise of public duties²³, are considered beyond the statute of limitation, due to the inaccurate definition of the crime of torture. In these cases, the limitation period varies between three, five and fifteen years²⁴.

22. National courts infrequently invoke the Convention when adopting resolutions, despite references by defense lawyers. The Paraguayan State referred to only two judgments during the reporting period²⁵.

²¹ Ratifican extradición de ciudadano libanés a Estados Unidos. Published on January 4, 2011. <http://www.paraguay.com/nacionales/ratifican-extradicion-de-ciudadano-libanes-a-estados-unidos-59660/pagina/3> . Paraguay: tres ciudadanos libaneses extraditados a Estados Unidos. Published on February 28, 2010. <http://www.paraguay.com/nacionales/ratifican-extradicion-de-ciudadano-libanes-a-estados-unidos-59660/pagina/3> accessed on October 7, 2010

²² Paraguay inicia extradición de libanés buscado por Estados Unidos. Publicado el 16 de enero de 2010. <http://www.nanduti.com.py/v1/noticias-mas.php?id=16084>, consultado el 7 de octubre de 2011. Paraguay inicia extradición de libanés buscado por Estados Unidos. Published on January 16, 2010. <http://www.nanduti.com.py/v1/noticias-mas.php?id=16084>, accessed on October 7, 2011.

²³ Article 307 of the Criminal Code. The official who, in service or in relation to him, perform or order to perform a corporal abuse or injury shall be punished with imprisonment of up to five years. In mild cases, imprisonment not exceeding three years or a fine shall be applied. In case of serious injury under Article 112, the offender shall be punished with imprisonment from two to fifteen years.

²⁴ The limitation period is set out by Article 102 of the Criminal Code.

²⁵ CAT/C/PRY/4-6 Para. 75

Articles 12 and 13

23. Cases of torture and other cruel, inhuman and degrading treatment continue to go unpunished. The cases reported by CODEHUPY to both the Ministry of the Interior (administrative jurisdiction) and the Public Prosecutors Office (criminal jurisdiction), with the exception of one, remain unpunished, without any relevant legal actions for clearing up the facts having been taken..

24. On December 4, 2009, a detailed report of several cases of torture and other cruel, inhuman and degrading treatment was submitted during the Public Hearing on Torture convened by the Senate Human Rights Commission before officials from the Ministry of the Interior, the Prosecutors Office specializing in Human Rights and the Human Rights Commission. They did not take any legal action on the cases, although they are obligated to do so under the Code of Criminal Procedure.

25. Codehupy submitted another account of torture to both the Ministry of the Interior and the Public Prosecutor's Office on April 4, 2011, and urged that concrete actions be taken to investigate these cases, on May 4 and 25 respectively. To date there has been no response.

26. Due to the lack of a precise definition of torture, Codehupy reports some cases that could be cruel, inhuman and degrading treatment, to the Ministry of the Interior, with the hope that disciplinary proceedings might be initiated against the offenders. However, there has been no progress in investigations from this office and impunity continues to be systematic.

Article 14

27. The State does not reply to all items in the list of issues. The compensation scheme pursuant to the law cited is not adapted to the Convention. The administrative function for opening files before the Ombudsman limits the period of time to

“people of any nationality that were victims of human rights violations during the dictatorship of 1954 to 1989”²⁶.

28. Legislation in force in Paraguay does not ensure the “restitution and the right to a fair and adequate compensation, beyond the time pursuant to Act N° 838/96 and its amendments” to all victims of torture and other cruel and degrading treatment. There is no flexible administrative process for this purpose. Torture continues to be common throughout the country. Act N° 838/96 and amendments do not fully comply with the obligations arising from Article 14 since it limits the above-mentioned time period for victims to be compensated.

29. However, any victim of torture has recourse to a process by ordinary procedure in civil courts. This process is extremely slow and difficult to access for large sectors of the population, especially for those socially excluded and who are highly vulnerable to torture and other cruel and degrading treatment²⁷..

30. The description for applications submitted by compensated victims pursuant to Act N° 838/96 and its amendments, the lack of trained human and structural resources reveals the collapsing state of access to timely compensation pursuant to this Act is extremely serious, since the victims of the dictatorship, principally due to age and deteriorating health, should not have to endure bureaucratic delays due to lack of resources²⁸.

²⁶ Article 1, Act N° 838/96 “Payment of compensation to victims of human rights violations during the dictatorship of 1954 to 1989”. This act was amended several times to extend the period for submission of compensation claims.

²⁷ The civil process in Paraguay is in written form and does not support ordinary procedure, without a registered lawyer. People who cannot afford a private attorney must necessarily apply to the Public Defender, which does not have enough staff to handle the volume of cases, so it encourages an informal administrative procedure that meets international obligations arising from Article 14, to serve these people and without time limits that facing the Convention are arbitrary and exclusive.

²⁸ According to the website of the Ombudsman’s Office, there are 17,918 (seventeen thousand nine hundred and eighteen) case files opened. To deal with this volume of case files, there are nine rotation offices with nine (9) attorneys, a secretary and an intern per rotation office. Some of these rotation offices (care and labor units) have up to 3501 (three thousand five hundred and one) case files, such as the 5th Rotation Office, while other, such as the 19th Rotation Office, only 916 (nine hundred sixteen) cases. The State hides data that reveals the highly inefficient implementation of this special law, accessed October 5, 2011.

31. Act N° 838/96 and related amendment²⁹, limits the payment of compensation to heirs to the first degree of, contrary to the provisions of article 14 of the Convention against Torture, as it extends compensation to any person in their charge. The character of heir is not required by the Convention. This is relevant since cohabiting and gay couples are arbitrarily excluded in violation of the international obligation of the State.
32. The Stroessner dictatorship was particularly cruel to homosexuals with several historical events that establish a target group that should be included for purposes of compensation.
33. The Paraguayan healthcare system does not have specialized units that can provide psychological medical treatment to victims of torture and other cruel inhuman or degrading treatment. This was not even considered under Act N° 838/96 and its amendments.

Article 15

34. Codehupy received complaints of torture crimes committed systematically, mainly by members of the National Police, and referred allegations to the appropriate authorities. These acts of torture occur at the time of arrest, during the transfer of detainees to a facility, or police headquarters³⁰.
35. While statements taken by police officers have no value in the criminal justice system, there is a practice of “making the arrested person talk”, especially if he or she is member of a socially excluded group, lives in a “marginal neighborhood” or

²⁹ Article 1 of Act N° 3603/08

³⁰ At the request of Codehupy, on December 4, 2009, the Commission on Human Rights of the Senate conducted the Public Hearing on Torture and other Cruel, inhuman or degrading treatment, where victims and/or relatives of victims reported in detail acts of torture, in different circumstances and perpetrators, highlighting the police.

commits minor crimes property, such as cell phone theft, bag-snatching, jewelry theft, etc³¹..

36. The latest reports submitted after visits by both the Special Rapporteur for CAT³² and members of the Subcommittee on Prevention of Torture³³, expressed concern for the systematic practice of torture throughout the country.

37. The press, particularly print, both nationally and internationally, continually disclose complaints by torture victims. Codehupy finds that, although there is the obligation to officially investigate these crimes, investigations are rarely opened for complaints published by the press³⁴..

³¹ On the basis of visits to places of detention, numerous private interviews held with victims and witnesses, as well as forensic medical evidence, the Special Rapporteur concludes that torture is still widely practiced during the first days of police custody in order to obtain confessions. A/HRC/7/3/Add.3 Para. 44.

³² In Ciudad del Este, the Criminal Investigation Police appear to use torture and ill-treatment as standard practice to obtain confessions, and a number of victims identified the main perpetrators of torture and ill-treatment as Assistant Commissioner Oscar Paredes Sanchez and Officer Manuel Benitez. The main method they use is to strip detainees naked and handcuff their hands and feet. They force them into kneeling positions and tie their hands and feet together with a rope. They then place a plastic bag over their heads and squeeze their testicles until the victims lose consciousness. This method, which is carried out during the night and early hours of the morning, is clearly designed to leave few visible marks. A number of detainees informed the Special Rapporteur that they managed to bite through the first plastic bag to enable them to breathe, but that when they did so, more bags were placed over their heads. A number of detainees also informed the Special Rapporteur that they were repeatedly subjected to the same procedure for periods of up to four days. The Special Rapporteur also received credible allegations about the use of identical methods by the Criminal Investigation Police in other regions of the country, including at Police Station 7 in Asunción, Paso Pe, Colonia Independence, Itaugua, and the 3rd Comisaría (Villarrica). The Special Rapporteur is concerned that the use of the same methods of torture and ill-treatment by the Criminal Investigation Police in various areas of the country may suggest some element of coordinated organization. This concern was additionally substantiated by information received from members of the Supreme Court and Office of the Ombudsman. The Special Rapporteur also came across other forms of torture and ill-treatment including death threats, beating with truncheons, beating with the butt of a rifle, beating on the soles of the feet with truncheons and rubber hoses, kicking, hitting in the windpipe, holding detainees upside down and beating the soles of their feet, stamping on detainees' handcuffs to break the skin, inflicting non-lethal gunshot wounds, forcing detainees to beat other detainees, withholding food, verbal abuse, sexual insults, leaving detainees handcuffed in uncomfortable positions for long periods of time, denial of medical treatment and attempted gang rape. The Special Rapporteur also received one allegation about the castration of a detainee resulting in death. Furthermore, the Special Rapporteur received a number of credible allegations of excessive use of force by the police, particularly in relation to members of the indigenous communities. A/HRC/7/3/Add.3 Paras 45-47.

³³ In its earlier report, the Subcommittee indicated that the police personnel had been responsible for acts of torture and other forms of ill-treatment of detainees. CAT/OP/PRY/2. Par. 24.

³⁴ <http://www.unosantafe.com.ar/mundo/Policia-tortura-a-un-menor-en-una-comisaria-de-Paraguay-y-lo-filman-20101014-0069.html> , <http://www.metatube.com/es/videos/40940/Filman-brutal-paliza-de-un->

Article 16

38. The physical conditions and infrastructure of prisons in Paraguay continue to be deplorable and violate the Convention as the Committee indicated³⁵. The prison population was 6646 on April 5, 2011³⁶. This figure exceeds the capacity of 5340 persons, which means that there is a difference of 1306 available spaces.

39. In April of this year, of the 15 existing prisons, seven were overcrowded, among those, The National Penitentiary, “Tacumbu” which houses more than 50 percent of the nation’s prison population, and is 1077 persons over capacity. Overcrowding, which subjects prisoners to indignant conditions would not exist if, among other reasons, judges were stricter in applying legal limits for preventive detention.

40. The Paraguayan Legal System does not comply, to a great extent, with rights clearly established in the National Constitution and the Code of Criminal Procedural, in preventing arbitrary deprivation of freedom and therefore contradicts obligations set out by the Convention³⁷. Generally, statements taken from defendants, even the charges, lack an exact and circumstantial relationship to the facts as related to time, place and space so that a logical defense can be made³⁸. The way the system treats defendants is a model of infringement on human dignity, especially when the person is poor.

policia-a-un-joven-en-Paraguay/ , <http://vivaparaguay.blogia.com/2010/101404-oficial-de-policia-tortura-a-un-menor-de-edad.php>

³⁵ CAT/C/PRY/Q/4-6. Pa. 25.

³⁶ Daily Report. Public Prosecutors Office dated 5 Abril 2011. In the past 5 years the total number of persons has continued to be around 7000. In 2006 data provided by the Supervisors office of the Supreme Court in October showed 6069 persons. Codehupy report 2006. Pg. 59.

³⁷ Libro Cuarto Titulo 1 y 2.

³⁸ Formas procesales, garantías de defensa y acusación fiscal defectuosa en Ñeembucú. Investigación de la Universidad Nacional de Pilar año 2010.

41. The judicial arbitrariness with which suppositions are applied to preventive detention is critical. Generally, the rulings applied are unfounded and with this defect are reaffirmed in all the courts. In terms of the maximum time for preventive detention, the Criminal Code sets it at a term within two years. A precedent that distorts the extent of the law allows for a sentence of the minimum jail time that would correspond to the punishment for the offense, therefore an accused processed under this system is imprisoned for more than two years. Even so, in cases of social alerts or certain punishable offenses that are stigmatized, the Supreme Court has on record Judges contradicting their own legal precedents aggravating the situation³⁹.
42. Codehupy considers that these violations of the National Constitution and the Code of Criminal Procedure, constitute an endemic problem that is normalized and in opposition to the provisions of the convention. Deprivation of liberty of one who does not know the cause of said deprivation and for periods of time that exceed the maximum limit allowed by the law constitute clear non-compliance with the international obligations of the Convention; keeping in mind that the majority of detainees in Paraguay are not convicted, even though preventative detention is considered an exception according to article 19 of the National Convention.⁴⁰
43. Along with the dreadful configuration of punitive powers in accordance with the rights system emerging from jurisdictional institutions, the State sanctioned a state of emergency with a discourse of being tough on crime that moves away from

³⁹ Contradictory rulings in which the same Supreme Court Judge, before the same factual and legal situation, makes different and contradictory decisions was found in an investigation in 2009 made by INECIP-PY/CIRD/UNP with support from USAID. In the case of ex general Lino Cesar Oviedo, it was acknowledged that his rights according to the Code of Criminal Procedure meant that his detention should not be more than 2 years; however, in another case, Juan Pio Paiva tried for a crime with tragic consequences and death for Paraguayan society, was denied access to liberty, even though he was incarcerated for more than 2 years, alleging that the length of jail time could be extended up to the minimum for the offense for which he was tried (min 5 years). Another investigation by the UNP in 2001 found similar contradictions in the case of lactating mothers who should have the right to house arrest and not preventive detention: a comparison of the cases: Alba Elena Allende de Blanco s/ Habeas Corpus Reparador. Ac. y Sent. 1309 20 September 2004 and "Preventive Habeas Corpus presented by Atty. Lilian Corvalán in favor of María Dolores Morínigo Delvalle". 2020. No. 66. Año 2010. Nº 66. Folio 105. Ac. y Sent. 514. 4 November 2010; The contradicting decisions seem to be based merely on the different criminal offenses, the precedent in 2010 refers to drug trafficking and the right is denied even though the 2004 ruling which cited fraud, grants the mother this right.

⁴⁰ According to the April 5, 2011 daily Ministry of Justice and Labor report, Paraguay has a greater percentage of women in preventive detention than men. In both cases the number of convicted is much less, since 74.09% of women are in preventive detention and 68.51% of men are in this situation.

advances made by constitutional rights supporters when the current Code of Criminal Procedure was approved⁴¹. A movement against reforming the inquisitorial system reissued appraisals of substitute and alternative prison measures, amending the Code of Criminal Procedure allowing for the application of said measures for all types of punishable offenses fully responding to the preventive nature of preventive detention in Paraguay. This rule standardized preventive detention for certain serious punishable offenses without contemplating the real motives that justify it, the risk of fleeing or of obstructing an investigation. Unfortunately, this results in a State that does not have the resources for housing its prison population in decent conditions.⁴²

44. In 2011, Law No. 4421 was passed, taking a critical step backward in terms of legal authority. The law prohibits the application of alternative or substitute preventive measures to prison merely because the suspect has more than one open case with an accusation of one of the punishable offenses established by this law. This restriction, once again, impinges on the principal of equality before the law, since the decision to concede or not to concede a measure cannot be limited by a mere suspicion that is under investigation in a separate case; the case should be decided on probability of risk of flight or obstruction of an investigation because detention is merely cautionary according to art 19 of the National Constitution. The conditions for detention created by this law, besides being humiliating, worsen prison overcrowding in a State that did not have adequate space to meet the demand placed on the prison system before this law was passed.

45. The State mentions that the mentally ill have access to psychiatric treatment; at the date of the previously cited prison report there were 93 (ninety-three). The so called Psychiatric Pavilion of the Tacumbu Penitentiary does not have adequate space to carry out any type of treatment and is a highly unhealthy environment⁴³.

⁴¹ New laws facilitate due process rights violations. CODEHUPY report on the human rights situation in Paraguay, 2010.

⁴² The members of the Supreme Court of Justice, in 2011, rejected an unconstitutional issue posed by CODEHUPY, the limitation that prevented the application of alternative measures to prison for certain punishable offenses considered serious, for merely citing the possibility of flight by those accused of these offenses and without evaluating the real existence of risk of fleeing or obstructing the investigation; The Bench cited the State's right to establish a criminal policy in which preventive measures are established for these offenses without taking into account that they are discriminatory since in similar proceedings there are different judicial conclusions based on a mere suspicion found in the proceedings.

⁴³ The CODEHUPY report on the human rights situation, 2008 pg. 208, shows that a study done by the Prison Health Office at the time indicated that in Tacumbú 2390 individuals had records with a brief background of their current health condition; it was determined that approximately 13% had mental

46. Prisons in this country have a high degree of corruption, which subjects the prison population to a humiliating system that allows inmates with economic power to benefit from arbitrary discrimination by prison personnel. There are “VIP” wings functioning as a source of financial gain which Paraguayan society has repeatedly denounced; this situation has not been addressed. There are profitable businesses run by the prison population, such as snack bars or food stands as well as personal services, by informal agreements that are part of the circuit of corruption.⁴⁴
47. Conjugal visits are historically discriminatory.⁴⁵ To date, same sex couples do not have access to services that allow them to sustain their relationships. The rules for addressing inmates sexual needs is based on a predominantly Christian ethic that excludes this right for those who do not hold those values; this, in light of the separation of church and state, implies degrading and discriminatory treatment that marks the whole Paraguayan prison system.
48. The deplorable prison conditions are aggravated by a poverty that is characteristic of the population that the justice system has historically targeted for punishment, the poor and other stigmatized populations.⁴⁶ In Paraguay, 30% of the population lives in poverty, 19% in extreme poverty. 70% of the population living in poverty is in rural areas. Statistics quoted by campaigns that favor the strengthening of the public defender point out that approximately 70% of the prison population receives assistance from said institution and 90% come from socially excluded sectors. Throughout the entire country there are only 190 criminal defense lawyers; case overload does not allow for a suitable defense.⁴⁷ The whole agency has one

illness, 60 individuals had diagnoses of psycho-social disabilities, acute or paranoid schizophrenia that was diagnosed as irreversible; at that time, the onsite health staff of 125 people did not include one psychiatrist.

⁴⁴ The CODEHUPY report on the human rights situation in Paraguay, 2008 pg. 200 al 205.

⁴⁵ Resolution N° 51/06 Office of Penal Institutions for establishing norms for the well-functioning of private visits.

⁴⁶ Additionally, the population affected by the criminal system is in its majority poor, a study by CODEHUPY in the 2006 report on human rights showed that every person in jail could be maintained on an average of 6136gs daily, which is the equivalent of 1.50USD; this amount would cover three meals a day, health, etc. According to the United Nation’s definition of poverty, the national budget at that time anticipated the maintenance of each prisoner with about 500gs over the extreme poverty line. See pg. 48 and table on pg. 60; this striking information was widely disseminated without any measures being taken to change the indignant prison conditions in the country.

⁴⁷ The Public Defense has 669 employees throughout the country: 129 Criminal Defenders; 23 who work all codes, 57 Civil Defenders and 38 Child Defenders. On average each Defender has 150 criminal cases, however the work load is very unequally distributed due to number of conflicts in a particular geographic

automobile to get around; in practice defense lawyers depend on the national police or prosecutors to get in contact with clients, witnesses, etc, which creates a difficult situation when the one violating their rights many times is a police officer or prosecutor.

49. These figures show the State's lack of commitment to decent treatment for the prison population, who are defenseless against the abuses of power inherent in the scope of deprivation of liberty in Paraguay. Finally, it is worth mentioning the lack of commitment on the part of the Paraguayan Parliament which, since 2010⁴⁸, has a commission on comprehensive criminal law reform in the Republic. Although the Criminal Code was modified, a prison code that was to substitute current prison regulations, completely out of date, was never approved.

50. **Measures adopted by the Paraguayan State for eradicating trafficking of persons**⁴⁹ are absolutely insufficient. There is no reasonable system for complying with the State's obligations in this area, since impunity for punishable offenses of human trafficking is the norm, along with inexistent comprehensive programs for rebuilding victim's lives. There is a lack of prevention plans and programs for trafficking and there is a need to raise the awareness of public employees about this issue and involve all sectors, especially members of state agencies that work with adolescents and young people.

51. CODEHUPY has documents showing that the Public Prosecutors Office has only two specialized units to combat human trafficking for assisting incidents throughout the country and which are located in the Capital. In the past five years there have been 124 cases. And from 2000 to 2010 only 5 orders to open oral proceedings⁵⁰. There is only one Gesell dome located in the capital, essential preventing the re-victimization and cruel treatment of children, adolescents and adults; in Ciudad del Este a new dome is anticipated. The Public Prosecutors Office is the only public

area compared to the number of available Defenders in that area. In just the first half of this year, 129 criminal defenders and 23 general defenders were requested to cover 28,234 cases. Comparative data done by CODEHUPY based on a report supplied by the Defender General's Office on 11 October 2011 by e-mail.

⁴⁸ Executive Decree Nº 4674 July 2010 .

⁴⁹ CAT/C/PRY/A/4-6 Párr. 31

⁵⁰ Data obtained from the report presented by the Office of *Informática y Sistemas*, related to the Judisof [sic] Management, used by the *Mesa de Entrada* of the *Jurisdicción Penal del Poder Judicial* and the *Oficina* for coordinating and monitoring of oral proceedings in the capital.

entity that has taken the initiative to acquire this technology though many other public entities have a similar need⁵¹.

52. The Coordinator of the Specialized Human Trafficking Unit of the Public Prosecutors Office reported that during 2008 thru 2011, investigations and judicial proceedings had the following procedural outcomes⁵²: fifteen conditional suspensions of proceedings⁵³, six temporary stays of proceedings⁵⁴, six dismissal of action without prejudice, eleven summary proceedings⁵⁵, one *criteria de oportunidad*⁵⁶, eight going to oral proceedings, ten accusations⁵⁷, twenty-two dismissals⁵⁸, and seventy-four cases under investigation. One report also indicates that there would have been fifteen sentencing, without specifying if they resulted from the summary or oral hearings⁵⁹.

53. A policy that is favorable to visualizing both the problem and the validity of the law requires that the greatest possible number of these cases be resolved in oral proceedings, which as was seen, is not occurring.

54. In an evaluation of criminal agencies, 34 police officers and prosecutors from 17 border area localities were interviewed. They were questioned about basic and needed concepts for the pursuit of human trafficking and showed a high level of ignorance. The visits were random for the purpose of gauging the training of

⁵¹ Articles 3 y 9 de la Law 1600/2000 on domestic violence and Code of Child and Adolescence.

⁵² The law anticipates how a criminal proceeding can be concluded through procedural outcomes.

⁵³ Art. 21 CPP. Implies the admission of the investigated offense on the part of the accused and the commitment to make reparations for the specific social harm caused by the criminal act, although once the period of time established has passed, the case expires and the perpetrator has criminal record.

⁵⁴ Art. 362 CPP. Ruled when the period of time for the investigation has expired, the Prosecutors Office did not collect all the evidence for filing a formal charge against the accused. Generally, the after the period of time, a final dismissal of the accused is ruled, which in practice a provisional dismissal implies that impunity for the offense under investigation.

⁵⁵ Art. 420 CPP. An express sentencing, with the admission of guilt. In practice it is used to avoid jail because although the accused is sentenced he/she is not imprisoned.

⁵⁶ Art. 19 CPP. When the Public Prosecutors Office declines to process the criminal action. It is an exception to the beginning of a legal process.

⁵⁷ Art. 347 CPP. The charge presented to the Prosecutors Office when it is convinced of the guilt of the person charged; however, this does not mean that there will be an oral proceeding.

⁵⁸ Art. 305 CPP. When the offense is not punishable or there is a legal obstacle for continuing with a criminal investigation.

⁵⁹ Report dated August 23, 2011 by the Special Unit 1 for human trafficking and sexual exploitation of children and adolescents" Report dated September 23, 2011 Special Unit 2 for human trafficking and sexual exploitation of children and adolescents"

employees who work in high risk areas. The level of confusion as regards human trafficking of persons as a punishable offense with the trafficking of immigrants was confirmed; or, worse, prostitution, when sex labor is not punished in Paraguay.

55. Codehupy has legal research that demonstrates that the criminal definition for trafficking has the punitive scope to penalize internal trafficking which was not visualized by the different responsible state agencies. The State needlessly invested resources for reforming regulations⁶⁰ when the provisions of the Palermo protocol are considered by the laws in force.

56. In 2009, civil society intervened and stopped a bill to modify the criminal definition that, instead of improving prosecution of trafficking would have made it more difficult. There are still those in the specialized area of the Public Prosecutors Office who unnecessarily restrict the punitive scope of the criminal definition of trafficking, allowing mainly internal trafficking to go unpunished.

57. Seven years after ratifying the Palermo Protocol, Paraguay has not yet trained its prosecutors and border police in the proper criminal definition, in flagrant violation of its international obligation. The state sectors that are highly specialized in the area continue to waste time in superfluous tasks instead of developing urgently needed public policy, which is their responsibility. In addition, there is a confusion of roles among the agencies, particularly the Public Prosecutors Office, which spends a lot of time on tasks that are not exclusively its responsibility, which is criminal investigation.

58. Awareness campaigns by the Secretariat of Children and Adolescents, as well as the Secretariat of Women, are partial since they only reach departments heads. In addition, they reveal the lack of a policy for allocating public funds for combating trafficking, since this was done with the financial support of International Organizations.

⁶⁰ "Críticas y Aportes al ante proyecto de ley elaborado por la secretaria de la Mujer elaborado por el Prof. Dr. Celso Castillo Gamarra para la Secretaria de la Mujer". Autor Juan Alberto Kohn Gallardo. Inecip Py. Año 2009

59. The only shelter managed by the Women's Secretariat, operating in the capital, barely houses 12 victims and has a maximum capacity of 20⁶¹ while the Public Prosecutors Office reports that between 2009 and 2010, 97 victims⁶² were rescued, a figure that does not include unreported cases, demonstrating the lack of state commitment in this area.

60. The shelter is only for women, not used exclusively for victims of trafficking, so that the male⁶³ and transgender population is excluded. From the inception of their development, this and other State services are void of a gender perspective that would protect equality and freedom, and expose the exclusion, in this case men and transgender individuals, of those who are constitutionally entitled to services.

61. As regards the list of questions, paragraph 38⁶⁴ on legislative, administrative and other measures adopted to fight terrorism, the Paraguayan State passed Law No. 4024 on June 23, 2010⁶⁵, which expressly infringes upon the legal principal established by the National Constitution; and therefore, affects rights by establishing a punitive instrument that is favorable to State terrorism.

⁶¹ Paraguayan State's answers during questioning

⁶² This information implies that once a trafficking victim is rescued, the Paraguayan State neglects rebuilding the victim's future.

⁶³ Answer by the Paraguayan State during questionin, reference is made to a group of adolescent boys, 16 years od, who were victims of trafficking in the country in a case "linked to a group of male adolescents of Asian origin, which is why the statistics show a particular trend toward the male sex."

⁶⁴ CAT/C/PRY/Q/4-6. Par. 38

⁶⁵ That punishes terrorism, terrorist association and financing of terrorism offenses.

62. The law defining terrorism⁶⁶ is written generically and does not comply with the provision to precisely denote the specific conduct threatened by criminal punishment. Determination of the interpretive limits cannot, therefore come from the written definition but by criteria applied by the judge, who in this way will establish the crime by his or her decision. This is in opposition to the cognitive premise of penal law in Paraguay and opens up the possibility for political criteria to be used in choosing who will be punished by a jail sentence of a minimum of 10 years and a maximum of 30 along with the possibility of applying as an aggravated factor a security measure of 10 more years, based only on the prediction of conduct and in complete abandon of a criminal law based in acts (*un derecho penal de acto*).

63. Codehupy, and other organizations that work collectively to advocate for basic rights through peaceful actions, have been denouncing the criminalization of demonstrations that have been loosely defined as crimes, many abstractly, that previous to this law, were part of the criminal policy constructed to dismantle social movements that organize and use demonstrations to demand that the historic factors of exclusion and unsatisfied basic needs be addressed. From a reading of the new criminal definition of terrorism it can be determined that a legal opinion alone will have the power to determine the content of prohibitions, that are so generic that they could range from, what the judge thinks or wants, a demonstration of rural organizations that protest some unsatisfied right with a road block interpreting their objective conduct according to article 213 to 216 of the Criminal Code, demanding a law or administrative measure that would address the serious problem of infant-maternal mortality they suffer.⁶⁷

⁶⁶ Article 1. Terrorism. That which, with the purpose of instilling or causing fear, forcing or coercing by actions or abstaining from actions toward: the Paraguayan population or that of a foreign country; constitutional agencies or its members; or, an international organization or its representatives; carrying out or attempting the following punishable offenses anticipated in Law N° 1160/97 "CRIMINAL CODE" and related amendment, Law 3440/08: 1) genocide, homicide y serious injury as stated in articles 319, 105 and 112; 2) those established against liberty stated in articles 125, 126 Y 127; 3) those established against the natural foundation of human life stated articles 197, 198, 200, 201; 4) punishable offences against persons security with a collective risk stated in articles 203 y 212; 5) those established against the personal security of persons in transit as stated in articles 213 al 216; 6) those established for the functioning of essential installations, as stated in articles 218 al 220; o, 7) sabotage as stated in articles 274 y 288; swill be punished by a jail sentence of 10 (ten) to 30 (thirty) years.

⁶⁷ Article 2. Terrorist Associations. He who: 1) establishes and association, in any way organized, with the purpose of carrying out the punishable offenses anticipated in Article 1 of the Law in effect; 2) was a member of or participated in said organization 3) financially supported or provided logistical support; 4) lend support; o,5) promoted it, will be punished by a jail sentence of 5 (five) to 15 (fifteen) years. Will be

64. Keeping in mind the that these types of actions lead to more than 2500 people from rural areas being processed in 2004, by arbitrary legal proceedings, for protests linked to demands for comprehensive land reform, the taking of measures against unpunished crimes by agro industrial fumigating with pollutants, etc. With law 4024/2101, the same criminal definitions used in those events could be applied to definitively eliminate alternative advocacy by social leadership for change by non violent but severely questioning means.
65. The language in law 4024/2010, which violates the principle of equality before the law, allows for long term imprisonment of social movement leaders that use alternative means of expression to revindicate basic rights. This will be made possible by interpretive excuses constructed by a judicial power that has demonstrated its extreme complacency or proactiveness in preserving social exclusion and has become a guardian.
66. Recent precedents exist that show that judges who dared to demand that rights be enforced and proceedings be adjusted to the law and reason were arbitrarily prosecuted by the (Jury for Trying Magistrates) Jurado de Enjuiciamiento de Magistrados⁶⁸. This law has a liberticide effect that in this context seriously compromises democracy in Paraguay. The image of a repression that goes unpunished, reestablishing State terror comes to mind. This law was passed by request of the president Fernando Lugo Mendez, to the surprise of many of his voters.
67. During the reporting period, a state of exception was declared on two occasions, under the aegis of the current government. CODEHUPY sustains that the laws declaring a state of exception are not adaptable to the National Constitution, in of themselves constitute unconstitutional acts that arbitrarily limit rights, establish, as

applied as necessary, as stated in Article 239, sections 3 and 4 of Law No. 1160/97 "CRIMINAL CODE" Law Nº 3440/08.

⁶⁸ Judge Gustavo Bonzi, Criminal Rights Court of de Yby Yau, Judicial Circumscription of Concepción, was suspended on August 23, 2011, after having ruled to free 14 accused from rural areas, that, with no evidence were held in sub-human conditions by request of the Public Prosecutors Office who accused them of belonging to a criminal gang. <http://www.lanacion.com.py/articulo/35756-el-juez-bonzi-fue-suspendido-por-el-jurado.html>; <http://www.paraguay.com/nacionales/corte-suspendio-a-juez-gustavo-bonzi-con-goce-de-sueldo-74311>

well, conditions for abuse of power regarding stigmatized populations, by state actions that have ineffectively persecuted groups of people who are involved in committing punishable offenses in the north of the country.

68. To date, the state of exception is in force without the existence of an armed international conflict or “serious internal commotion that imposes an imminent threat to this Constitution or to the regular functioning of the organizations created by it” (Art. 288 NC sic.). The Republic of Paraguay has a Public Prosecutors Office and a National Police which are fully functioning and have the legal capacity to act effectively. These agencies, within their jurisdictions, have sufficient legal authority to identify and capture members of groups of common criminals who are active in the area that has unnecessarily been declared under the system of legal exception. The unpunished ineffectual and inefficient actions of legal system agencies require different measures that allow for punitive interventions that would isolate those in the northern areas, who have chosen to commit serious punishable offenses that outrage the general population.

69. As regards punishment of abortion, Paraguay has one of the highest maternal mortality rates in the region: 125.4 maternal deaths per 100 thousand live births 2009 and 100.8 in 2010⁶⁹. The three main causes of maternal death are: abortion, hemorrhaging and toxemia, in that order⁷⁰.

70. In July of 2009, amendments to the Criminal Code went into effect, by virtue of which abortion continues to be penalized in all cases⁷¹, thus continuing to disregard

⁶⁹ Sub-Sistema de Información de las Estadísticas Vitales (SSIEV). Departamento de Bioestadística. Ministerio de Salud Pública y Bienestar Social

⁷⁰ Ídem.

⁷¹ Art. 109 of the Criminal Code, Amended by Law 3.440/08.

1° He who kills a fetus will be punished by a jail sentence of up to five years. The attempt will also be punished. 2° The punishment can be raised to eight years, when the perpetrator: 1. Acts without the consent of the pregnant woman; or 2. with her intervention causes serious danger causing the death or serious injury to the pregnant woman. 3° When the offense is carried out by the pregnant woman, acting alone or assisted by a third, the punishment will be a jail sentence of up to two years. In this case, the attempt will not be punishable. In deciding the punishment, it will be taken under consideration, specifically, if the motive for the offense was the lack of support, based on a right guaranteed by the Constitution. 4° He who No obra antijurídicamente el que produjera indirectamente la muerte de un feto, si esto, según los conocimientos y las experiencias del arte médico, fuera necesario para proteger de un peligro serio la vida de la madre.

what the Committee for the Elimination of All Forms of Discrimination Against women (CEDAW Committee) that has examined the State on two occasions for the high maternal mortality rate, has recommended; that the legal punitive measures for abortions be reviewed and sufficient and suitable family planning services and information be provided⁷²

71. Recent modifications to the Criminal Code lessen the punishment for women who abort (up to 2 years jail sentence) but stiffen the punishment for third parties that assist them, such as doctors, midwives, nurses, etc. The article establishes that, “no one who indirectly causes the death of a fetus, is acting unlawfully if, according to their medical knowledge and experience, it was necessary to save from serious harm the life of the mother”. That is, the Code poses two issues: on the one hand stiffer punishment for individuals who collaborate with a woman to perform an abortion under safer conditions; which leads health professionals to abstain from providing these services and forces women to have abortions performed under worse conditions or greater risk. It also has only one cause for exemption which is neither clear no absolute, since it introduces the term “indirectly”, that is, there can be no direct intervention to perform an abortion, it is only possible when it is the consequence of another intervention which is necessary to save a women’s life⁷³.

72. Denying access to abortion, or the abusive treatment connected to abortion, can also constitute a violation of the right not to be subjected to cruel, inhuman and denigrating treatment. This is apparent in, among others, the cases when: post-abortion medical care is systematically denied, instead of appropriately giving medical treatment to a woman, healthcare professionals report her, women are forced to continue pregnancy of a malformed fetus that will not survive, and probably die *in utero* or immediately after birth, against their will, and when healthcare professionals mistreat women during post-abortion medical treatment.

73. Codehupy remedied several paradigmatic cases. In 2009, in Villarrica (Department of Guaira), before three cases of voluntary abortion arrived, the area Prosecutor, Gustavo Cáceres, threatened the doctors in the case that they did not report the cases. He said that he would call the directors of the Fourth Medical Care Region

⁷² cf. Cedaw, 2005: párr. 32 y 33

⁷³ Informe Sombra CEDAW, 2011.

and Regional Hospital and that he would ask for the maternity logbook “because all cases of induced abortion should be communicated to the prosecutor’s office. If they do not do so, they will be prosecuted.” This action goes against article 286 of the Penal Procedure Code, that explicitly states that there is no obligation to report punishable offenses that are revealed under professional secret, in agreement with article 147 of the Penal Code, that punishes revealing a third party’s secret learned in confidentiality, including that between doctor and patient⁷⁴.

74. Another remedied case, in the same year, is of R, 29 years old with two children, 1 year old and 7 years old, teacher, domiciled in Fernando de la Mora, who went to the San Pablo Hospital for medical care after an abortion. The healthcare personnel filed a report against her with the local prosecutor, breaking, as in the previous case, due patient confidentiality. The prosecutor intervened and charged the woman with criminal homicide, although the punishable offense was abortion. R, because of this, was sentenced to jail in the “Buen Pastor” women’s prison. In an interview, she expressed her impotence when the Hospital personnel allowed the press to come in and take pictures of her without her consent, while she was convalescing. The intervening prosecutor accused her of acting “with premeditation” and, in the prison, inmates shouted “child killer” at her “, forcing her to stay in her cell for two weeks, without going out to the yard. Because of the type of crime she was charged with and the associated punishment for criminal homicide, an offense she did not commit, she was not able to obtain a substitute measure, remaining detained during the investigation.

75. As regards the punishment of abortion we recommend that the Paraguayan State review the punishment for abortion, studying ways to anticipate determined exceptions, for a period which respects a women’s decision, considering as well exceptions for pregnancies resulting from rape or incest, cases of non-viable births and when a women’s health is at risk. Also, the State should avoid punishing medical professionals who act within their professional obligations and fully respect doctor-patient confidentiality.

⁷⁴ Codehupy, 2009: 345.

