

COORDINADORA
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PARAGUAY

Alternative Report

Paraguay

Presented to the Comitee on
Enforced Disappearances 2014
In view of the report presented by Paraguay
(7th period of sessions, from 15 to 26 september 2014)

August 2014

Introduction

This report constitutes an alternative report to the report of the Republic of Paraguay on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearances (hereinafter "the Convention"). It has been prepared by Coordinadora de Derechos Humanos del Paraguay (CODEHUPY), Paraguayan Chapter of the Inter-American Platform of Human Rights, Democracy and Development (PIDHDD)¹.

The presentation of the report is structured in accordance with sections and questions raised by the Committee on Enforced Disappearances (hereinafter "the Committee") on the list of issues on the report submitted by Paraguay².

Thus, following the sections of the list, this report focuses in each section on the following questions:

- I. General information: 3;
- II. Definition and criminalization on enforced disappearances (articles 1 to 7): 5, 6, 8, 9;
- III. Judicial procedure and cooperation in criminal matters (Articles 8 to 15): 10, 12, 13, 14, 15.
- IV. Measures to prevent enforced disappearances (Articles 16 to 23): 17, 18.
- V. Measures of reparation and protection of children from enforced disappearance (articles 24 and 25): 21, 22, 23.

Under each one of these sections there are transcriptions of the issues raised by the Committee to the Paraguayan State with its corresponding number, followed by the observations and information from CODEHUPY. At the end of each section recommendations were made to the Paraguayan State in relation to each of the sections.

At the end of the document, are included annexes that complement the content of the report.

¹ Integrated by: Right-holders Organizations (30): Aireana, Grupo por los derechos de las lesbianas; Asociación de Familiares de Víctimas del Servicio Militar Obligatorio – AFAVISEM; Asociación Americana de Juristas - AAJ; Asociación Panambi; Base Investigaciones Sociales – Base IS; Centro de Documentación y Estudios - CDE; Centro de Estudios Paraguayos Antonio Guasch - CEPAG; Centro Paraguayo de Teatro - CEPATE; Coalición Paraguaya para la Diversidad Cultural; Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer - CLADEM Py; COMUNICA, Asociación Paraguaya de Comunicación Comunitaria; Coordinación de Mujeres del Paraguay - CMP; Coordinadora Nacional por la Promoción de los Derechos de las Personas con Discapacidad - CONAPRODIS; Coordinadora por los Derechos de la Infancia y la Adolescencia - CDIA; DECIDAMOS, Campaña por la Expresión Ciudadana; Fundación Celestina Pérez de Almada; Fundación Dr. Andrés Rivarola Queirolo - FUNDAR; Fundación Vencer; Iniciativa Amotocodie; Instituto de Estudios Comparados en Ciencias Penales y Sociales - INECIP-Paraguay; Movimiento de Objeción de Conciencia – MOC Py; ÑEMONGETARA, Programa de Educación Popular; Pro Comunidades Indígenas - PCI; Servicio de Educación y Apoyo Social/Área Rural - SEAS-AR; Servicio Jurídico Integral para el Desarrollo Agrario - SEIJA; Servicio Paz y Justicia - Serpaj Paraguay; Sindicato de Periodistas del Paraguay - SPP; Sobrevivencia, Amigos de la tierra Paraguay; Tape`a para el desarrollo sostenible; Tierraviva a los pueblos indígenas del Chaco. Adherents Organizations (6): Amnistía Internacional Paraguay; Coordinadora Nacional de Pastorales Indígenas - Conapi-CEP; Gente Ambiente y Territorio - GAT; Pastoral Social Nacional; Servicio de Educación Popular – SEDUPO; Semillas para la Democracia.

² Committee on Enforced Disappearances, List of issues on the report submitted by Paraguay under Article 29, paragraph 1, of the Convention, adopted by the Committee at its sixth session (17 to 28 March 2014), document United Nations CED/C/PRY/Q/1, 11th April 2014.

I. General Information

Question 3. Please inform about the current state of the process of appointing the Ombudsman. Also, considering the statement by the State party in paragraph 180 of its basic document forming part of the reports of States parties (HRI / CORE / PRY / 2010), please provide updated information about the measures taken to give the Ombudsman the necessary resources to finish the development of his functions. Please also convey more information about the activities of the Ombudsman on matters relating to enforced disappearances.

According to the Article 277 from the National Constitution, the Ombudsman lasts five years in office, coinciding with the Congress period. He is appointed by the Deputies Chamber from a list proposed by the Senate. The current Ombudsman, whose mandate was renewed directly (without a process of recruitment opened) for a second consecutive term in 2004, had its term of the office stinguished in July 2008. Its management is questioned by human rights organizations and by victims from the dictatorship of Alfredo Stroessner period(1954-1989) because the designated officer lacks independence and suitability for the position, and also because he has clearly demonstrated poor performance in office. His election reflected the intention of the political system to neutralize this body of constitutional control. After more than ten years of its effective creation, the institution has not been structured as an office for human rights internal protection

It is up to the Legislative Branch to execute the process of appointment of a new Ombudsman. In the parliamentary term from 2008 to 2013, the Legislative Branch did not made such designation, and since the beginning of the current period, from 2013 to 2018, until the end of the preparation of this report, the Legislative Branch still have not impulsed the process of choosing a new Ombudsman, thus completing 6 years of demise of the mandate of the current defender.

The Human Rights Committee have already recommended to Paraguay to ensure transparent and participatory selection of an Ombudsman with unquestionable suitability, and to ensure the conditions for the institution to fulfill its mandate fully and independently in accordance with the Paris Principles (CCPR / C / PRY / CO / 3, 29 April 2013, para. 7).

Recommendations:

a) The State party should provide the opening of a new process for selecting candidates to the Ombudsman office, ensuring publicity and transparency of it so as the citizens participation in the process, ensuring that the designation falls on a person with unquestionable competence, in accordance with the Paris Principles.

II. Definition and criminalization of enforced disappearance (articles 1 to 7)

Question 5. Regarding the Article 236, paragraph 1 of the Penal Code, please clarify if the removal of the protection of the law should be understood to be a consequence of the forced disappearance or whether, by contrast, is interpreted to be a constitutive element of the crime. Also, please comment on the scope of paragraph 2 of that Article (arts. 2, 4 and 6).

CODEHUPY understands that the elements of the crime of enforced disappearance set out in Article 236 paragraph 1 of Paraguayan Penal Code include: a) the arrest, detention, abduction or privation of liberty of any form to one or more persons; b) refusal to provide information on the whereabouts, to acknowledge the privation of liberty or concealment of the fate or whereabouts of the disappeared person, being the subtraction of the protection of the law a consequence of this last item. However, to date there is no judicial precedent applying this provision of the Criminal Code so that it could be known which would be the interpretation of the Paraguayan courts will give to the matter.

It is also pertinent to mention that in our opinion, the phrase "subtracting it from the protection of the law" contained in Article 236 of the Penal Code regardless of considering it as a constituent element or as a result of the described conduct, requires evidence that confirm this subtraction, it means that it is evidence, that in a certain moment that phrase could be an obstacle to punish such serious behaviors.

Question 6. Regarding paragraph 13 of the report, please clarify how do they investigate and prosecute acts defined in Article 2 of the Convention committed by persons or groups acting without the authorization, support or acquiescence of the State (art. 3).

There is no judicial precedents of criminal penalties application for the crime of forced disappearance of persons, under any circumstances, so that it can not be said that enforced disappearances carried out by individuals acting without the authorization, support or acquiescence of the State shall be prosecuted under Article 236 of the Penal Code. However, the practice of the General Attorney Office and the Judiciary has been consistent in such behaviors so far, subsuming them under other offenses, including kidnapping (Article 126 of the Criminal Code).

Question 8. In relation to Article 6, paragraph 1, subsection a) of the Convention, please provide information about the applicable law in relation to the following acts: ordering, induce or attempt to commit an enforced disappearance, being an accomplice or participant in thereof, or any other conduct that by its nature is similar to those given. Please also provide information about the applicable law regarding the responsibility of superior hierarchical officers in the terms of Article 6, paragraph 1, subsection b) of the Convention. (Article 6).

While the main problem with the prosecution of perpetrators of enforced disappearances and other crimes against humanity in Paraguay remains being the impunity factor (as reported in question 14), there are no legal obstacles to the investigation, prosecution and punishment regardless of the degree of the responsibility. The Paraguayan criminal law empowers prosecution of the perpetrator or participant and of the one who gives the order (art. 29), of the one who induces or instigate (art. 30) and of the accomplice (art. 31). Criminal law also allows to apply the

commander theory, ie, punish senior officers for actions taken by their subordinates when they had knowledge or should have had, that they committed enforced disappearances (art. 15).

Question 9. In relation to paragraph 20 of the Report, please indicate if there any legislative initiative with a view to incorporate specific mitigation and aggravating circumstances to the criminal law referred to in the Article 7, paragraph 2 of the Convention (Article 7).

There are no legislative initiatives to incorporate in criminal law mitigating and aggravating circumstances under Article 7 of the Convention. Neither exist in the Criminal Code rules allowing to mitigate penalties through cooperative agreements with the prosecution investigation.

Recommendations:

The State party should adjust its criminal law, to reconcile the mitigating and aggravating circumstances under Article 7 of the Convention, in particular the possibility of mitigate the penalty as a result of the cooperation with the investigation on enforced disappearance crimes.

III. Judicial procedure and cooperation in criminal matters (Articles 8 to 15)

Question 10. In relation to Article 5 of the Constitution, which provides that the "genocide and torture and forced disappearance, kidnapping and murder for political reasons are imprescriptible", please specify whether this principle of imprescriptibility could be applicable to all cases of enforced disappearance (art. 236 of the Penal Code). If it were applicable only to enforced disappearances that had been committed for political reasons, please clarify what would be the applicable statute to other cases of enforced disappearance (art. 8).

The question is not clear because there is no defined jurisprudence about it by local courts. In spite of reading in the article 5 of the Constitution, interpreted in the light of other provisions of international law, in particular Article 5 of the Convention, that would indicate that the imprescriptibility operates independently of the political motivation of the disappearance, there are no judicial applications of this principle that could serve as a precedent. The Constitutional Chamber of the Supreme Court interpreted the principle of imprescriptibility in cases of torture, which scope of the applied principle could be understood - mutatis mutandi – the scope of the principle applied to enforced disappearances.

In existing precedent, the Court seems to interpret that, even when torture and enforced disappearance are international crimes, they are non-lapsable or limiteded per se, except where such acts are committed within a systematic or widespread practice, that is, if they are described as crimes against humanity³.

³ Supreme Court of Justice. Decision and Judgment No. 195, May 5th 2008 (In the Court file Inconstitutionality Exception in the file: "BASILIO PAVÓN, MERARDO PALACIOS, OSVALDO VERA AND WALTER BOWER ON PERSONAL INJURY IN THE EXERCISE OF PUBLIC SERVICE" YEAR: 2003 -).

Therefore, in case of sustaining this interpretation it would be applicable the limitation period of fifteen years computed from the time the criminal offense finishes (article. 102 Paraguayan Penal Code). For CODEHUPY, this precedent is a major concern, because it could be used to enact expiration of torture and forced disappearances occurring in the future, and that it could be considered that they are not crimes against humanity. This interpretation downplays very clearly the statement found in the Article 5 of the Constitution.

Question 12. Please provide more information about the scope, content and operation of the Program of Support and Protection of Victims and Witnesses in Criminal Proceedings referred to in paragraph 34 of the report. In particular, please indicate whether the program could benefit others who may participate in the investigation of an enforced disappearance, including the complainant, the relatives of the disappeared person and their defenders. Please also specify whether the General Attorney's Office Unit for the Programme of Support and Protection of Victims and Witnesses in Criminal Proceedings has enough financial, technical and human resources to carry out their activities effectively (art. 12).

While there is a Law No. 4083/2011 that establishes a Programme of Support and Protection of Victims and Witnesses in Criminal Proceedings which structurally and functionally depends of the General Attorney's Office, it has no real development in practice and effectively do not meet a real and effective protection function for witnesses and victims in criminal proceedings. There is no institutional development that allows the implementation of any protective measures established by law. Limitations in the technical, human and financial resources make of this program more a work in progress rather than a real public service. Also, a question to be noted is that the State Mechanism for the Prevention of Torture (MNP) has noted that the Programme does not apply specifically to the protection of victims and witnesses that are deprived of liberty and to people denouncing or testifying against police or prison officers in cases of torture or other human rights violations⁴.

Question 13. Please provide information about the measures provided to prevent those people supposedly suspected of having committed an enforced disappearance from being in a position to influence the investigation or threaten people involved in them. In particular, please indicate whether the suspension of duties is expected during the investigation when the alleged offender is a State officer. Please also indicate whether there are mechanisms to prevent a security force from the investigation of a forced disappearance in case that one or more of its members are currently accused of them (art. 12).

While the existing law allows the public officials who are accused of serious violations against human rights to be separated from the public forces or from their positions of power, in practice such behavior is not widespread. In a case where two children were illegally recruited for military service and disappeared while in the custody of the Army (case on reported in more detail under item 14), the accused military officer continued his career, occupying positions of command and currently reaching the rank of lieutenant colonel in the Paraguayan Army.

No. 5182). Judgment No. 960 of December 31, 2009 (In the File "Request for extradition of the Argentine citizen Eduardo Abelardo Britos" No. 1184-1109).

⁴ National Mechanism for the Prevention of Torture (2014). Annual report and recommendations. Asuncion, p. 146-147. Available at: <http://www.mnp.gov.py/informes/anual> Query: 5th August 2014].

Question 14. Please provide detailed and updated information on the progress and outcome of the investigations regarding enforced disappearances that would have been perpetrated during the dictatorship that took place in Paraguay between 1954 and 1989, including the number of investigations, the number of persons accused and / or convicted, as well as the criminal measures applied. In this regard, please also provide information on measures taken to ensure the right of victims to be informed of the progress and results of the investigation and to participate in the proceedings. Please also indicate whether you have received and are currently reviewing allegations regarding enforced disappearances that had been committed after 1989 and, if applicable, please provide information about them as well as on cases of human trafficking that could be included under the terms of the Convention (arts. 12 and 24).

In 2008 the Commission for Truth and Justice (Comisión de Verdad y Justicia - CVJ) established the investigation of violations against human rights during the dictatorship, determined the names of 336 victims of enforced disappearances, 59 of extrajudicial executions and 28 cases that did not have sufficient conviction to be qualified, classified under twelve episodes occurred during this period of time. To this group it must be added the case of the genocide of the Ache People, whose 60% to 70% of its members were killed between 1960 and 1970 according to estimations made by the CVJ, based on anthropological studies. Based on information provided by witnesses the Final Report of the CVJ offers a list of 179 missing and dead Aches due to the manhunts and to the process of forced sedentarization. However, the report is cautious to point out that the real number of deaths is "undetermined."⁵

The CVJ considered these violations of human rights had a "widespread and systematic character for several decades" and that they were part of an "institutional State policy in coordination with other regional dictatorships" in the framework of Operation Condor⁶, which makes those human rights violations, crimes against humanity. Enforced disappearances were perpetrated in conjunction with other illegal techniques of repression, including prolonged illegal detention without communication and torture, practices that had a massive dimension, affecting one of 63 adults during the dictatorial period. Also, the CVJ fully identified 450 repressors, including senior officers, direct executors and their abettors⁷.

After 25 years of the end of the Stroessner dictatorship, the status of these cases is of widespread and systematic impunity. From the total number of identified repressors from the Stroessner dictatorship, eight received sentences that became final and were executed. Of these, in turn, only six actually met imprisonment, and the other two have been benefited with house arrest based on grounds of age. These sentences were imposed in the framework of ten cases based on illegal detention facts, torture and enforced disappearance of 16 victims. Specifically regarding cases of enforced disappearances five cases were opened regarding the missing of six disappeared detainees respectively. The remaining 98.3% of the repressors identified by the CVJ went unpunished and to the current date, a significant portion of them have died. The criminal justice was reduced to a small group of scapegoats, middle level officers and small order executors who happened to appear in the Crime Investigation Department of the police, one of the repressive institutions that operated during the dictatorship.

⁵ Truth and Justice Commission. Op cit. Volume III, p. 173.

⁶ Plan Condor was a criminal association among South American military dictatorships during the decade of the 70s. The plan included the exchange of information, illegal transfer of the disappeared and conducting repressive joint operations, including forced disappearances.

⁷ Truth and Justice Commission (2008) Final Report Anive Hagua oiko. Volumes I-VIII violations of rights of some groups in situations of vulnerability and risk. Truth and Justice Commission, Asunción.

The progress on these cases depended entirely on the presentation of evidence and on the action of complainants. The causes that depended on the General Attorney's Office prosecutions had no progress at all. In 2011, fifty cases arising from the Final Report of the CVJ were submitted to the General Attorney's Office, without any registered basic evidential issues activities until the present.

After 1989, CODEHUPY and its partner organizations recorded at least four cases of enforced disappearances. The first case is the disappearance in 1998 of two conscripts during obligatory military service. In this case, the State recognized the international responsibility before the Inter-American Commission on Human Rights, for violations of the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons, signing a friendly settlement agreement in which it undertook to investigate the facts and punish the responsables.⁸

However, on August 24th 2007 the State party's criminal justice closed the case with a fine sentence to the military officer accused of the disappearance. The court did not considered the crime as a case of disappearance, but as a case of dropping, which establishes a lower criminal penalty that produces an effect similar to impunity. The fine, which arrives to a sum just over U\$ 7,000 at the present time value, has not even been paid yet.

The other case is about the disappearance of the peasant leader Nicasio Ramon Montiel and his nephew Juan Bautista Sánchez. Both were members of an organization of rural workers. They were reported missing on January 21th 2000 after being surprised by an ambush prepared by an unofficial police band which was led by a military officer of the Paraguayan Army who worked for a landowner, with whom the peasants kept a land dispute. The case still remains unsolved.⁹ This case is placed in the context of a broader pattern of repression that CODEHUPY has reported in various local and international instances. In this context, CODEHUPY records that, between 1989 and 2013, 115 leaders and members of peasant organizations were executed or disappeared in the context of systematic and planned attacks against rural communities in order to force their movement as a way to appropriate their territories. The offenders are landowners and corporate interests linked to agribusinesses, allied with traditional political leaders that dominates the State as a way to guarantee their impunity.

Question 15. Please indicate whether, under domestic law, may limitations or conditions object the applications for judicial assistance or cooperation in pursuance of Articles 14 and 15 of the Convention, including whether the request is from a non party State of the Convention. Please also extend the information provided in paragraphs 51 and 112 of the report (arts. 14 and 15).

Due to the situation of general impunity described in the information provided above, in August 5th 2013 a group of thirteen victims and relatives of missing people during the Stroessner dictatorship presented a criminal complaint for crimes against humanity in the courts of the Republic Argentina, invoking the universal principle of jurisdiction. The cause, identified under No. 7300/13 is assigned to the Federal Court No. 5 under the authority of the judge Norberto Oyarbide. On April 8th 2014 the complaint was extended with the introduction of the Federation of Aché People who denounced the case of genocide of its people during the dictatorship of Stroessner. In September

⁸ Friendly settlement agreement. Case No. 12.330 MARCELINO GOMES PAREDES AND CRISTIAN ARIEL NUNEZ. Official Gazette. Republic of Paraguay. No. 238, December 10, 2009, p. 8.

⁹ File "Reinerio Aguirre and other on people disappearance in the settlement yvy Marane'ý - Col. Sgto. José Félix López ". Year 2000, No. 56, page 98, in the 1st Instance Criminal Court, 2nd shift, Concepción.

2013 the Paraguayan State received through the Foreign Affair Ministry, a judicial warrant from Argentina requesting a report on whether there are criminal proceedings, regarding the denounced facts, taking place in Paraguay and, if appropriate, to report about all the available data on the cause, the state of judicial proceedings, the procedural status of the accused and any other information that may be of interest to the Argentinian justice to investigate the case. The warrant was not answered and the report was not sent. According to unofficial information supplied to the CODEHUPY this report had been prepared by officers from the General Attorney's Office, but in some political leadership levels of the Paraguayan State they decided not to send it because it would leave in evidence of the same existing pattern of impunity which would legitimate the universal jurisdiction. This case is particularly important in terms of the arts. 14 and 15 of the Convention, taking into account that some of the victims registered in Paraguay are Argentinians, Uruguayans, Brazilians and Chileans disappeared under the "Condor Plan".

In order to the obligations under Art. 13 of the Convention, it should be stated that the Republic of Paraguay has been used numerous times as a refuge for repressors from the region, criminally prosecuted in their home States for crimes against humanity, including forced disappearances. Structures and networks of cooperation between the repressive forces operating in the region in the past, remain in the State party until today.

There are two historical cases, one of the Deputy Samuel Miara, and the other of the Senior Military doctor Nolberto Atilio Bianco and his wife Nilda Susana Wherli Bianco, both required by the Argentinean justice in cases opened for crimes against humanity and, specifically, for appropriation of minors and identity replacement. In the Bianco case, the Paraguayan State delayed the extradition request by Argentina in 1987, although they had exhausted all judicial instances in April 1989.

Paraguay argued trivial reasons such as loss and reconstitution of the file or the renewal of the judiciary to justify the delay of the extradition. Just after consulting the IACHR, the Bianco were extradited in March 1997.¹⁰ Bianco was sentenced to twelve years in prison, and had remained two in prison, discounting the ten years he supposedly spent under house arrest. However, despite an agreement of parts made with the Republic of Paraguay at the request of the IACHR in the conciliation stage, the Paraguayan justice did not comply with the repeated Argentinian warrants that ordered to make genetic tests to the appropriate children.

In 2009, a Criminal First Instance Court rejected the request for extradition of the former Argentinean policeman Eduardo Abelardo Britos, who was wanted by the Federal First Instance Court of La Rioja, Argentina, in the context of a case investigating facts regarding illegal deprivation of liberty and torture occurred in a Gendarmerie barrack in the framework of a systematic extermination plan implemented by the security forces of the Argentinean government in 1976. Britos is also linked to other criminal cases of homicide in the province of La Rioja which investigates the death of the conscript Roberto Villafane and the murder of the priests of Chamical. The court which refused the extradition based on the statute of limitations in the criminal case. However, later the Supreme Court reversed the decision and upheld the extradition, which was executed in January 2010.¹¹

¹⁰ Interamerican Commission on Human Rights (IACHR), 2012 REPORT No. 108/12. DECISION Case 11,561 - PARAGUAY [HTML], Washington: Interamerican Commission on Human Rights. Available at: <www.oas.org/es/cidh/decisiones/2012/PYAR11561ES.doc> [Accessed 5th August 2014].

¹¹ Supreme Court of Justice. File "Request of preventive detention for extradition of the Argentine citizen Eduardo Abelardo Britos" No. 1184-1109 (Judgment No. 960 of 31th December 2009).

Recently, in 2014, the priest Aldo Vara was discovered and arrested, a former military chaplain of the V Army Corps, required by an international arrest warrant issued by the Federal Court of Appeals of Bahía Blanca (Argentina), who was protected by the Diocese of Ciudad del Este (Paraguay), was discovered and arrested. Vara died shortly after being arrested for extradition, while benefiting from house arrest. In the city of Panama, on the other hand, the Argentinean military Ricardo Luis von Kyaw, was arrested and extradited to the Argentine Republic, required by the Federal Court No. 1 of La Plata, in the framework of the investigation of crimes against humanity committed in a clandestine detention center known as “La Cacha”. Von Kyaw traveled with a Paraguayan Passport which credited him with a false identity. During the years prior to his capture, he had remained clandestine in Paraguay.

Recommendations:

a) The State party should ensure sufficient financial and technical resources to the functioning of the *Program for the Support and Protection of Victims and Witnesses in Criminal Proceedings*, particularly to the cases of cooperation with the criminal investigation regarding offenses against human rights and against people with especially vulnerable conditions facing abuses of power.

b) The State party should ensure that public officers who are suspected or have been accused of committing a forced disappearance are removed from office and suspended from duty during the criminal investigation.

c) The State party should develop and implement a comprehensive, effective and independent criminal policy addressed to crimes against humanity committed during the Stroessner dictatorship (1954-1989). The State must ensure that crimes are investigated, prosecuted and punished, taking into consideration their condition of crimes against humanity committed in the context of a systematic attack on the civilian population, ensuring the punishment of all the perpetrators, accomplices and concealers that are still alive.

d) The State party should ensure that enforced disappearances occurred after the dictatorship, are effectively investigated and punished with the appropriate severity of punishment for the committed crimes.

e) The State party should ensure prompt and effective filling out of judicial cooperation requests required by other states, including those requested in the context of investigations identified under No. 7300/13 in charge of the Federal Court No. 5 under judge Norberto Oyarbide, in Argentina, and those requests for extradition which have the purpose to investigate enforced disappearances and other crimes against humanity. The State party should ensure that the Paraguayan courts do not oppose obstacles or inappropriate conditions to the cooperation requests, especially those related to the legal action prescription.

IV. Measures to prevent enforced disappearances (Articles 16-23)

Question 17. Please indicate whether exceptions may be opposed against the right of the persons deprived of their liberty that their detention must be immediately communicated to their families or any other person of their choice. Please also provide information on the measures adopted to ensure that this right is guaranteed in practice (art. 17).

While the detainees have the right that their detention must be communicated immediately to their family or any other person of their choice is formally provided in the legislation, there is no previously established formal mechanism or budget conditions to enforce this law. In some primary detention centers, police personnel lends his own mobile phone so as the detainee can communicate with their relatives. In most cases, however, such communication is not performed.

A major risk facing enforced disappearance cases is the breach of the right to count on a Public Defender from the moment of the detention. This affects most severely the people in situation of poverty who must rely on public defense. Currently, public defenders only starts to intervene when the detainee is taken to provide evidence to the prosecutor. Between the arrest and the formal charge, it takes several days, in which the defenselessness of the detainee is also a factor of vulnerability facing abuses of power. This situation is exacerbated in the arrests of adolescents (14-17 years old) because even if it is correct the ban to declare in the Public Ministry (General Attorney's Office), they are assisted by a Public Technical Defender only when appearing before the Criminal Court, which prolongs the helplessness of all cases at least 24 more hours.

There is no effective legal remedy in the domestic law to protect people in case of a suspected enforced disappearance so to determine their whereabouts and control the legality of the detention -if there is any- especially in the early stages of the disappearance. This legal remedy, according to the international human rights law and to the Article 17.1 paragraph f) of the Convention, should be the habeas corpus, but the common practice in the Paraguayan courts and the Supreme Court laws is, coincidentally, to declare the inadmissibility of this legal remedy when it comes to enforced disappearance cases.

Thus, on July 12th 2000, the Supreme Court of Justice rejected an habeas corpus petition in favor of two conscripts who had disappeared in a military unit, arguing that their whereabouts were unknown. The military claimed that conscripts had defected, a fact that was proven to be false¹². In January 2002, two Asuncion courts rejected many habeas corpus petitions presented by relatives of two people who had been illegally detained by the National Police agents and considered missing for fourteen days, in the framework of a kidnapping investigation.

The petition was dismissed for lack of certainty on their arrest because both the Police and the Ministry of Interior denied having arrested the victims, who they considered fugitives¹³. In May 2006 and March 2009 the Supreme Court of Justice dismissed two

¹² Interamerican Commission on Human Rights (IACHR), 2003 REPORT NO 82/03. REQUEST 12.330 Admissibility. Case MARCELINO GOMES PAREDES AND CRISTIAN ARIEL NUNEZ. PARAGUAY [HTML], Washington: Inter-American Commission on Human Rights. Available: In <<http://www.cidh.org/annualrep/2003sp/paraguay.12330.htm>> [Accessed 5th August 2014].

¹³ Interamerican Commission on Human Rights (IACHR), 2008 REPORT No. 86/08. REQUEST 04-03. ELIGIBILITY . Case JUAN FRANCISCO ARROM SUHURT, ANUNCIO MARTI MENDEZ, VICTOR ANTONIO COLMAN ORTEGA , ANA ROSA SAMUDIO DE COLMÁN, JORGE SAMUDIO FERREIRA

other habeas data petitions on behalf of presumed missing people due to organized crime groups. In the first case, it was a journalist who was suspected of being disappeared after having denounced the ties between a member of the Deputy Chamber and the drug trafficking. In both situations, the Court argued that habeas corpus was inappropriate having a criminal complaint being investigated by the General Attorney's Office¹⁴.

Question 18. Please provide detailed information about the information that should be included in the records of the persons deprived of liberty who remain in prisons and police stations (paragraph. 69 of the report), as well as the records kept in other establishments where there could be persons deprived of their liberty, such as the military detention centers. In this regard, please also specify if those records are fully adjusted to the Article 17, paragraph 3, of the Convention and report on the measures taken to ensure that they are appropriately completed and updated. In addition, please comment on the allegations that inform of some cases in which the deprivation of liberty would not have been properly recorded, for example in police stations. If so, please provide information on the procedures performed; imposed sanctions; and measures taken to prevent recurrence of such omissions, including whether training to relevant staff is provided regarding this issue (art. 17).

Regarding the registration system, there is a big flaw committed by the State party on the proper use of this effective tool for the prevention of torture and enforced disappearances. This situation affects two sensitive institutional settings that keep persons deprived of liberty: the primary centers of detention (police stations, under the National Police) and prisons (under the Ministry of Justice).

In police stations, through the Command of the National Police Resolution No. 176/11 a Record Book of Detainees was adopted as a result of a recommendation made by the Subcommittee on Prevention of Torture¹⁵. This recommendation arose from the finding that the arrests were recorded in a book that did not contain the basic and standardized information to ensure the protection of detainees from torture. The register currently in use, contains fields that fulfill the requirements of art. 17.3 of the Convention, if they are properly filled. The problem is that the registry is not used in a systematic and complete way. In some police stations it is not used, under the argument of avoiding double registration. Symptomatically, the fields for the medical examination information, family and Defenders visits and information regarding transferring of the arrested person to another destination are not completed. Neither there is a record of every detainee. Only of those who were arrested under a warrant. The arrests that do not result in a subsequent criminal prosecution, as the case of suspects, undocumented or intoxicated persons are not registered. The National Prevention Mechanism against Torture (MNP) establishes that the lack of staff training and the absence of a clear definition of a responsible person for the registration official collaborate with the violating of this legal statute¹⁶. Whatever the cause, the record is

AND THEIR FAMILIES against PARAGUAY [HTML], Washington: Inter-American Commission on Human Rights. Available at: <<https://www.cidh.oas.org/annualrep/2008sp/Paraguay04-03.sp.htm>> [Accessed on August 5th 2014].

¹⁴ Supreme Court of Justice. File: "Generic Habeas Corpus presented by Mrs. María del Pilar Roysg in favor of Ramon E.nrique Galeano" (Judgment No. 336 of May 31th 2006). File: "Generic Habeas Corpus presented by José Giménez and others in favor of Oscar Sergio Giménez Figueredo" (Judgment No. 115 of March 23, 2009).

¹⁵ Subcommittee on Prevention of Torture. Report on the visit to the Republic of Paraguay of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading. UN Doc. CAT/OP/PRY/1, June 7, 2010, para. 74.

¹⁶ National Mechanism for the Prevention of Torture. Op. Cit., P. 65.

not properly used and does not constitute a preventive measure against the risk of torture or enforced disappearance.

The prisons hold a judicial record of persons deprived of liberty. In these records are entered personal information, family contacts, court orders which imposed the sentence of prison or the preventive detention, so as the appearances the Court or hearings. Medical information taken during admission and discharge are not entered on those records. Nor there is a unified record of persons deprived of liberty that allows an on line management that allows the the Ministry of Justice administrative authorities, Judges, Prosecutors and Defenders immediate access to the information about the location and legal status of a detainee in the prison system. Each prison keeps their files on paper, hindering the management and the transparency of the information by the other operators of the judicial and penal system. Also, there are cases of detainees who remain in prison long after completing their sentence. Neither an effective judicial control over administrative transfers that occur between prisons for disciplinary reasons is permitted.

Recommendations:

- a) The State party should ensure the minimum conditions in the primary detention centers to ensure that all detentions will be communicated immediately to the family or any other person designated by the detainee. The State party should ensure budgetary conditions and regulations for the Ministry of Public Defense to ensure the presence of a technical Defender ex officio from the moment of detention, providing legal assistance at police stations. Should take extra care when detainees are between 14 and 17 years old.
- b) The State party should ensure the effective date of the habeas corpus in cases which the alleged forced disappearance of persons is in accordance with Article 17.1 paragraph f) of the Convention.
- c) The State party should ensure the correct use of the Register of Detainees in police stations of the National Police, ensuring their proper use is actually a preventive measure against torture, enforced disappearances and other human rights violations.
- d) The State party should establish a single national register of detainees in prisons and centers for juvenile offenders, allowing the judicial and administrative authorities to control the situation of persons deprived of liberty. Registration should keep at least the date and place of arrest, court data, cause and warrant under which he is being held, information on compulsory medical examinations, records of complaints received, visits from relatives, lawyers or supervisory bodies, full record of appearances at court hearings and transfers to other detention centers, the records of disciplinary action in which there is information on the identity of the offender, the penalty imposed, the duration of it and the qualified officer; the date of enforcement of the sentence and release date.

V. Measures of reparation and protection of children against enforced disappearance (articles 24 and 25)

Question 21. Paragraph 86 of the report refers to the law No. 838/96 "which compensates victims of human rights violations during the dictatorship of 1954 to 1989" which in cases of forced disappearance of persons provides for compensation caused by political or ideological reasons. Also, as reported, in accordance with one of its extensions, such compensation may be claimed by the surviving spouse or blood relatives to the first degree. In this regard, please indicate whether, in addition to those persons listed above, other individuals who have suffered harm as a direct result of an enforced disappearance could access to compensations to the victims of the dictatorship, according to the Paraguayan law. Please also provide updated information about the compensations that were granted for forced disappearances (paragraph 106 of the report), and the measures taken to speed up procedures to provide such compensation. In addition, please indicate whether the remedial measures taken in relation to persons who have been victims of forced disappearances during the dictatorship have included rehabilitation measures, such as medical and psychological assistance, and ascertain that women victims of forced disappearance during that period have received assistance in the framework of comprehensive care measures in cases of violence against women described in the report. Please also provide additional information about the Center for Victims, from de General Attorney's Office, referred to in paragraph 171 of the Core document that is part of the reports of the States parties (HRI / CORE / PRY / 2010) (art. 24).

So far, the Paraguayan State agreed compensation to the families of 16 victims of enforced disappearance under the Law No. 838/96 which establishes compensation to victims of the 1954-1989 dictatorship. On the other hand, the families of 320 victims of enforced disappearance of the dictatorship, according to the record of the Commission for Truth and Justice (the remaining 95% of the victims) were not compensated in any way.

Taking into account the current values, the amount of compensation for forced disappearance reaches approximately 43,000 American dollars. This is the only compensation offered to the victims or their families and not fully complements other rehabilitation measures, such as medical and psychological assistance. According to a public report of the Ministry of Finance, to June 2013, had made compensation payments totaling \$ 92.1 million to 6,076 people, including direct victims and heirs, for the most part, victims of torture.

The compensation policy established by the State party is challenged by groups of victims of the Stroessner dictatorship for being partial and not complete.

The meager amounts determined in compensation, cumbersome procedures, lack of transparency of awards are being questioned. In the case of allegations of enforced disappearance, the Ombudsman Office requires the applicant previously presents the declaration of missing and presumed dead before the civil justice, then once registered his death should be initiated the inheritance process which establish his qualifications as a heir of the deceased. For all these court proceedings the family needs to appoint a family attorney to make arrangements in the courts of Paraguay and to assume all costs of trials. These requirements are excessive and unnecessary and demonstrate a lack of understanding that the State officers have concerning the legal status of the disappeared detained.

Questioning occurs on the revictimization nature of the attention provided to victims in all administrative instances where they have to process the application, starting with the Ombudsman. Also victims of the Stroessner dictatorship reported that officials from the Ombudsman office ask for bribes to speed the processing of applications. On several occasions compensation claims from genuine victims were arbitrarily rejected, when on the other hand amounts were paid to impostors who submitted forged documents with the complicity of the Ombudsman. It is also questioned the lack of a comprehensive reparations policy covering all the dimensions of harm.

To date, the State party has not complied with the judgment of the Inter-American Court of Human Rights in the case *Goiburú and others against Paraguay* regarding the resolution item which orders to build a monument in memory of the four victims in this case, with a plaque that alludes to the context of enforced disappearances during Operation Condor¹⁷. Nor is fulfilled the Municipal Council of Asunción Ordinance No. 6/1993 from May 6th 1993 which orders the Municipality of the capital to erect a monument in the designated “Square of the Disappeared” (Plaza de los Desaparecidos) with the names of the all the missed persons.

Question 22. Please provide updated information on the measures taken and the results, to locate missing persons during the dictatorship (paras. 91 to 97 of the report). In this regard, please also specify whether the bodies responsible for the investigation, search and identification of missing persons during that period have enough financial, technical and human resources to carry out their work in a timely and effective manner (art. 24) .

The Truth and Justice Commission (CVJ), with the technical support of the Argentine Forensic Anthropology Team (EAAF) received from the Argentine Fund for Horizontal Cooperation (FOAR), was able to locate the remains of three people who disappeared during the dictatorship. Subsequently, in 2011, during the government of Fernando Lugo (Decree No. 7101/2011), was established an inter-ministerial coordination unit responsible for the execution of the search and identification of missing persons in the period 1954-1989 in compliance with the recommendations of the CVJ. This unit (known by its acronym ENABI, National Team for investigation, search and full identification of forcibly disappeared and extrajudicially executed persons during the period 1954 to 1989), currently is under the Ministry of Justice. Since its creation it made 24 findings, thus totaling 27 so far. The findings are saved as evidence in the Forensic Laboratory of the Public Ministry.

The search program of the disappeared detainees during the dictatorship of Stroessner faces serious economical funding obstacles. In terms of human resources, only the salary of the director of ENABI is covered, and the rest of the contributions are voluntary without even travel expenses being covered. They do not have a car, working tools and office supplies. The ENABI has identified 12 sites where there are mass graves of missing persons during the Stroessner regime, which can not be exhumed because of the lack of resources for operational work.

In 2013, the Paraguayan State budgeted a fund of \$150.0000 American Dollars to finance an identification program (initially enabled 50% of such amount and later enabled the remaining 50% in 2014). 50% of this fund should have been transferred to the Argentine Forensic Anthropology Team (EAAF) because the country does not have the technical means to do the work of identification. However, these funds were never transferred, alleging domestic legislation impediments related to public procurement

¹⁷ IHR Court . *Goiburú and others vs. Paraguay*. Judgment of September 22th 2006. Paragraph 177 and resolution item No. 10.

and the lack of transparency regarding the attempted alternative procedures. With these resources would be created a National Genetic Data Bank of the families of the 336 victims of enforced disappearance during the dictatorship and it would be available the genetic profile of the Paraguayan population (to be developed on a dose of 400 random samples) in addition to starting the work with the identification of 20 missing persons.

Question 23. Please provide information on current legislation regarding the legal situation of disappeared persons whose fate has not been clarified and from their relatives, in such fields as social welfare, financial matters, family law and property rights (art. 24).

In March 2007 a group of ten members from the Deputies Chamber presented a Bill of Protection to Persons from Enforced Disappearances. The project was limited to establishing a civil summary procedure for the declaration of absence with presumed death of all those people whose forced disappearance happened before February 3rd 1989 (end of the Stroessner dictatorship), referred to the effects of the civil inheritance law. Although the project preserved the rights of the victim in case of reappearance, did not regulate on the rest of the subjects in accordance with Article 24.6 of the Convention. The project, however, was rejected on two successive occasions in 2008, and was sent to the archives. The State party does not have appropriate legislation, in accordance with Art. 24.6 of the Convention, ruling about the legal status of missing persons and their relatives in civil, economic and social protection issues.

Recommendations:

a) The State party should develop and implement a universal policy of full compensation for all victims and families of victims of the dictatorship. Comprehensive reparation measures should address all the complexities of the damage, including monetary compensation, rehabilitation, medical and psychological care, satisfaction for victims and their families and guarantees of non-repetition, specifically those whose purpose is aimed at verification of the facts and full and public disclosure of the truth, the social recovery of the memory of the victims, holding tributes and commemorations, public recognition of their dignity and the establishment of memorials and places where the bereaved can express and develop their grief, as well as society as a whole to understand and preserve the memory of what happened.

b) The State party should guarantee funding for a program to search for and locate missing persons arrested during the Stroessner dictatorship (1954-1989), ensuring adequate funding for the National Team for investigation, search and full identification of people deprived of liberty-disappeared and extrajudicially executed during the period 1954-1989 (ENABI). It also should be ensured a funding for an identification program, respect and return of the remains of missing persons whose death has been solved after the research. To this end, the State must ensure efficient and transparent implementation of the fund created to finance the National Genetic Data Bank of the relatives of victims of enforced disappearances during the dictatorship and the genetic profile of the Paraguayan population. The State party should ensure hereinafter financial and technical necessary resources to make scientific processes of genetic identification of missing persons in the country.

c) The State party should adopt legislation for comprehensive protection of disappeared persons whose fate has not been clarified and for their relatives, in fields such as social welfare, financial matters, family law and property rights, according to the art. 24.6 of the Convention.

Annex I: Criminal convictions imposed for crimes against humanity

Cause	Víctim(s)	Repressors and Convictions	Year of the Sentence
Homicide by Torture	Mario Schaerer Prono	Lucilo Benítez (25 years) Camilo Almada Morel (25 years) Juan Aniceto Martínez (25 years) Pastor Milcíades Coronel (25 years)	1999
Enforced Disappearances	Amílcar Oviedo Duarte	Pastor Milciades Coronel (25 years) Lucilo Benítez (25 years) Agustín Belotto Vouga (12 years y 6 months) Plus a fine of 5.500.000 guaraníes to each one	2002
Unlawful detentions and torture	Gumercindo Galeano Leopoldo Morínigo Bernardo Morínigo Isabelino Silva Antonio Silva Hilario Martínez	Camilo Almada Morel (7 years)	2000
Unlawful detentions and torture	Alberto Alegre Portillo	Pastor Milcíades Coronel (8 years) Lucilo Benítez (8 years)	1999
Enforced Disappearances	Miguel Ángel Soler	Camilo Almada Morel (16 years, 6 months and 6 days) Lucilo Benítez (16 years , 6 months and 6 days) Juan Aniceto Martínez (16 years, 6 months and 6 days)	2007

Enforced Disappearances	Benjamín y Rodolfo Ramírez Villalba	Pastor Milciades Coronel (25 years) Alberto Buenaventura Cantero (12 years and 6 months) Lucilo Benítez (12 years and 6 months) Agustín Belotto Vouga (12 years and 6 meses) Juan Aniceto Martínez (12 years and 6 months)	1999
Enforced Disappearances	Carlos Mancuello Bareiro	Pastor Milciades Coronel (17 years) Camilo Almada Morel (13 years and 9 months) Lucilo Benítez (13 years and 9 months) Alberto Buenaventura Cantero (7 years and 6 months) Agustín Belotto Vouga (7 years and 6 months)	2008
Unlawful detentions and torture	Julián Cubas	Camilo Almada Morel (12 years) Lucilo Benítez (12 years)	2003
Enforced Disappearances	Agustín Goiburú	Francisco Ortíz Téllez (10 years)*	2007
Unlawful detentions and torture	Sebastián Castillo	Ramón Duarte Vera (13 years and 4 months)*	2002

Source: Self made form based on the files: "Pastor Milciades Coronel and other about death and torture. Capital "; "Sabino Augusto Montanaro and others about Abuse of authority, kidnapping, torture, deprivation of liberty, Capital murder"; "Camilo Almada Morel and others about torture, illegal arrest, abuse of authority and others"; "Pastor Milciades Coronel, Lucilo Benítez and others about abuse of authority and others. Capital "; "Francisco Alcibiades Brítez Borges and others about murder, violation of domicile, abuse of authority, false imprisonment, kidnapping, torture and death threats -Capital"; "Sabino Augusto Montanaro and others about kidnapping, false imprisonment, abuse of authority, torture and double homicide. Capital "; "Francisco Alcibiades Brítez Francisco Borges and others about kidnapping, false imprisonment, abuse of authority, torture and murder in the Capital"; "Pastor Coronel Miltiades and other on abuse of authority, false imprisonment, kidnapping, torture and death threats.

Capital "; "Sabino Augusto Montanaro and others about crimes against life, physical integrity, health and constitutional guarantees."

Observations: * The sentences imposed was not followed because the repressors were benefited with house arrest, considering that were over the age of 70 years old.

**Annex II: Compensations agreed based on art. 5 inc. a) of the Law No. 838/1996
"Which gives compensation to the victims of human rights violations during the
dictatorship of 1954-1989"**

ENFORCED DISAPPEARANCE

Name	File	CVJ File	Disappearance Date
Juan Carlos Rivas Bauzá	55/04	D0399	24/06/1963
Amílcar María Oviedo Duarte	232/04	D0053	21/09/1976
Antonio Alonso Ramírez	113/05	D0150	23/07/1960
Derlis Nenrhod Villagra Arzamendia	220/05	D0007	30/11/1975
Américo Villagra Cano	287/05	D0008	03/12/1975
Federico Jorge Tatter Morínigo	447/05	D0031	15/10/1976
Víctor López Irala	487/05	D0013	05/09/1976
Octavio Rubén González Acosta	143/06	D0018	03/12/1975
Luis Gonzaga Pereira Pereira	347/06	D0314	04/1976
Martín Rolón Centurión	11/07	D0048	09/04/1976
José Estanislao Sotelo Núñez	358/07	D0203	10/03/1980
Agustín Goiburú Giménez	430/08	D0045	09/02/1977
Urpiano Fleitas Ruiz Díaz	805/10	D0227	23/06/1980
Blas Ignacio Talavera	109/11	D0186	26/12/1959
Rigoberto Insaurralde Cabrera	626/12	D0059	31/05/1960
Sindulfo López Irala	663/12	D0063	05/09/1976

ARBITRARY EXECUTION

Name	File	CVJ File	Disappearance Date
Arturo Bernal	382/04	D0241	06/06/1976
Juan Pedro Benítez	84/05	D0272	24/07/1975
Silvano Ortellado Flores	223/05	D0158	15/04/1976
Juan Ojeda	235/05	D0300	24/10/1963
Pedro Nolasco Riveros	378/05	D0410	09/01/1964
Dionisio Rodas Martínez	457/05	D0149	11/05/1976
Gumercindo Gamarra Domínguez	26/06	D0417	19/05/1971
Jorge Agustín Zavala Esquivel	80/06	D0206	12/01/1978
Albino Amarilla Villalba	459/09	D0025	16/02/1981
Alejandro Falcón Escobar	131/11	D0024	17/05/1976
Francisco Martínez	264/11	D0274	11/07/1986
Herminio Cubilla Florentín	1340/12	D0271	06/07/1965
Aurelio Bogado Martínez	1296/12	D0275	11/07/1986

NOT RATED

Name	File	CVJ File	Disappearance Date
Benjamín Merardo Navarro	33/08	s/d	s/d
Agustín Coronel Torales	328/13	s/d	s/d

Source: Self made form based on information from the Ombudsman Office available in <<http://www.defensoriadelpueblo.gov.py/>> [Accessed on August 5th 2014] and Truth and Justice Commission (CVJ), 2008: Final Report "Anive Hagua Oiko". Volume VIII, p. 423 et seq.