



Rights of the Child
in Paraguay

OMCT

OPERATING THE **SOS-TORTURE** NETWORK



Rights of the Child in Paraguay



**The aim of OMCT country reports
are to prevent torture**

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

Summary

1. INTRODUCTION	7
2. DEFINITION OF THE CHILD	8
3. DEFINITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	9
4. CHILDREN IN DETENTION	11
4.1 TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN DETENTION	11
4.2 CONDITIONS OF DETENTION	14
5. CHILDREN IN THE ARMED FORCES	17
5.1 UNDER-AGE RECRUITMENT IN THE ARMED FORCES	17
5.2 TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN THE ARMED FORCES ...	19
5.3 DEATH IN THE ARMED FORCES	20
6. PROTECTION FROM OTHER FORMS OF VIOLENCE	23
6.1 LEGAL FRAMEWORK	23
6.2 STREET CHILDREN AND CHILD LABOUR	25
6.3 SEXUAL ABUSE AND EXPLOITATION	28
7. CHILDREN IN CONFLICT WITH THE LAW	30
7.1 AGE OF CRIMINAL RESPONSIBILITY	30
7.2 GROUNDS OF ARREST	30
7.3 POLICE CUSTODY	31
7.4 PRE-TRIAL DETENTION	33
7.5 REINTEGRATION	34
8. CONCLUSION AND RECOMMENDATIONS	35



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Report on the Implementation
of the
Convention on the Rights of the Child
by
the Republic of Paraguay

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Introduction

The Republic of Paraguay ratified the Convention on the Rights of the Child (the Convention) on 20 September 1990 and it came into force on 25 October 1990. Paraguay is also a party to other international instruments related to human rights, in particular to the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. At a regional level, Paraguay is a party to the American Convention on Human Rights (“Pact of San Jose”) and the Inter-American Convention to Prevent and Punish Torture.

OMCT welcomes the second report, submitted by the State of Paraguay to the Committee on the Rights of the Child (the Committee), which refers to aspects that contribute to the achievement of important developments in the situation of Paraguayan children. However, despite ongoing legislative reforms and practical improvements regarding child protection and

development, OMCT deems that Paraguay has not sufficiently taken into account the suggestions and recommendations of the Committee on its initial report. In particular, there still are cases of torture of children in detention and in the armed forces. The situation of children in conflict with the law is also a source of deep concern.

The rights of children to be protected against torture and other forms of violence in Paraguay are mainly enshrined in the Constitution of 1992, the Penal Code and the Criminal Procedure Code. The legal framework applicable to children also includes the Code of the Minor (Código del Menor).¹ However, this law might soon be replaced by a new Code on Childhood and Adolescence (Código de la Niñez y la Adolescencia). This Code has been adopted by the Senate and the House of Deputies of the Parliament, but still needs presidential

promulgation before coming into effect. OMCT encourages the Paraguayan government to promulgate this new law without further delay, since this change, as recognized by the Inter-American Commission

on Human Rights (IACHR), will result in a shift from the present legal conception of the child as a subject of tutelage and repression to full admission of the rights of the child.²

II. Definition of the Child

The Code of the Minor applies to minors from their conception to the age of 20 years.³ However, this definition will be modified with the coming into effect of the new Code on Childhood and Adolescence. According to article 2, this Code will apply to every human being from his/her conception to his/her 18th birthday.⁴ Within this category, the same article provides that an individual must be considered as a child until his/her 14th birthday and as an adolescent from his/her 14th until his/her 18th birthday.

The age of majority may be reduced under the Civil Code, whereby young people of 16 may marry provided they have parental consent and an additional judicial authorization. However, Paraguayan law, despite article 12 of the Convention, does not give the children concerned the possibility of being heard in this procedure. Article 178 of the future Code on Childhood and Adolescence will remedy this deficiency, if it comes into force.

2 - Inter-American Commission on Human Rights, *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser.L/VII.110, doc. 52, 9 marzo 2001, par. 11-12.

3 - Art. 1.

4 - “Todo ser humano desde su concepción hasta el día en que cumple los 18 años”.

III. Definition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Committee has on several occasions pointed out that article 37 of the Convention is linked to article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵. Furthermore, the Committee, in its examination of States Parties' reports, and other commentaries, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 37.⁶ These rules and guidelines are: the Beijing Rules⁷, the Riyadh Guidelines⁸ and the Rules for the Protection of Juveniles Deprived of their Liberty⁹.

OMCT believes that the Government report's handling of the issues of torture and other forms of ill-treatment is insufficient. The report provides very little information on *de facto* ill-treatment or torture of children and *de jure* protection and thus, OMCT believes that the Committee should be provided with more information.

The prohibition of torture is stated in article 5 of the Paraguayan Constitution, which provides that nobody will be submitted to torture or cruel, inhuman or degrading treatment or punishment.¹⁰ As a means of criminal investigation, such practices are indirectly prohibited by article 174 of the Criminal Procedure Code, whereby acts which infringe procedural guarantees enshrined in the Constitution, in the international law in force and in the laws, as well as all the other acts which are consequences

5 - Art. 1 of the Convention against Torture defines torture as: «(...) any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. «

6 - See for example Report on the tenth session, October - November 1995, CRC/C/46, para. 214. Or see Report on the ninth session, May - June 1995, CRC/C/43, Annex VIII, p. 64.

7 - General Assembly resolution 40/33.

8 - General Assembly resolution 45/112.

9 - General Assembly resolution 45/113.

10 - "Nadie será sometido a torturas ni a penas o tratos crueles, inhumanos o degradantes".

of these laws, will not have any probative value.¹¹

These articles correspond with the duties that arise from article 37 of the Convention. However, OMCT regrets that the Paraguayan legislation, and in particular the Penal Code, does not provide any definition of torture as defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This deficiency has already been criticised by the UN Committee against Torture, which expressed its concern at “the fact that in the legislation in force, torture is not defined as an offence in accordance with article 1 of the Convention; the offence provided for in the new Penal Code does not include basic elements of the offence described in the Convention”.¹² In particular, the existing legislation makes no reference to psychological torture, nor does it make mention of penalties in connection with the act or

complicity with such act. Therefore, OMCT suggests that the members of the Committee ask the government of Paraguay to enact a law defining the crime of torture in terms of article 1 of the Convention against Torture.

The Paraguayan legislation is also inadequate regarding the legal framework of torture and other forms of ill-treatment of children. Article 134 of the Paraguayan Penal Code, which the government recalls in its report, does not deal with torture in the sense of the Convention, but only with violence exercised by a person in charge of the education, tutelage or guardianship of minors of 16 years.¹³ OMCT welcomes this provision as a means mainly to overcome private violence against children. As such, article 134 appears to be a tool aimed at implementing article 19, rather than article 37, of the Convention. Indeed, its scope of application is too limited to fully cover all cases of torture, since it does not seem to include acts perpetrated by public officials or other persons acting in an official capacity, as required by article 1 of the UN Convention Against Torture. As a result, OMCT would recommend that Paraguay adopt a more comprehensive penal provision on torture and other forms

11 - Código procesal penal, art. 174: “Exclusiones probatorias: Carecerán de toda eficacia probatoria los actos que vulneren garantías procesales consagradas en la Constitución, en el derecho internacional vigente y en las leyes, así como todos los otros actos que sean consecuencia de ellos”.

12 - *Conclusions and recommendations of the Committee against Torture : Paraguay*. 10/05/2000. A/55/44, par. 150 (b).

13 - Art. 134: “El encargado de la educación, tutela o guarda de un menor de dieciséis años que sometiera a éste a dolores síquicos considerables, le maltratará grave y repetidamente o le lesionara en su salud, será castigado con pena privativa de libertad de hasta dos años o con multa, salvo que el hecho sea punible con arreglo al artículo 112”.

of ill-treatment of children, which would comply with the Convention.

In the case of child detention, the

Constitution of Paraguay adds that minors shall not be imprisoned with adults.¹⁴ This provision appears to be consistent with article 37 (c) of the Convention.

IV. Children in Detention

a. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Detention

OMCT expresses its deep concern about the situation in the juvenile detention centres of Paraguay. Several governmental and non-governmental organisations have repeatedly denounced practices, which amount to torture or cruel, inhuman or degrading treatment. In a study on children in prison carried out between November 1997 and May 1998, the Public Ministry of Paraguay, in collaboration with UNICEF and Defence for Children International – Paraguay Section, investigated the cases of 87 children awaiting trial. Regarding torture and other forms of ill-treatment, this study concluded that 41 of the 87 detainees interviewed reported that they had been

beaten, kicked and submitted to other forms of ill-treatment (especially in police facilities). 24 others refused to answer.¹⁵ Even though this report was written some three years ago, the situation does not appear to have improved much since.

The case of Panchito López Juvenile Detention Centre, located in Asunción, is the most serious. Various allegations of torture and ill-treatment have been registered. According to Amnesty International, besides a high incidence of random brutality from the prison guards, these practices have included “boys being kicked, beaten, suspended upside down, having plastic bags

14 - Art. 21 “De la reclusión de las personas (...) Los menores no serán reclusos con personas mayores de edad”.

15 - Public Ministry of Paraguay, UNICEF and Defence for Children International, *Summary of the Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*: “41 de los 87 detenidos entrevistados denunció haber recibido golpes, patadas y otros malos tratos (especialmente en dependencias policiales). Otros 24 se negaron a contestar la pregunta”.

put over their heads, being hit on the back with a hammer or having their hands and feet scalded. Some reported denial of food and drink, or access to toilets — sometimes for several days”.¹⁶

More particularly, on 26 February 2000, the International Secretariat of OMCT was informed by a reliable Paraguayan source that Francisco Carballo Figueredo (15) and Rubén Dario Alcaraz (17) had been ill-treated the day before in Panchito López Centre.¹⁷ The former one showed clear signs of beatings on the back and alleged that he had been hung upside down from a pillar for three hours. According to the same information, the victim was deeply psychologically affected. With regard to Rubén Alcaraz, he was hung by the hands and kicked with a boot with a metallic toe.

The UN Special Rapporteur on torture also denounced the cases of Antero Daniel Roa (17), who had received the same treatment as Rubén Dario Alcaraz, and of Victor

Aponte, who had been beaten on the back and showed symptoms of cerebral lesions.¹⁸

Of utmost concern are the reprisals imposed on inmates testifying to abuses to which they have been subjected. On 6 April 2001, five of them, Jorge Heredia, Rafael Pereira, Oscar Acuña, Diego Acosta and Jimmy Orlando Dos Santos, met with Amnesty International USA delegates who were visiting Panchito López Centre. According to Amnesty International, these inmates were beaten the following day by a prison guard in front of other detainees and were transferred to adult prisons. One of them, Diego Acosta had also been held handcuffed in an isolation cell, which allegedly measured 1,2 square metres.¹⁹

The internal tensions of Panchito López Centre have also been at the origin of three cases of fire, which had extremely grave consequences. On 11 February 2000, some child detainees set their dormitory on fire to protest at the severe beatings they regularly received from the guards. 7 of the inmates died in this fire and 28 others suffered serious burns. This tragedy provoked the reaction of the detainees and their families, which led to another fire on 18 February 2000. 16 other juveniles were wounded. A

16 - *Paraguay, Panchito López Juvenile Detention Centre: An opportunity for the Government of Paraguay to meet its promises*, AI-index: AMR 45/004/2001, 01/04/2001. (<http://web.amnesty.org/ai.nsf/Index/AMR450042001?OpenDocument&of=COUNTRIES\PARAGUAY>)

17 - See also the *Report of the Special Rapporteur on torture*, Sir Nigel Rodley, E/CN.4/2001/66, 26 January 2001, par. 835.

18 - *Ibid.*

19 - Amnesty International Press Release, 11 April 2001, AI Index AMR 45/006/2001.

year later, on 5 February 2001, 9 more detainees were injured in similar circumstances. These events clearly show that the government has not been able to adopt adequate measures to solve a problem, which has lasted for a long time. In January 1999, two inmates died in a fire and another one sustained serious burns in the Buen Pastor Detention Centre for women.

With reference to these events, OMCT wishes to recall article 32 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, according to which: “The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drill procedures to ensure the safety of the juveniles”.

Following the events of February 2000, some of the children held in Panchito López were transferred to the Emboscada prison, a maximum security adult facility. However, there too the situation was of utmost concern. On 19 March 2000, the Paraguayan section of Defence for Children International presented a denunciation before the Commission on Human

Rights of the Paraguayan Senate. In its file, the organisation alleged acts of torture and inhuman treatment of children held in the Emboscada prison.²⁰ According to the inmates, they had regularly been kicked, beaten and hung by their hands or feet. Some of them had also been kept in incommunicado detention in the adult pavilion.²¹

OMCT would like to recall that this practice is in contradiction not only with article 37 of the Convention, but also with article 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty. This last provision clearly states that “all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”.

Several detainees have also been transferred from Panchito López to a new Comprehensive Education Centre (Centro de Educación Integral) in Itauguá. Although the conditions of detention are reportedly

20 - See also the *Report of the Special Rapporteur on torture*, Sir Nigel Rodley, E/CN.4/2001/66, 26 January 2001, par. 835.

21 - Ver <http://www.abc.com.py/archivo/2000/03/20/jud08/htm>

better there than in Panchito López, allegations of ill-treatment have also been made. According to press reports, two child inmates of the new Centre were severely beaten by prison guards on 15 January 2001. Due to these abuses, they had to be sent to the National Hospital for treatment. Amnesty International also mentioned other cases of torture and ill-treatment in the same centre.²² On 29 January 2001 the child inmates of the Education Centre of Itauguá mutinied in protest against these and other abuses by setting fire to their dormitories. As a result of these incidents, two of them had to be admitted to hospital.

Hence, OMCT would ask the government of Paraguay to ensure that prosecutors and judges diligently investigate all allegations of torture and ill-treatment made by child detainees and adopt adequate sanctions whenever necessary.

As a preventive measure, OMCT would also recommend that the government ensures that independent and qualified medical personnel be required to carry out examinations of child detainees in order to identify possible cases of physical torture or ill-treatment, as well as psychological trauma

potentially attributable to mental torture or ill-treatment.

Furthermore, OMCT would request the government to elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. As prescribed in article 85 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, this should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child.

Finally, OMCT would recommend that victims of torture obtain fair and adequate compensation. Child victims must also be entitled to measures to promote their physical and psychological recovery and social reintegration in an environment conducive to their health, self-respect and dignity.

b. Conditions of Detention

Regarding the general conditions of detention, OMCT is deeply concerned by the

²² - Paraguay, *Panchito López Juvenile Detention Centre: An opportunity for the Government of Paraguay to meet its promises*, AI-index: AMR 45/004/2001, 01/04/2001.

overcrowding of the Paraguayan juvenile facilities and related problems. In the case of Panchito López Centre for example, the Inter-American Commission on Human Rights established, during its on-site visit in July 1999, that juvenile detainees were suffering from conditions of extreme and unacceptable overcrowding.²³ This situation was aggravated by the filthiness of the cells and the lack of sufficient food, washing facilities, exercise and access to fresh air. Moreover, the internees were not receiving adequate medical care.

Obviously, this situation does not meet the requirements of article 37 (a) of the Convention or those of the UN Rules for the Protection of Juveniles Deprived of their Liberty. Among these rules, OMCT wishes to emphasise:

- article 31, which states “the right to facilities and services that meet all the requirements of health and human dignity”;
- article 32, which requires that these facilities take into account “the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports,

physical exercise and leisure-time activities”;

- article 34, according to which “sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner”;
- article 37, which requires to ensure “food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements” as well as “clean drinking water available to every juvenile at any time”.

Despite the conclusions of the Inter-American Commission on Human Rights which recommended the closing of Panchito López Centre,²⁴ this centre keeps functioning and, in particular, the problem of overcrowding has scarcely improved. In April 2001, there were still around 200

23 - “Condiciones de extremo e inaceptable hacinamiento”. Inter-American Commission on Human Rights, *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser./L/VII.110, doc. 52, 9 marzo 2001.

24 - *Ibid.*, par. 49: “Como consecuencia de lo anteriormente analizado, la Comisión recomienda al Estado de Paraguay: 3. Se cierre de inmediato el Correccional de Menores Panchito López”.

inmates held in a space normally built for a maximum of 80.

More generally, the study carried out under the supervision of the Public Ministry of Paraguay, UNICEF and Defence for Children International – Paraguay Section concluded that, in most cases, the child detention centres in Paraguay did not separate sentenced detainees from the others, did not provide a plan of adaptation of the children to the institution and did not have employees specially qualified to deal with minors.²⁵ Under these circumstances, a number of these detention centres do not appear to be different from adult prisons.

Therefore, OMCT would like to recall in particular article 81 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, according to which the personnel of juvenile detention facilities “should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists”.

OMCT would also urge the Paraguayan government to adapt its child detention centres in order to meet the requirements of article 37 (c) of the Convention, which states that every child deprived of liberty shall be treated “in a manner which takes into account the needs of persons of his or her age”.

The same study also concluded that a large majority of juvenile detention centres resort to solitary confinement as a punishment.²⁶ In this regard, OMCT recalls that the Human Rights Committee, in its General Comment on article 7 of the International Covenant on Civil and Political Rights, notes that prolonged solitary confinement of the detained or imprisoned person may amount to torture.²⁷ Thus, placing a child in isolation or solitary confinement raises an issue under article 37(a) of the Convention. This conclusion also appears in article 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, which prohibits all disciplinary measures constituting cruel, inhuman or degrading treatment, including “placement in a dark cell, closed or solitary confinement”.

Therefore, OMCT would request that the Paraguayan government explain what

25 - Public Ministry of Paraguay, UNICEF and Defense for Children International, *Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*, pp. 221-222.

26 - Public Ministry of Paraguay, UNICEF and Defense for Children International, *Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*, p. 217.

27 - Human Rights Committee, General Comment 20, HRI/GEN/1/Rev.2, p. 31.

circumstances and what behaviour, on the part of the child, would lead to such a measure, and outline the means of recourse open to the child.

Finally, according to the study, there are still detention facilities where children are held with adult prisoners.²⁸ This is obviously contrary to article 37 (c) of the

Convention. In this regard, OMCT firmly believes that detained children must be held separate from adults. The risks for children detained with adults, both to their physical and psychological integrity, are enormous. Thus, OMCT would urge that the government outline what measures it is planning to amend this intolerable situation.

V. Children in the Armed Forces

a. Under-age Recruitment in the Armed Forces

OMCT is deeply concerned by allegations of torture, ill-treatment and unexplained deaths of children in the Paraguayan armed forces. Such events are rooted in the practice of under-age recruitment which still occurs in Paraguay despite the recommendation of the Committee asking the government to put a stop to this practice.²⁹ In its report published in March 2001, the Inter-American Commission on Human Rights had already denounced the fact that there were a very large number of children doing military service in Paraguay.³⁰ According to

SERPAJ – PY, approximately 80 % of the conscripts are below 18 years of age, among them 30,3 % are 15 or under. The average recruitment is no more than 16,4 years of age.³¹

This practice is clearly contrary to domestic law. Article 129 of the Constitution of Paraguay states that military service is compulsory for all male citizens. The Law 569

28 - Public Ministry of Paraguay, UNICEF and Defense for Children International, *Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*, p. 221.

29 - *Concluding observations of the Committee on the Rights of the Child* : Paraguay. CRC/C/15/Add.75, 18 June 1997, par. 36.

30 - Inter-American Commission on Human Rights, *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser./LJ/VII.110, doc. 52, 9 marzo 2001.

31 - SERPAJ-PY, *Derechos Humanos y Paraguay 2000*.

32 Art. 3 par. a

of 24 December 1975, which reinforces the contents of this provision, adds that this obligation must be carried out from 18 to 19 years of age either in the armed forces or in the national police.³² Each year, a presidential decree calls up all males between 18 and 26. Moreover, authorities that do not abide by this prescription must be dismissed or declared incompetent to occupy public functions for five years.³³ Thus, under-age recruitment in Paraguay does not result from a lack of legal provisions, but from a failure to implement domestic legislation.

In many situations, under-age recruitment occurs under duress. Twice a year, during the conscription periods, the armed forces recruit minors in the street or in private homes without written authorization by a competent judge and allegedly using intimidation or physical constraint. Furthermore, the Paraguayan authorities do not apply the appropriate measures to bring to justice the officials responsible for this practice.³⁴

Although forced recruitment has decreased over the last three years, it is still a matter of concern. In April 2000, the Human Rights Commission of the House of Deputies (Comisión de Derechos Humanos de la Cámara de Diputados) made a public statement denouncing the psychological coercion exerted by the armed forces to recruit new soldiers in the city of Concepción.

Therefore, OMCT regrets that this situation has scarcely improved since the last examination of children's rights in Paraguay by the Committee in June 1997.³⁵ Thus, OMCT would ask the Paraguayan government to abide by the recommendation of the Committee "to rigorously enforce legislation on the minimum age for recruitment into the army".³⁶

OMCT would also encourage the Paraguayan government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. This Protocol, which Paraguay signed in September 2000, provides that "States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces".

32 - Art. 3 par. a

33 - Art. 56 of the Law 569 of 24 December 1975.

34 - SERPAJ-PY, *Informe sobre niños soldados en Paraguay*, Febrero 1999, p. 3.

35 - *Concluding observations of the Committee on the Rights of the Child*: Paraguay. CRC/C/15/Add.75, 18 June 1997, par. 17 and 36.

36 - *Ibid.*

b. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Armed Forces

OMCT is deeply concerned by several serious allegations of torture and ill-treatment inflicted on children doing military service. During its on-site visit in July 1999, the Inter-American Commission on Human Rights had already declared that it had “received complaints of excesses being committed during exercises and physical punishment that left physical and mental after-effects”.³⁷ As a result, the Commission called on the Paraguay government “to apply all measures to ensure full respect for the human rights of individuals enlisted in obligatory military service, for those responsible for human rights violations committed against soldiers to be tried and punished, and, in such cases, for the soldiers or their families to receive adequate compensation”.³⁸

However, this recommendation was apparently not taken into account by the authorities concerned. Indeed, Amnesty International, in its April 2001 report, declared that it continued to receive reports of serious ill-treatment of child conscripts who

were illegally recruited.³⁹ Among the cases it raised, Amnesty International especially highlighted those of Rosalino Ortiz (16), Brigido Martínez (15), Pedro Edgar Aquino (16), Bernadino Acuña (16) and Reinaldo Morínigo (17) all of whom had been severely beaten while carrying out military service in the year 2000. Servicio Paz y Justicia Paraguay (SERPAJ – PY), the local NGO that had received the reports of these children, stated that this type of practice was “administered in a generalized and systematic fashion against conscripts in the armed forces and national police”.⁴⁰

These abuses have resulted from physical and psychological punishment as well as excessive physical exercises. This type of practice had already been denounced by the UN Committee against Torture which stated in its Concluding observations: “The Committee is concerned at: (...) (c) The information the Committee received from reliable sources that the practice of torture and cruel, inhuman or degrading treatment or

37 - Inter-American Commission on Human Rights, *Press Release no 23/99* (<http://www.cidh.oas.org/Comunicados/English/1999/23-99.htm>).

38 - *Ibid.*

39 - See Amnesty International, *Paraguay, Conscription: Recruitment of children, routine ill-treatment and unexplained deaths*, AI-index: AMR 45/002/2001. (<http://web.amnesty.org/ai.nsl/Index/AMR450022001?OpenDocument&of=COUNTRIES/PARAGUAY>)

40 - *Ibid.*

punishment continues (...) in Armed Forces prisons and premises, where soldiers performing compulsory military service are subjected to frequent physical ill-treatment.”⁴¹

OMCT would recommend that the government of Paraguay not leave unpunished those responsible for similar behaviour in the armed forces. Consequently, OMCT would request the government to ensure that prosecutors and judges diligently investigate all allegations of torture made by detainees and apply adequate sanctions whenever necessary.

OMCT also would recommend that the government elaborate and implement preventive programmes, in particular by ensuring education and training for army officials who may have children under their command. This should include specific training on the Convention on the Rights of the Child.

Finally, OMCT would recommend that victims of torture obtain fair and adequate com-

penation. Child victims must also be entitled to measures to promote their physical and psychological recovery and social reintegration in an environment favourable to their health, self-respect and dignity.

c. Death in the Armed Forces

By ratifying the Convention, Paraguay confirmed that “every child has the right to life”.⁴² With respect to this international obligation, OMCT is concerned about the numerous deaths of child conscripts in the armed forces and by the failure of the Paraguayan government to investigate most of these cases. The Association of Families of Victims of Obligatory Military Service (AFAVISEM)⁴³ has denounced the fact that since 1989 ninety-four conscripts have died while doing military service in Paraguay. About half of them were children; the youngest, Antonio Blanco, killed in 1997, was only 12-years old when he died.⁴⁴

According to SERPAJ – PY, these deaths are generally the consequence of the excessive disciplinary measures and punishments imposed by officials on the conscripts. This situation has also been aggravated by

41 - *Conclusions and recommendations of the Committee against Torture* : Paraguay, 10/05/2000. A/55/44, par. 150.

42 - Art. 6

43 - Asociación de Familiares de Víctimas del Servicio Militar Obligatorio.

44 - Derechos Human Rights, *Paraguay: Underage conscript dies following possible torture*. ([http://](http://www.derechos.org/human-rights/actions/ot/para1.html)

www.derechos.org/human-rights/actions/ot/para1.html)

the absence of adequate medical examinations before the induction of the recruits into the armed forces. Such an examination could help to detect health problems rendering them unfit for military service.⁴⁵ In other cases, the deaths of the recruits are also linked to accidents caused by the absence of preventive measures and by faulty army equipment and installations.⁴⁶

OMCT wishes to highlight, among other cases, that of Milciades Ojeda (16) who was doing his military service at the Third Army Corps in Mariscal Estigarribia, Chaco department. According to the army, Milciades received several internal injuries and had his skull crushed after falling off a tractor on 11 January 2000. Milciades died on 16 January 2000. According to a doctor who examined him, his injuries were inconsistent with this version. It was unlikely that a fall of 1.8 meters would cause such serious injuries.⁴⁷ The civilian justice is investigating this case, but OMCT still has not heard of any sentence on it.

Another case of deep concern is the death of Pedro Antonio Centurión, an Argentinean child, which occurred on 12 September 2000 in the *Cuartel de Vista Alegre* in Puerto Falcón. Pedro Antonio was

thirteen when he was forcibly recruited and died at fourteen from a bullet wound in his head. The bullet entered in the upper part of the head and went out of the lower part. The military authorities alleged that he had committed suicide. However, his mother denied these allegations and denounced the fact that no autopsy had been carried out on her son. According to press reports, the birth certificate of Pedro Antonio had been falsified so as to claim that he had Paraguayan nationality and that he had reached the requisite age for recruitment by the armed forces.⁴⁸

Other similar cases include:

- Vicente Ariel Noguera (17), who died on 11 January 1996 in the Third Army Corps in Chaco department.
- Marcelino Gómez Paredes (15) and Cristian Ariel Nunez Lugo (14) who

45 - Serpaj-Py, *Informe sobre niños soldados en Paraguay*, Febrero 1999, pp. 4-5.

46 - Ibid.

47 - Derechos Human Rights, *Paraguay: Underage conscript dies following possible torture*. (<http://www.derechos.org/human-rights/actions/ot/para1.html>)

48 - Clarin, "A mi hijo lo secuestraron y no se suicidó", 17 September 2000 and La Opinion, 13 October 2000. On this case, see also Inter-American Commission on Human Rights, *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser.L/VII.110, doc. 52, 9 marzo 2001, and Amnesty International, Paraguay, *Conscription: Recruitment of children, routine ill-treatment and unexplained deaths*, AI-index: AMR 45/002/2001.

“disappeared” between January and February 1998 from the Detachment “General Colmán” of the V Infantry Division in the Chaco department.

- Sydney Moraes (17), who died on 18 July 2000 in the Police Station of Santafé, in the Alto Parana.
- Ricardo Lugo Maciel (17), who died on 18 March 2000 from a bullet wound in Police Station No 10 of the Fram District in the Itapuá Department.
- Ilson de Moura Suarez (17), who died on 26 July 2000 in the Police Station of Santa Rosa del Monday in Ciudad del Este.⁴⁹

OMCT urges the Paraguayan government to guarantee a thorough investigation into these unexplained deaths in the armed forces, in order to identify those responsible, bring them before a civil competent and impartial tribunal and apply the appropriate penal, civil and/or administrative sanctions.

In order to put and end to these problems, OMCT would also ask the government to elaborate and implement preventive programmes, in particular by ensuring education and training for officials in the armed forces. This should include specific training on the Convention on the Rights of the Child.

⁴⁹ - For more details on these cases, see Amnesty International, *Paraguay, Conscription: Recruitment of children, routine ill-treatment and unexplained deaths*, AI-index: AMR 45/002/2001.

VI. Protection From Other Forms of Violence

a. Legal Framework

Article 19 of the Convention requires the protection of children “(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.

This right is confirmed by the Paraguayan Constitution which declares that the family, the society and the State have the obligation to guarantee the child her/his harmonious and integral development, as well as the full enjoyment of her/his rights protecting her/him against abandonment, malnutrition, violence, abuse, trafficking and exploitation.⁵⁰

In this regard, article 8 of the Code of the Minor appears to be too vague by providing that all minors have the right to receive humane treatment from their parents, tutors or guardians.⁵¹ However, the new Code on Childhood and Adolescence, when it comes

into force, will remedy this deficiency by recognizing, in particular, the right of the child to respect and dignity as a human being in the process of development and as a subject of rights. The same Code will also specify that humane treatment includes the inviolability not only of physical, but also psychological and moral integrity.

Although a new Penal Code has recently been adopted, the provisions applying to the protection of children against private violence, and particularly against sexual abuse still need to be improved.

As we already know, article 134 states that a person responsible for the education, tutelage or guardianship of a minor of 16 years who submits her/him to grave psychological suffering, seriously and repeatedly ill-treats her/him or affects her/his health will be punished by imprisonment of up to two years or

50 - Art. 54: “La familia, la sociedad y el Estado tienen la obligación de garantizar al niño su desarrollo armónico e integral, así como el ejercicio pleno de sus derechos protegiéndolo contra el abandono, la desnutrición, la violencia, el abuso, el tráfico y la explotación”.

51 - “Todo menor tiene derecho a: (...) d. Recibir un trato humano de sus padres, tutores, guardadores”.

a fine.⁵² OMCT welcomes the adoption of this provision, since it specifically penalises violence against children perpetrated by actors other than State representatives.

However, OMCT deems that the threshold of applicability of this provision is excessively high, since it requires that the psychological suffering be “considerable” and that the ill-treatment be “serious and repeated”. Therefore, article 134 does not protect children adequately against private violence, since the penal intervention it allows comes too late.

Specifically regarding violence inside the family, article 229 provides that the person within the family who habitually exerts physical violence on another with whom he cohabits will be fined.⁵³ OMCT regrets that this provision only includes physical violence without mentioning psychological violence to which children are particularly sensitive. Furthermore, the fact that this violence must be “habitual” in order to be punished might be an impediment to timely

intervention of the judicial system and, consequently, does not provide adequate guarantees to protect the victim from repeated violence. Finally, it is doubtful that the imposition of a fine is a solution to the problem that this article seeks to solve, since it does not prevent the risk of retaliation against the victim.

Regarding sexual violence, OMCT welcomes the recent adoption of the Paraguayan Penal Code, which better takes into account the rights of the child by punishing incest and sexual abuse of children. However, this new law could be further improved. In particular, article 230 of the Penal Code only considers incest as a misdemeanour and sanctions it with five years of imprisonment. Regarding sexual abuse on defenceless persons, article 130 provides a sentence of three years, which might be extended to ten years if coitus is proved. Finally, article 135 applies to sexual abuse of children up to 14 years and provides a sentence of three years imprisonment or a fine, in the absence of aggravating circumstances. These circumstances include serious physical ill-treatment, repetition of the abuse and a situation of dependency between the victim and the perpetrator. For children older than 14 years, no particular protection is provided.

52 - Art. 134: “Maltrato de menores. El encargado de la educación, tutela o guarda de un menor de dieciséis años que sometiera a éste a dolores físicos considerables, le maltratará grave y repetidamente o le lesionará en su salud, será castigado con pena privativa de libertad de hasta dos años o con multa, salvo que el hecho sea punible con arreglo al artículo 112”.

53 - Art. 229: “Violencia familiar. El que, en el ámbito familiar, habitualmente ejerciera violencia física sobre otro con quien conviva, será castigado con multa”.

OMCT deems that this legislation should be strengthened so as to offer children better protection from sexual violence. Incest, in particular, is a form of abuse which has a profound and long term effect on victims. Therefore, considering it as a misdemeanour does not take into account its real seriousness. Furthermore, OMCT would ask the Paraguayan government to re-examine its other provisions on sexual abuse, in particular by providing special protection for children up to the age of 18. This legislation appears even weaker, when taking into account that it does not fix any minimum age to have voluntary sexual intercourse.

The Penal Code also deals with child trafficking. In simple cases, where the perpetrator abuses the necessity, the lack of conscientiousness or the inexperience of the holder of parental authority, the maximum prison sentence provided for is five years.⁵⁴ In case of aggravating circumstances, in particular when the child is exposed to a danger of sexual or work exploitation, the sentence might reach 10 years of imprisonment.⁵⁵

b. Street Children and Child Labour

OMCT expresses its deep concern regarding the situation of children working and, in many cases, living on the street. Although there are no recent and reliable statistics on this phenomenon, it has been argued, according to the Inter-American Commission on Human Rights, that the problem is widespread. In December 1996, the NGO “Niños de la Calle” deemed that there were 15.000 children working in the streets of the Gran Asunción.⁵⁶ In the last few years, this situation has deteriorated with the appearance of very young children, between 0 and 5 years, carried by older ones. The latter use the former to incite pity and to ask for money.

Due to this situation, abuse and neglect of children have also increased. Many suffer from malnutrition and disease. Several cases of violence against and death of children, and sometimes of babies, have also been

54 - Art. 223; “Tráfico de menores: 1° El que explotando la necesidad, ligereza o inexperiencia del titular de la patria potestad, mediante contraprestación económica, indujera a la entrega de un niño para una adopción o una colocación familiar, será castigado con pena privativa de libertad de hasta cinco años”.

55 - Art. 223: “Tráfico de menores: 2° Cuando el autor: (...) mediante su conducta expusiera al niño al peligro de una explotación sexual o laboral, la pena podrá ser aumentada a pena privativa de libertad de hasta diez años.

56 - <http://www.cyberia.net.py/ninos/paginas/estadisticas.html>

registered.⁵⁷ It has also been reported that street children have been recruited under duress into the armed forces.

So far, contrary to the recommendation of the Committee⁵⁸, the government has not demonstrated genuine determination to protect street children against violence. In 1996, the National Child Welfare Centre (Centro Nacional de Atención a la Infancia, CENADI) was created. Its main responsibility is to deal with child abuse. Simultaneously, the government launched a National Child Welfare Plan (Plan Nacional de Atención a la Infancia). Unfortunately, the efficiency of the Centre and the implementation of the Plan have been seriously affected by a lack of resources and of information at a local level. As a result, according to the Inter-American Commission on Human Rights, the policies promoted by the State have not been enough to assist children whose families do not support them, in violation of its international commitments.⁵⁹

57 - CODEHUPY, *Informe sobre la situación de los derechos humanos en Paraguay*, 1999.

58 - *Concluding observations of the Committee on the Rights of the Child* : Paraguay. CRC/C/15/Add.75, 18 June 1997, par. 44.

59 - "Las políticas impulsadas por el Estado no han sido suficientes para asistir a los niños que no pueden tener el apoyo de su familia en violación a sus compromisos internacionales". Inter-American Commission on Human Rights, *Tercer Informe sobre la Situación de los Derechos Humanos en Paraguay*, OEA/Ser.L/VII.110, doc. 52, 9 marzo 2001, Cap. VII, par. 25.

In this regard, the coming into force of the new Code on Childhood and Adolescence will provide some legal tools which might be useful to improve the situation of street children. In cases requiring protection, article 35 of the Project offers several measures, such as counselling of the child and her/his family, inscription of the child in primary school, child support in case of emergency and adequate housing.

OMCT welcomes the drafting of this article which will certainly help to alleviate the suffering of street children. However, in order to give its full meaning to this provision, OMCT would ask the government of Paraguay to explain to the Committee the concrete measures it intends adopting to implement it.

The economic crisis has also caused a lot of children to drop out of school so as to find means of survival in different sectors of the labour market. According to UNICEF, one in three children between 7 and 17 work, often in unsafe labour conditions.

In this respect, the Constitution of Paraguay states that resolving this problem must be one of the main goals of the State, since article 90 provides that the rights of the work-

ing child aimed at guaranteeing her/his normal physical, intellectual and moral development shall be a priority.⁶⁰ For this purpose, the minimum age for work has been fixed at 12 years old.⁶¹ Children between the ages of 12 and 15 are not allowed to work more than 4 hours a day and 24 hours a week.⁶²

Unfortunately, the problem of working children is still largely unknown and must be investigated. The lack of reliable facts and data on child labour in Paraguay prevent the elaboration of global policies based on the real needs of the affected population. Such a study should not only deal with children working in the street, but also include those who work in industry, in the countryside and as domestic workers. In this respect, OMCT regrets that the government of Paraguay did not take into account the recommendation of the Committee according to which it should “give priority attention to the development of a system of data collection and to the identification of appropriate disaggregated indicators with a view to addressing all areas of the Convention and all groups of children in society”.⁶³

Furthermore, OMCT would like to recall that article 19 (2) of the Convention requires the

Paraguayan State to adopt effective protective measures against child abuse, neglect and exploitation. According to the same provision, these measures must include “effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.

Such programmes should be aimed at fully realizing the right of the child, enshrined in article 32 of the Convention “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”.

OMCT also would like to call on the government of Paraguay to promptly promulgate the Code on Childhood and Adolescence

60 - Art. 90: “Del Trabajo de los menores: Se dará prioridad a los derechos del menor trabajador para garantizar su normal desarrollo físico, intelectual y moral”.

61 - Art. 36 of the Labor Code.

62 - Art. 123 of the Labor Code.

63 - *Concluding observations of the Committee on the Rights of the Child* : Paraguay. CRC/C/15/Add.75, 18 June 1997, par. 32.

which will set new legislation on child labour. According to article 53, this legislation will protect:

- a. the adolescent who works for her/his own account;
- b. the adolescent who works for someone else; and
- c. the child who is engaged in family work without remuneration.⁶⁴

Although OMCT welcomes this initiative, which is aimed at improving child labour conditions, it wishes to have more information on the legal provision which might apply to children in the sense of article 53 of the Code, i.e. those who are not considered as “adolescents”, or, being minors of 14, who work for their own account or for someone else.

OMCT also welcomes the fact that the future legislation will adopt a global approach to

the problem of child labour by protecting, *inter alia*, the health, the liberty, the respect, the dignity, and the education of the working child.⁶⁵

c. Sexual Abuse and Exploitation

Sexual violence against children is of particular concern in Paraguay. Although there are no detailed statistics on this problem, it is generally estimated that more than half the complaints of sexual abuse come from children under 16.⁶⁶

The number of children who are victims of trafficking for sexual purposes is increasing. Some of them might be very young (8 years). Some of these children, who generally have to leave home to escape abuse and other ill-treatment, are then introduced to prostitution networks by adults who take advantage of their vulnerability and economic distress. In other cases occurring outside the exploitation system, adults approach street children and offer them money in exchange for sex.

So far, contrary to the recommendation of the Committee,⁶⁷ the State reaction to this

64 - Art. 53: “Del ámbito de aplicación: Este Capítulo ampara:

- a) al adolescente que trabaja por cuenta propia;
- b) al adolescente que trabaja por cuenta ajena; y,
- c) al niño que se ocupa del trabajo familiar no remunerado”.

65 - Art. 54

66 - Clide Soto, *Mujer*, published in *Derechos Humanos en Paraguay*, 1999, CODEHUPY.

67 - *Concluding observations of the Committee on the Rights of the Child*: Paraguay. CRC/C/15/Add.75, 18 June 1997, par. 47.

problem has remained very limited, since no global policies have been elaborated.⁶⁸ First of all, this reaction has focused mainly on brothels without sufficiently taking into account other forms of sexual exploitation, such as informal practices mainly affecting street children. Thus an important aspect of this phenomenon remains largely ignored. Secondly, the Paraguayan judicial system has mainly focused its interventions on children by treating them as offenders and arresting them, whereas they are in fact victims. Conversely, those really guilty, such as pimps, landlords of brothels or paedophiles, generally escape justice.⁶⁹

In this regard, OMCT regrets this lack of adequate policy that appears to be contradictory to article 19 (2) of the Convention. Furthermore, it does not take into account article 34 of the Convention which requires that the child be protected from all forms of sexual exploitation and abuse, in particular by taking “all appropriate national, bilateral and multilateral measures to prevent:

a. The inducement or coercion of a child to engage in any unlawful sexual activity;

- b. The exploitative use of children in prostitution or other unlawful sexual practices;
- c. The exploitative use of children in pornographic performances and materials”.

Consequently, OMCT would urge the government of Paraguay to adopt a policy on crime which seeks to investigate and punish those responsible for the sexual trafficking of children and to reintegrate the child victims.

OMCT would also call on the government of Paraguay to collect relevant and complete data on this situation in order to, as already recommended by the Committee, formulate a national policy and seek international assistance in this regard.

Finally, OMCT would encourage the government to promptly promulgate the Code on Childhood and Adolescence, which will recognise the right of the child to be protected from “all forms of exploitation”⁷⁰ and forbid the use of children in activities of the sex trade.⁷¹

68 - STARK Roberto, *Informe alternativo de cumplimiento de los DDNN en el Paraguay*, Asunción, 1999, pp. 9-10.

69 - Coordinación de Mujeres del Paraguay (CMP), *Informe a la Comisión Interamericana de Derechos Humanos sobre la situación de los derechos humanos de las mujeres*, Asunción, Paraguay. July 1999.

70 - Art. 26.

71 - Art. 32

VII. Children in Conflict with the Law

a. Age of Criminal Responsibility

Article 21 of the Penal Code sets the minimum age of criminal responsibility at 14 years. According to this provision, the person who has not yet reached 14 years is exempt from criminal responsibility.⁷² From this age, children are submitted to the ordinary penal legislation. The Code of the Minor confirms this rule by specifying that the juvenile justice system applies to minors up to 14.

In this regard, OMCT regrets that Paraguay has still not taken into account article 40 (3) of the Convention, which invites States Parties “to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”. Indeed, children between 14 and 18 are still tried by the ordinary justice.

However, OMCT recalls that the Draft Code on Childhood and Adolescence, while keeping the minimum age of criminal responsibility at 14, i.e. with the beginning of the adolescence,⁷³ will establish a specific criminal procedure applicable to children from 14 to 18. Therefore, OMCT would request the Committee to recommend a prompt promulgation of this project in order for the Paraguayan government to set up the institutional reforms it needs.

b. Grounds of Arrest

The Code of the Minor seems to grant excessive powers of arrest to the Paraguayan authorities. According to this Code, measures of deprivation of freedom may be imposed on children not only for violating criminal provisions, but also for non penal reasons, such as for being in a “state of danger” (estado de peligro), for “leaving home” (abandono de hogar), for lack of formal occupation or even as a disciplinary

72 - “Responsabilidad penal de los menores: Está exenta de responsabilidad penal la persona que no haya cumplido catorce años de edad”.

73 - Art. 195 and 2.

measure requested by the child's parents or tutor.

These expressions, because of their vagueness, do not sufficiently restrict the possibilities of arrest and detention of children, whereas such a decision should be an exceptional measure. Moreover, this uncertainty on the possible grounds of arrest increases the risk of arbitrary practices. In this regard, OMCT wishes to recall article 37 (b) of the Convention which lays down that “no child shall be deprived of his or her liberty unlawfully or arbitrarily” and that “the arrest, detention or imprisonment of a child shall be used only as a measure of last resort”.⁷⁴

It must also be highlighted that, due to the economic and social crisis that Paraguay is currently going through, there is a risk that these provisions of the Code of the Minor will affect socially and economically disadvantaged groups in particular, such as street children. Indeed, these children are more likely to be perceived by State authorities as being in a “state of danger”, “lacking a formal occupation” or “having left home”. As a result, the Code of the Minor risks promoting discrimination and repression against young individuals living in

precarious situation. Such an attitude would be incompatible with article 2 of the Convention, which obliges the States Parties to respect its provision “without discrimination of any kind”, and with article 6, which requires that they “ensure to the maximum extent possible the survival and development of the child”.

c. Police Custody

The basic judicial guarantees during police custody are mainly enshrined in article 12 of the Paraguayan Constitution which deals with arrest and detention. This provision requires either a written order by a competent authority or a state of being caught in the act in order for the arrest to be legal. Moreover, it recognizes, amongst other rights, the right to be informed of the reason of the arrest and detention, the right to remain silent, the right to legal assistance and the obligation for the State to inform the detainee's next of kin. However, despite these rules, Paraguayan NGOs still receive allegations of inadequate proceedings and ill-treatment by the police.⁷⁵

74 - See also art. 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

75 - STARK Roberto, *Informe alternativo de cumplimiento de los DDNN en el Paraguay*, Asunción, 1999, pp. 15-16.

In their study on children in custody, the Public Ministry of Paraguay, UNICEF and Defence for Children International – Paraguay Section established that only 40% of the children interviewed had been detained on the basis of an order from the competent authority or after being caught in the act. Furthermore, in the large majority of the cases, children were not informed of the reasons for their detention, of their right to remain silent and to receive legal assistance. As a result, 90% of them obtained this assistance only after having been detained for over one month. Finally, in most cases, the parents were not informed on time of the arrest of their child.⁷⁶

OMCT notes that these practices constitute violations of several provisions of the Convention, in particular those enshrined in articles 37 and 40 of the Convention. Furthermore, these practices also contravene article 18 (a) of the UN Rules for the Protection of Juveniles Deprived of their Liberty which states that “Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers”. Finally,

OMCT wishes to stress the importance of respecting the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”). In particular, article 10 (1) of this instrument states that “upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter”.

OMCT believes that the possibility for children taken into police custody to have access to a lawyer from the outset of their deprivation of liberty and to contact their relatives are fundamental safeguards against ill-treatment, particularly as children are often unaware of their rights and are more vulnerable to abuse.

This concern is not a theoretical one, since reliable sources have reported that children have been victims of ill-treatment in police stations, mainly of threats and beatings. It has also been reported that children have been detained in police stations for adults.⁷⁷ This practice contravenes the letter of article 37 of the Convention and article 29 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

76 - Public Ministry of Paraguay, UNICEF and Defense for Children International, *Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*, p. 81-147.

77 - STARK Roberto, *Informe alternativo de cumplimiento de los DDNN en el Paraguay*, Asunción, 1999, pp. 15-16.

In terms of preventive measures, OMCT would recommend the implementation of effective procedures for internal monitoring and disciplining of the behaviour of public officials. Moreover, OMCT strongly recommends the education and training of all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. In particular, there should be specific training on the Convention, on the UN Rules for the Protection of Juveniles Deprived of their Liberty and on the UN Standard Minimum Rules for the Administration of Juvenile Justice.

d. Pre-trial Detention

Despite the recent change of the criminal procedure law, the Paraguayan judicial system still remains relatively inefficient. Due to the excessive slowness of most judicial proceedings, the majority of detainees in Paraguayan prisons are those awaiting a final decision on their cases. According to the Inter-American Commission on Human Rights, this situation constitutes one of the most serious problems it has been confronted with regarding human rights in

Paraguay.⁷⁸ Indeed, changing the Criminal Procedure Code is an indispensable, but insufficient measure. The Paraguayan judicial system mainly suffers from a lack of personnel and resources.

In their study on imprisoned children, the Public Ministry of Paraguay, UNICEF and Defence for Children International – Paraguay Section, concluded that in the past six months none of the 87 juveniles whose files had been studied were definitively released or sentenced.⁷⁹

In 2001, this situation was on-going. Defence for Children International – Paraguay Section, reported, for example, that in January there were 201 children in Panchito López Juvenile Centre, among whom, 193 had been tried and only 8 of whom had been convicted. Therefore, contrary to article 37 (b) of the Convention, pre-trial detention of children in Paraguay is in practice a rule, rather than an exception.

78 - Inter-American Commission on Human Rights, *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser.L/VII.110, doc. 52, 9 marzo 2001, par. 28 ss.

79 - Public Ministry of Paraguay, UNICEF and Defense for Children International, Summary of the *Investigación sobre niños, niñas y adolescentes privados de libertad en el Paraguay*, p. 5: “En los seis meses no se consideró ninguna libertad definitiva ni se condenó a ninguno de los 87 adolescentes cuyos expedientes fueron estudiados”.

Following the tragedy which occurred in Panchito López in February 2000, the same problem was also denounced by the Paraguayan Department of Judicial Guarantees (Departamento de Garantías Procesales). In a report addressed to the General Prosecutor of the State, this monitoring body revealed the extremely bad handling of the majority of the cases of children detained in the Centre, including some of the victims of the fire.⁸⁰

OMCT would recommend that the Paraguayan authorities adapt this practice to the requirement of article 37 (b) of the Convention and articles 2 and 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty which state that imprisonment must be a last resort and for the shortest period of time. OMCT would also like to recall the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), in particular the section related to pre-trial detention.

e. Reintegration

OMCT regrets that the Paraguayan government has not developed a policy of following up of the children who have been confronted with the justice system.⁸¹ Such a policy would help to meet article 40 (1) of the Convention that requires State Parties to promote “the child’s reintegration and the child’s assuming a constructive role in society”.

However, OMCT welcomes the Draft Code on Childhood and Adolescence, which will set up, as highlighted by the Inter-American Commission on Human Rights,⁸² the basis of the reform of the Paraguayan juvenile justice system. In particular, OMCT notes with satisfaction that this project will promote a positive, rather than a punitive approach. This is mainly reflected in the adoption of several socio-educative measures aimed at serving as a substitute to penal sanctions.⁸³ Therefore, OMCT would call on the government to promptly promulgate and implement the new Code on Childhood and Adolescence.

80 - ABC Color, *Informe revela pésimo manejo de juicios abiertos a menores*, 20.02.2000.

81 - STARK Roberto, *Informe alternativo de cumplimiento de los DDNN en el Paraguay*, Asunción, 1999, p. 34.

82 - *Tercer informe sobre la situación de los derechos humanos en Paraguay*, OEA/Ser.L/VII.110, doc. 52, 9 marzo 2001, par. 20.

83 - Title II of the Project.

VI. Conclusions and Recommendations

The International Secretariat of OMCT is deeply concerned with the situation of children in Paraguay, in particular, with the degree of risk that children face of torture and other cruel, inhuman and degrading treatment or punishment while in detention or while doing military service. OMCT believes that a number of safeguards, both legal and practical, must be implemented in order to fully guarantee the rights of children enshrined in the CRC.

Regarding the torture and other cruel, inhuman or degrading treatment or punishment of children OMCT recommends that the Committee on the Rights of the Child:

urge the Paraguayan Government to:

- respond to allegations of torture and other cruel, inhuman or degrading treatment or punishment of children in Paraguay;
- enact legislation defining torture as foreseen in article 1 of CAT;
- amend art. 134 of the Paraguayan Penal Code in order to provide adequate protection of children against torture and other cruel, inhuman or degrading treatment or punishment;
- ensure that all children deprived of their liberty by the law enforcement agencies, irrespective of the crime of which they are suspected, be granted, from the outset of their custody, the right of access to an independent lawyer;
- ensure that all detained children, irrespective of the crime of which they are suspected, be informed of the right to immediately notify their next of kin of their situation;
- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention;

- adopt and enforce appropriate sanctions for public officials who are found to have held a child in custody without immediately notifying the prosecutor, or interrogated a child without the presence of a prosecutor or a lawyer;
- ensure that independent and qualified medical personnel be required to carry out regular examinations of child detainees;
- ensure that prosecutors and judges diligently investigate all allegations of torture made by child detainees;
- ensure that sentences for torture or ill-treatment are commensurate with the gravity of the crime;
- improve living conditions in prisons in conformity with the UN Rules for the Protection of Juveniles Deprived of their Liberty, in particular by addressing overcrowding, poor hygiene and lack of food;
- elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, in particular the Convention on the Rights of the Child and on the UN Rules for the Protection of Juveniles Deprived of their Liberty;
- establish a national system of visiting boards to visit police stations and gendarmeries to interview detainees and inspect facilities. This should include regular (and unannounced) inspections by competent administrative authorities;
- ensure that victims of torture obtain redress and have an enforceable right to fair and adequate compensation. Child victims must also be entitled to measures to promote their physical and psychological recovery and social reintegration in an environment which fosters their health, self-respect and dignity.

Regarding the right to life, OMCT recommends that the Committee on the Rights of the Child:

urge the Paraguayan Government to:

- guarantee an immediate investigation into alleged cases of violation of the right to life of children in detention or in the armed forces, identify those responsible, bring them before a civil competent and impartial tribunal and apply the appropriate penal, civil and/or administrative sanctions;
- elaborate and implement preventive programmes, in particular by ensuring education and training for officials in the armed forces and for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include specific training on the Convention on the Rights of the Child.

Regarding under-age recruitment in the armed forces, OMCT recommends that the Committee on the Rights of the Child:

urge the Paraguayan Government to:

- abide by the recommendation of the Committee asking “to rigorously enforce legislation on the minimum age for recruitment into the military”;
- ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.

Regarding street children and child labour, OMCT recommends that the Committee on the Rights of the Child:

urge the Paraguayan Government to:

- make strong efforts to protect the rights of children currently living and/or working on the street, including the rights to survival and development, to health care, to nutrition, to alternative care assistance, to housing and to education;

- make strong efforts to protect all children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;
- collect reliable and complete data on child labour in Paraguay in order to set up a global policy aimed at fully implementing the requirement of article 32 of the Convention;
- promptly promulgate the Code on Childhood and Adolescence and adopt concrete and efficient measures aimed at implementing the Title II of this Code devoted to the protection of children at work.

Regarding sexual abuse against and exploitation of children, OMCT recommends that the Committee on the Rights of the Child:

urge the Paraguayan Government to:

- amend its penal legislation, in particular article 135 and 230 of the Penal

Code, in order to ensure better protection of children against sexual abuse;

- collect reliable and complete data on sexual violence and trafficking in Paraguay in order to set up a global policy aimed at fully implementing the requirement of article 34 of the Convention;
- adopt a policy on crime which seeks to punish those responsible for sexual trafficking of children and to reintegrate the child victims.

Regarding the juvenile justice system in Paraguay, OMCT recommends that the Committee of the Rights of the Child:

urge the Paraguayan Government to:

- promptly promulgate and implement the new Code on Childhood and Adolescence in order to launch a thorough reform of the juvenile justice system in accordance with the provisions of the Convention, in particular with the necessity to promote such a system for children up to the age of 18 years;

- ensure that children in conflict with the law stay in pre-trial detention for the shortest possible period of time;
- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;
- strictly define the possible grounds of arrest which might affect children in order to ensure that the deprivation of liberty is a last resort for all children in conformity with articles 37(b) of the Convention and articles 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- indicate the training activities developed for all professionals involved with the system of juvenile justice, on the provisions of the Convention and other relevant international instruments in the field of juvenile justice, including the “Beijing Rules”, the “Riyadh Guidelines” and the United Nations Rule for the Protection of Juveniles Deprived of their Liberty;
- set up and implement a policy on criminality aimed at promoting the reinsertion of children accused of or recognized as having infringed penal law.



COMMITTEE ON THE RIGHTS OF THE CHILD
28th Session - Geneva, 24 September - 12 October 2001

Report on the Implementation
of the
Convention on the Rights of the Child
by
the Republic of Paraguay

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the second periodic report of Paraguay (CRC/C/65/Add.12), submitted on 12 October 1998, at its 741st meeting (see CRC/C/SR.741), held on 8 October 2001, and adopted, at its 749th meeting (CRC/C/SR.749), held on 12 October 2001, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the State party's second periodic report, which very precisely follows the guidelines for reporting, thus providing the Committee with a lot of information on the implementation of the Convention. However, the written replies to its list of issues (CRC/C/Q/PAR.2), received only on 5 October 2001, only partly addressed the Committee's questions. Furthermore, the delegation representing the State party was unfortunately not in a position to answer most of the questions put by the Committee.

In particular, the Committee regrets that it was not possible to discuss in more detail the content of the new Children's Code. The Committee regretfully recalls that similar problems occurred during the examination of the initial report of the State party.

B. POSITIVE ASPECTS

3. The Committee welcomes the adoption of the Children's Code in line with its previous recommendation (CRC/C/15/Add. 75, para. 29).

4. In light of its previous recommendation (CRC/C/15/Add.75, para. 41), the Committee notes with satisfaction the promulgation in 1997 of the Adoption Act to combat trafficking in children and establish strict control over all matters connected with adoption, especially intercountry adoption. It further takes note of the Law against Domestic Violence.

5. The Committee notes with satisfaction the establishment in 1997 of a Juvenile Complaints Department for the receipt of complaints of violations of children's rights, and in 1998 of a National Network against Child Abuse (REDNAMI), made up of governmental and non-governmental organizations.

C. FACTORS AND DIFFICULTIES IMPEDING PROGRESS IN THE IMPLEMENTATION OF THE CONVENTION

6. The Committee notes with concern that the State party is facing many difficulties in the implementation of the Convention, in particular owing to political instability, low economic growth and an inadequate public service. The Committee acknowledges that the serious economic and social disparities, affecting in particular people living in rural areas and indigenous people, impede the full achievement and enjoyment of the rights recognized in the Convention.

D. PRINCIPAL AREAS OF CONCERN AND RECOMMENDATION

1. General Measures of Implementation

Committee's Previous Recommendations

7. The Committee notes with great concern that most of its previous recommendations (CRC/C/15/Add.75) have not been satisfactorily followed up or not followed up at all.

8. The Committee strongly recommends that the State party give effective follow-up to the Committee's previous recommendations, paying particular attention to those which are reiterated hereafter.

Legislation

9. The Committee notes with concern that the recently adopted Children's Code may not enter into force at the end of November 2001, six months after its promulgation.

10. The Committee recommends that the State party:

- (a) Ensure that the Children's Code enters into force without delay;

- (b) Ensure the implementation of the Children's Code in full compliance with the Convention, paying particular attention to the elimination of the traditional concept of «irregular situation» and to the need for adequate structures by allocating the necessary human and financial resources.

Coordination

11. While noting that the new Children's Code foresees the establishment of a National Secretariat for Children and Adolescents, the Committee notes with concern that a process of reform of the structure of ministries and secretariats in Paraguay may delay the entry into force of the Code until July 2002, thereby preventing the allocation of funds in the 2002 budget for the new structure. It further notes with concern that the National Plan of Action for Children (PNAI) has limited economic resources and is not disseminated at local level, and that its coordinating body, the PNAI Committee, does not have a budget allocation and has had a large turnover among its members.

12. The Committee recommends that the State party:

- (a) Strengthen coordination between the various governmental bodies and mechanisms involved in children's rights at both the national and local levels, in line with its previous recommendation (CRC/C/15/Add.75, para. 30);
- (b) Ensure the establishment of the National Secretariat for Children and Adolescents without delay;
- (c) Provide adequate human and financial resources in the 2002 budget for the National Secretariat for Children and Adolescents in order to enable it to carry out its tasks in an effective way; and
- (d) For the preparation of the next National Plan of Action take into account the obstacles met in implementing the previous National Plan of Action and the results of the mid-term evaluation and of the review made for the end-of-decade report.

Budgetary Allocations

13. While noting the information that there has been an increase in public social spending, the Committee reiterates its concern that budgetary allocations for children are still insufficient to respond to national and local priorities for the protection and promotion of children's rights and to overcome and remedy existing disparities between rural and urban areas with respect to services provided to children (CRC/C/15/Add.75, para. 35).

14. In light of article 4 of the Convention, the Committee encourages the State party:

- (a) To strengthen its efforts to reduce poverty and its impact on children;
- (b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated «to the maximum extent of Ö available resources and, where needed, within the framework of international cooperation» for the full implementation of the economic, social and cultural rights of children, in particular with respect to local governments and for children belonging to the most vulnerable groups in society; and

- (c) To identify the amount and proportion of the budget spent on children at the national and local levels in order to evaluate the impact and effect of the expenditures on children.

Monitoring

15. Although the 1992 Constitution foresees the creation of a Defensor del Pueblo (human rights ombudsman), the Committee notes with concern that no mechanism has been established yet to receive and address complaints, in particular in the field of children's rights.

16. The Committee encourages the State party to establish an independent and effective mechanism in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134), provided with adequate human and financial resources and easily accessible to children, that:

- (a) Monitors the implementation of the Convention;
- (b) Deals with complaints from children in

a child-sensitive and expeditious manner; and

- (c) Provides remedies for violations of their rights under the Convention.

In this regard, the Committee further recommends that the State party consider seeking technical assistance from, among others, UNICEF and OHCHR.

Data Collection

17. The Committee, while noting the creation in 1995 of a database to monitor the National Plan of Action for Children (PNAI), expresses its concern that statistical data are not updated and do not cover sufficiently nor are disaggregated for all areas covered under the Convention, and that, when available, these data are not used in an adequate manner to assess trends and as a basis for policy-making in the field of children's rights.

18. In line with its previous recommendation (CRC/C/15/Add.75, para. 32), the Committee recommends that the State party:

- (a) Further strengthen, expand and update its database; and

- (b) Use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention.

Dissemination and Training

19. The Committee recognizes that material promoting human rights was disseminated by both governmental agencies and non-governmental organizations, in line with its previous recommendation (CRC/C/15/Add. 75, para. 33), but notes that these measures need to be strengthened, in particular in rural areas and among indigenous children.

20. The Committee recommends that the State party:

- (a) Increase its efforts to translate informative material into Guaraní and the main indigenous languages and disseminate it;
- (b) Develop more creative methods for promoting the Convention, including through audio-visual aids such as picture books and posters, in particular at local level;

- (c) Provide adequate and systematic training and/or sensitization of professional groups working with and for children, such as judges, lawyers, law enforcement personnel, teachers, school administrators and health personnel;
- (d) Fully integrate the Convention into the curricula at all levels of the educational system; and
- (e) Seek technical assistance from, among others, UNICEF, UNESCO and OHCHR.

Cooperation with NGOs

- 21. The Committee, while noting examples of collaboration between governmental institutions and non-governmental organizations, e.g. in the preparation of the Children's Code and of the State party's second periodic report, nevertheless notes that cooperation with non-governmental organizations should be further promoted and reinforced.
- 22. The Committee reiterates its recommendation to the State party (CRC/C/15/Add. 75, para. 31) to encourage the pro-

motion of closer cooperation with non-governmental organizations, in particular in the area of implementation of the new Children's Code.

2. Definition of the Child

23. The Committee reiterates its concern about the disparity between the legal minimum age for admission to employment (12 years) and the age for the end of compulsory education (15 years).

24. The Committee recommends that the State party increase the minimum age for admission to employment in order to prevent children from starting to work before the completion of compulsory education.

3. General Principles

25. The Committee is concerned that the principles of non-discrimination (article 2 of the Convention), best interests of the child (art. 3), right to life, and maximum possible survival and development of the child (art. 6) and respect for the views of the child (art.

12) are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at both national and local levels.

26. The Committee reiterates its previous recommendation (CRC/C/15/Add.75, para. 34) that the State party:

- (a) Appropriately integrate general principles of the Convention, in particular the provisions of articles 2, 3, 6 and 12, in all relevant legislation concerning children;
- (b) Apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children; and
- (c) Apply these principles in planning and policy-making at every level, as well as in actions taken by social and health welfare institutions, courts of law and administrative authorities.

Non-discrimination

27. The Committee is concerned that the

principle of non-discrimination is not fully implemented for children belonging to indigenous groups or those groups speaking only Guaraní, urban and rural poor children, girls, street children, children with disabilities, and children living in rural areas, especially with regard to their access to adequate health and educational facilities. It further notes with concern that pregnant girls are often not allowed to continue their education, especially in private schools.

28. The Committee recommends that the State party:

- (a) Take all the necessary measures to end discrimination;
- (b) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination;
- (c) Develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well-targeted actions aimed at ending all forms of discrimination; and
- (d) Include specific information in the next periodic report on the measures and pro-

grammes relevant to the Convention on the Rights of the Child undertaken by the State party to follow-up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29 (1) of the Convention on the aims of education.

4. Civil Rights and Freedoms

Birth Registration

29. The Committee notes with concern that a large number of children, in particular those belonging to indigenous groups and/or living in rural or remote areas, are not registered because of distance or because parents are unaware of the importance of birth registration. It further notes that registration is not free.

30. In light of article 7 of the Convention and in line with its previous recommendation (CRC/15/Add.75, para. 38), the Committee recommends that the State party:

- (a) Develop more widespread awareness among the population of the importance of birth registration; and
- (b) Improve the registration system in order to reach all people, in particular in rural and remote areas, including by using mobile registration units.

Corporal Punishment

31. The Committee is concerned that corporal punishment of children remains socially acceptable in Paraguay and that it is still practised in families, schools and other institutions.

32. In light of articles 3, 19 and 28 (2) of the Convention, the Committee encourages the State party to:

- (a) Develop measures to raise awareness about the harmful effects of corporal punishment and encourage use of alternative forms of discipline in families to be administered in a manner consistent with the child's dignity and in conformity with the Convention; and
- (b) Explicitly prohibit corporal punishment

in the family, in schools and in other institutions.

5. Family environment and alternative care

Parental Responsibilities

33. The Committee is concerned at the increase in the breakdown of families, in particular owing to migration to urban areas. It further notes that children, particularly in poor families, are not sufficiently stimulated, which can have a negative impact on their harmonious development.

34. In light of article 18 of the Convention and in line with its previous recommendations (CRC/C/15/Add.75, paras. 39 and 43), the Committee recommends that the State party:

- (a) Improve social assistance to families to help them with their child-rearing responsibilities, including through counselling and community-based programmes, with a focus on early stimulation; and

- (b) Seek international assistance from, among others, UNICEF.

Abuse and Neglect

35. The Committee, while noting the establishment in 1998 of a National Network for Child Abuse (REDNAMI), is nevertheless concerned at its lack of human and financial resources. It is further concerned at the lack of data and information on child abuse and neglect, at the inadequacy of measures, mechanisms and resources to prevent and combat physical and sexual abuse and neglect of children, and at the limited number of services for abused children, in particular in rural areas.

36. In light of article 19 of the Convention and in line with its previous recommendation (CRC/C/15/Add. 75, para. 40), the Committee recommends that the State party:

- (a) Undertake studies on domestic violence, ill-treatment and abuse, including sexual abuse, in order to assess the extent, scope and nature of these practices;
- (b) Adopt and implement effectively adequate measures and policies, and con-

tribute to changing attitudes, and in that regard provide the National Network for Child Abuse with adequate human and financial resources;

- (c) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy;
- (d) Take measures to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention; and
- (e) Seek, in this regard, international cooperation and technical assistance from, among others, UNICEF and WHO.

6. Basic Health and Welfare

Health and health services

37. While noting the decrease in the infant and child mortality rates, the Committee is nevertheless concerned at the lack of reliable statistics and at the still high rates of mortality, morbidity and malnutrition affecting especially indigenous children and those who speak only Guaraní. It further notes the high maternal mortality rates, due largely to a high incidence of illegal abortion, especially in rural areas. It is also concerned about the unsatisfactory level of the immunization coverage.

38. In light of article 24 of the Convention and in line with its previous recommendation (CRC/C/15/Add. 75, para. 45), the Committee recommends that the State party:

- (a) Allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children without discrimination, in particular by focusing more on primary health care and decentralizing the health-care system;
- (b) In order to prevent child mortality and

morbidity and address the high maternal mortality rate, provide adequate antenatal and postnatal health-care services and develop campaigns to inform parents about basic child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, family planning and reproductive health;

- (c) Develop a comprehensive nutritional programme in order to prevent and combat malnutrition, in particular among indigenous children and those who speak only Guaraní;
- (d) Look to international cooperation for the full and efficient implementation of the immunization programme; and
- (e) Seek technical assistance from, among others, WHO, UNICEF and UNFPA.

Children with Disabilities

39. The Committee, while noting the National Action Plan for Disability, expresses its concern that lack of funding and mental and architectural barriers prevent its full implementation. Further, it notes with concern that there are no programmes and

services specific for children. The Committee is also concerned at the general lack of resources and specialized staff for these children, especially the ones with mental disabilities, in particular in rural areas.

40. In light of article 23 of the Convention, the Committee recommends that the State party:

- (a) Undertake studies to determine the causes of and ways to prevent disabilities in children;
- (b) Undertake measures to ensure that the situation of children with disabilities is monitored in order to assess their situation and needs effectively;
- (c) Conduct public awareness campaigns in all languages, in particular indigenous ones, to raise awareness of the situation and the rights of children with disabilities;
- (d) Allocate the necessary resources for programmes and facilities for all children with disabilities, especially the ones living in rural areas, and strengthen community-based programmes to enable them to stay at home with their families;

- (e) Support the parents of children with disabilities with counselling and, when necessary, financial support;
- (f) In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on «The rights of children with disabilities» (CRC/C/69, para. 310-339), further encourage their integration into the regular educational system and inclusion into society, including by providing special training to teachers and by making schools more accessible;
- (g) Seek technical assistance from, among others, WHO.

Adolescent Health

41. The Committee expresses its concern regarding the high rates of early pregnancy, the rise in the number of children and youths using drugs, and the growing number of cases of HIV/AIDS among the youth. Further, it notes the limited availability of programmes and services in the area of ado-

lescent health, including mental health, and the lack of sufficient prevention and information programmes in schools, especially on reproductive health.

42. In line with its previous recommendation (CRC/C/15/Add.75, para.45), the Committee recommends that the State party:

- (a) Undertake a comprehensive and multi-disciplinary study to assess the scope and nature of adolescent health problems, including the negative impact of STDs and HIV/AIDS, and develop adequate policies and programmes;
- (b) Increase its efforts to promote adolescent health, including mental health, policies, particularly with respect to reproductive health and substance abuse, and strengthen the programme of health education in schools;
- (c) Undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youth-sensitive and confidential coun-

selling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child; and

- (d) Seek additional technical cooperation from, among others, UNFPA, UNICEF, WHO and UNAIDS.

7. Education, Leisure and Cultural Activities

Education

43. While noting with appreciation the National Education Law of 1998 and the high rate of primary school enrolment, which is more than 95 per cent, the Committee is nevertheless concerned about the continuing poor quality of education, the non-tuition costs of compulsory school, the high repetition and drop-out rates, and the poor condition of infrastructures. It further notes with concern that pregnant girls are not allowed to stay in school.

44. In light of articles 28 and 29 of the Convention, the Committee recommends that the State party:

- (a) Undertake appropriate measures to increase budgetary allocations for education, in particular for the improvement of school infrastructure;
- (b) Ensure regular attendance at schools and the reduction of drop-out rates;
- (c) Take measures to prevent bullying and other forms of violence in schools;
- (d) Improve the quality of education in order to achieve the goals mentioned in article 29 (1), in line with the Committee's general comment No. 1 on the aims of education; and
- (e) Seek additional technical cooperation from, among others, UNESCO and UNICEF.

8. Special Protection Measures

Children in Armed Conflict

45. The Committee is deeply concerned that, although the State party's legislation states that the minimum age for recruitment into the armed forces is 18, minors constitute a

considerable proportion of conscripts into the Paraguayan armed forces and national police, and very much regrets that its previous recommendation (CRC/C/15/Add. 75, para. 36) in this regard was not implemented. It is deeply worried at the number of cases of torture and ill-treatment of conscripts, including children, by their superiors and at cases of unclarified deaths of conscripts, which also involved minors. In particular, it notes with concern that the majority of these deaths and ill-treatment cases were not investigated, and that there are reports of forcible recruitment of children, especially in rural areas, and of falsification of documents proving their age.

46. The Committee urges the State party:

- (a) To put an end to the practice of recruiting children into the Paraguayan armed forces and national police, in line with its previous recommendation (CRC/C/15/Add.75, para. 36), and punish those involved in forcible recruitment;
- (b) To investigate all cases of ill-treatment and death of conscripts and suspend from duty the officials implicated in such accidents;

- (c) To prosecute and punish those responsible for these violations;
- (d) To provide compensation to the victims of human rights violations during military service or their families;
- (e) To provide training on human rights, including children's rights, to army officials; and
- (f) To ratify the Optional Protocol to the Convention on the involvement of children in armed conflict, setting 18 years as the minimum age for all military recruitment.

Economic Exploitation

47. The Committee expresses its deep concern at the increasing number of children who are exploited economically, in particular those under 14 years of age. In particular, it notes cases of abuse of girls in domestic service and a large number of children working in the streets, often at night and in unhealthy conditions, especially in the capital, Asunci n. It also notes that ILO Convention No. 138 concerning Minimum

Age for Admission to Employment has not been ratified.

48. In light of article 32 of the Convention and in line with its previous recommendation (CRC/C/15/Add. 75, para. 43), the Committee reiterates that the State party should:

- (a) Continue to enforce and strengthen its legislation protecting working children;
- (b) Combat and eradicate as effectively as possible all forms of child labour, including by strengthening its cooperation with ILO/IPEC; and
- (c) Ratify ILO Convention No. 138 concerning Minimum Age for Admission to Employment.

Sexual Exploitation

49. The Committee expresses its deep concern that, with regard to the increasing phenomenon of commercial sexual exploitation of children, there are no data available, legislation is inadequate, cases involving sexually exploited children are often not investigated and prosecuted, victims

are criminalized, and rehabilitation programmes are not available. It further notes that a national plan against commercial sexual exploitation of children has not been developed.

50. In light of article 34 of the Convention and in line with its previous recommendation (CRC/C/15/Add. 75, para. 47), the Committee recommends that the State party:

- (a) Undertake a study on this issue in order to assess its scope and causes, enable effective monitoring of the problem and develop all necessary measures and programmes to prevent, combat and eliminate sexual exploitation and abuse of children;
- (b) Develop and adopt a national plan against sexual and commercial exploitation of children, taking into account the Agenda for Action of the Stockholm World Congress against Commercial Sexual Exploitation of Children; and
- (c) In this regard, seek international cooperation from, among others, UNICEF and WHO.

Juvenile Justice

51. While noting that the new Children's Code establishes a specific criminal procedure for children aged from 14 to 18 and the creation of a Youth Division of the National Police, the Committee expresses its concern at the long periods of pre-trial detention, at the fact that it is not used as a last resort, and that children are not informed of their rights and are not provided with legal assistance. Deep concern is also expressed at reports of torture and ill-treatment of detained juveniles, especially in the recently destroyed Panchito López Juvenile Correctional Institute, and at the situation of detention centres for juveniles, which are overcrowded and in poor condition.

The Committee further notes that the education, rehabilitation and reintegration programmes provided during the detention period are inadequate.

52. In line with its previous recommendation (CRC/C/15/Add. 75, para. 48), the Committee recommends that the State party:

(a) Continue reviewing laws and practices regarding the juvenile justice system in

order to bring it as soon as possible into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);

(b) Expedite the full enforcement of the Children's Code of 2001 which guarantees due process of law for children and social and educational correctional measures;

(c) Use pre-trial detention only as a measure of last resort, for as short a time as possible and for no longer than the period prescribed by law;

(d) Use alternative measures to pre-trial detention and other forms of deprivation of liberty whenever possible;

(e) Incorporate into its legislation and practices the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, in particular to guarantee them

access to effective complaints procedures covering all aspects of their treatment;

- (f) Ensure that those officers implicated in acts of torture and ill-treatment against inmates are suspended from duty pending a full and impartial investigation and, if found responsible, brought to justice;
- (g) Provide training on human rights, including children's rights, to staff in detention centres;
- (h) Take effective steps to improve conditions in detention centres and provide adequate education to children deprived of their liberty;
- (i) Take appropriate rehabilitative measures to promote the social reintegration of the children involved in the juvenile justice system;
- (j) Seek assistance from, inter alia, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice and UNICEF, through the United Nations Coordination Panel on

Technical Advice and Assistance on Juvenile Justice.

9. Optional Protocols

53. The Committee encourages the State party:

- (a) To ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict;
- (b) To accept the amendment to article 43 of the Convention as soon as possible.

10. Dissemination of Documents

54. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the second periodic report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant

summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of

the Convention and its implementation and monitoring within the Government and the general public, including NGOs.

The World Organisation
Against Torture (OMCT)
wishes to extend its grati-
tude for its support to the
Children's Rights Programme
to:

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MISEREOR E.V.
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