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REPORT ON THE SITUATION OF HUMAN RIGHTS IN PARAGUAY

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006

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**RESOLUTION CONCERNING THE REPORT ON THE SITUATION
OF HUMAN RIGHTS IN PARAGUAY
September 22, 1987**

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

WHEREAS:

The Commission provisionally approved on June 26, 1987 its Report on the Situation of Human Rights in Paraguay (OEA/Ser.L/V/II.70, doc. 6).

That the Report was sent to the Government of Paraguay on July 6, 1987, in order for that Government to submit any observations said Report may warrant.

That the Government of Paraguay presented its observations on September 9, 1987.

RESOLVES:

1. To approve the present Report, the text of which is appended to this resolution.

2. To send this Report, through the Secretary General of the Organization, to the General Assembly, pursuant to Article 52, paragraph f of the Charter of the Organization of American States, and

3. To publish this Report.

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INTRODUCTION

A. BACKGROUND

The Inter-American Commission on Human Rights (IACHR) prepared a Special Report on the Status of Human Rights in Paraguay in 1978.¹ As noted in that report in the section on background,² after repeated efforts by the Commission the oft requested permission to visit the country was received from the government. The message came at the end of a telegram from the then Minister of Foreign Affairs of Paraguay, Dr. Alberto Nogues, to Dr. Andrés Aguilar, Chairman of the Commission. It announced that "the Paraguayan Government is willing to receive your visit on a date to be set by mutual consent."

The IACHR was nevertheless obliged to draft and publish its report without the proposed on-site inspection, since the Paraguayan authorities never got around to setting a date for the visit. Even now, ten years later, the Government of Paraguay has yet to name the day.

In the report cited, the IACHR concluded that in the Republic of Paraguay the great majority of the rights recognized by the "American Declaration of the Rights and Duties of Man" and other instruments of the same nature not only were not respected in accordance with the international commitments assumed by that country, but that their violation had become common practice.

At that time, the Commission specifically cited violations of the right to life, to personal freedom, to justice, to free speech and expression of opinions and the rights of assembly and association.

The report in question was submitted to the eighth regular session of the OAS General Assembly, held June 21-July 1, 1978. The General Assembly agreed in its Resolution 370 (VIII-O/78):

To thank the Inter-American Commission on Human Rights for its report on the situation of human rights in Paraguay and to request it to continue to observe the situation of human rights in that country and to report on the matter to the General Assembly at its next regular session.

At its ninth regular session, held in La Paz, Bolivia October 22-31, 1979, the OAS also approved another resolution (AG/RES. 443).

1. OAS/Ser.L/V.II.43, doc. 13 corr. 1, 31 January 1978.
2. Pages 1 to 10.

stating that it had taken note of the Annual Report of the IACHR for 1978.³ The last preambular paragraph states that:

The Government of Paraguay has not complied with the recommendations made by the General Assembly at its eighth regular session.

The operative paragraphs of the aforementioned resolution AG/RES. 443 included the following:

6. To reiterate the need for the government of Paraguay to respect human rights, and to urge that government to demonstrate the willingness it expressed in a note from the Ministry of Foreign Affairs dated July 2, 1979, to cooperate with the Inter-American Commission on Human Rights by setting a date certain in the near future for its visit to that country, as agreed with the Government of Paraguay in September 1977.

To request the Government of Paraguay to lift the stage of siege throughout the country, and to permit all exiles to return.

8. To request the Commission to continue to monitor the exercise of human rights in Paraguay ... and to report thereon to the tenth regular session of the General Assembly.

Based on the provisions of operating paragraph 6 of Resolution AG/RES. 443, at its 49th session the Inter-American Commission on Human Rights again addressed the proposed on site observation in Paraguay and agreed on April 1, 1980 to send a cable to the Minister of Foreign Affairs of Paraguay, requesting that he set a specific date for the observation visit agreed upon. The IACHR also resolved at that time that in the event that the Government did not respond affirmatively, a note would be sent to the OAS Secretary General, apprising him of the situation so that he could bring it to the attention of the Permanent Council of the Organization's General Assembly.

The text of the cable sent to the Minister is reproduced below:

His Excellency
Alberto Noguez
Minister of Foreign Relations
Asunción, Paraguay

I have the honor of addressing Your Excellency to state that the Inter-American Commission on Human Rights resolved at

3. AG/doc.1101/79 and IACHR OAS/Ser.L/V/II.47, doc.13, rev. 1, 29 June 1979.

its 49th regular session to ask Your Excellency for specific information as to the manner in which the Government of Paraguay would be willing to observe the request embodied in the sixth paragraph of Resolution 443 of the General Assembly of the Organization of American States, in which it is urged that willingness to cooperate with the Inter-American Commission on Human Rights be demonstrated by setting a proximate and precise date for on-site observation by the Commission in your country. The Commission takes the liberty of suggesting that Your Excellency's Government consider the possibility that the visit take place during the latter half of July or, alternatively, during the month of November of this year.

Accept, Excellency, the assurances of my highest consideration.

Luis Demetrio Tinoco Castro
Chairman

On April 28, 1980, the Commission received the following reply from the Government of Paraguay:

Mr. Tom J. Farer
Chairman of the Inter-American Commission on Human Rights
General Secretariat, Organization of American States
Washington, D.C., USA

With reference to your cable, and as stated in my note dated July 2, 1979, I must repeat that, for reasons of sovereignty that stem from its exclusive purview and initiative, the Government of Paraguay continues to reserve the right to determine the occasion on which the Commission could visit my country.

Please accept the assurances of my highest consideration.

Alberto Noguez
Minister of Foreign Relations of Paraguay

Pursuant to its decision at its 49th regular meeting, the Commission addressed the OAS Secretary General on May 28, 1980 to apprise him of the step it had taken and the result thereof. At the same time, the committee agreed to continue observing the development of human rights in Paraguay.

The IACHR thus continued to process the complaints received in respect to individual cases, to examine the data sent to it on the

observance of human rights and to consider the general status thereof in the country. The Commission's annual reports included the results obtained in individual cases and those of its analysis of the general status of human rights in Paraguay, on which it reported to the OAS General Assembly at that body's regular sessions. At the same time, the Commission continued its efforts with the Paraguayan authorities to have a date set for its proposed on site observation visit to the country.

In April 1986, at its 67th regular session, the Inter-American Commission of Human Rights agreed to prepare a special report on the general situation of human rights in Paraguay and to repeat its request for the Government's permission to carry out its proposed in loco visit.

Pursuant to that decision, the Chairman of the Commission sent the following note to the Government of Paraguay on April 17, 1986:

His Excellency
Dr. Carlos Augusto Saldívar
Minister of Foreign Relations
Asunción, Paraguay

Excellency:

The Inter-American Commission on Human Rights has the honor of advising Your Excellency of its decision at its 67th regular session to prepare a report on the general situation of human rights in Paraguay.

In order for that report to convey the realities of Paraguay as faithfully and objectively as possible, and encouraged by the recent decisions of Your Excellency's Government to allow various government and nongovernmental organizations to visit Paraguay, the Commission has deemed it advisable to request the permission of your Government for a visit in loco to the country, on a specific date at the earliest possible time, but in any case prior to the end of the present year.

We would be grateful for an early reply. In the meantime, please accept, Excellency, the renewed assurances of my highest consideration.

Luis Adolfo Siles
Chairman

During its 68th regular session in September 1986, the Commission reaffirmed to the Government in the last paragraph of its 1984-85 annual report the commitment it had assumed in September 1977, which had

remained pending since that time, insisting that a specific date had to be set for the on site observation. It underscored the idea that:

Any other attitude on the part of the Paraguayan Government would indicate that it was not willing to respect the commitment it had accepted.

The Chairmen of the Commission, Drs. Luis Adolfo Siles Salinas and Gilda M.C.M. de Russomano met in the course of 1986 and 1987 with Foreign Minister Dr. Carlos Augusto Saldívar, again emphasizing the expediency of inviting the Commission to visit the country. This was prior to the publication of the present report.

During the interview between the Chairwoman and the Minister of Foreign Affairs, the Minister give her a note dated June 2, 1987, in which the Paraguayan Government apprised the Commission of its decision not to set a date for the visit. One of the reasons adduced for such refusal was that the Government of Paraguay gives priority to its relations with the United Nations Commission on Human Rights, and had acceded to the visit of a special rapporteur who had already visited Paraguay. According to the Government, assent to the visit of the Commission would have created an undesirable and dangerous duality. Another argument was the short deadline set by the Commission for the visit to be authorized. The complete text of the missive from the Government of Paraguay, together with the Commission' reply, may be found in the Annex to this report.

In its reply, the Commission refutes the reasons adduced by the Government of Paraguay, stating that the "duality" of procedures has never been an obstacle to the Commission's consideration of human rights in OAS member countries. The Commission points out that there is no provision, either in the United Nations Charter or in that of the OAS, that can be interpreted as conferring such priority or incompatibility; on the contrary, both organizations have consistently recognized the possibility that parallel procedures can exist. As for the shortness of deadlines, the Commission noted that this argument could not be sustained given the ten year lapse since the Government of Paraguay had agreed to accept the visit, and the repeated requests to that effect submitted by the Commission and even by the General Secretariat of the OAS. In light of the inconsistency of the arguments adduced by the Government, the Commission concludes that such refusal by the Government of Paraguay raises new obstacles to the Commission's compliance with its mandate.

Since the Government of Paraguay has not issued its authorization, and violations of the rights recognized in the American Declaration of the Rights and Duties of Man have continued during the period covered by this report, the Inter-American Commission on Human Rights has decided to issue the present report, which was approved provisionally in accordance with its Rules of Procedure and sent to the Government on July 6, 1987.

On the 9th of September, 1987 the Commission received the observations of the Government of Paraguay on the provisional report, and after a careful analysis, proceeded to make the changes it deemed appropriate. On September 23, following its deliberation, the Commission adopted this definitive text.

B. CONTENTS, METHODOLOGY AND SOURCES OF THE PRESENT REPORT

The present report of the Situation of Human Rights in Paraguay covers the period from December 31, 1977--the date when the last special report prepared by the Inter-American Commission on Human Rights in that country was updated--until June 26, 1987, the date when the IACHR tentatively approved this new special report during its 70th regular session.

The successive chapters address the following rights: the right to life, safety and integrity of the individual; to due process of law and protection from arbitrary arrest; the right to freedom of thought and expression; the right to freedom of movement and residence; labor rights and finally, political rights. The report ends by setting forth the conclusions reached by the Commission and the recommendation that the status of human rights in Paraguay be addressed by the government of that country.

Each of those chapters presents the principal violations of which the Commission was apprised in the period covered by the present report. Each chapter starts with the transcription of the corresponding article from the American Declaration of the Rights and Duties of Man, an instrument that is applicable to Paraguay, which has failed to ratify the American Convention on Human Rights.

To prepare the present report, the Commission had recourse to the laws and the jurisprudence of Paraguay's courts. Special consideration was given to the claims it has received and to the Government's responses thereto. The Commission has also utilized information published in the Paraguayan and foreign press media. Finally, preparation of the report made use of the abundant documentation received directly by the Commission or remitted to it by human rights organizations, both Paraguayan and international.

The Commission once again regrets the obstacles raised by the Government of Paraguay to prevent the on site inspection visit to ascertain the status of human rights in that country. Those obstacles, however, have not prevented the Commission from performing its duty and preparing this report on the Status of Human Rights in Paraguay for the period from 1979 to 1987.

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CHAPTER I

STRUCTURE OF THE STATE AND LEGAL REGULATION OF HUMAN RIGHTS

The object of this first chapter is to describe Paraguay's juridical system insofar as it addresses both the political organization of the state and the code of laws governing human rights which that state has undertaken to respect and promote. To that end, the pertinent provisions of the Constitution of the Republic of Paraguay will be examined, including the amendment introduced in 1977 and existing laws whose enforcement affects the power system or the regulation of human rights. This presentation is therefore designed to serve as a general framework for the analysis that will address the specific problem issues of each right examined in the respective chapters.

The current Constitution of Paraguay was approved by the National Constitutional Convention on August 25, 1967 and was promulgated by the Executive Branch on the same day. Article 219 foresees the possibility of introducing "such amendments as experience may counsel" following a period of five years from the date of its promulgation. It was on the basis of this article that in 1977 another National Constitutional Convention amended Article 173 to permit reelection of the president. With that amendment, the 1967 Constitution replaced the 1940 Constitution which had been in force until that time.

A. THE POLITICAL ORGANIZATION OF THE PARAGUAYAN STATE

Article 1 of its Constitution proclaims that the Republic of Paraguay "adopts representative democracy as its form of government." Article 3 stipulates that "the government of the republic is exercised by the legislative, executive and judicial powers, within a system of division, balance and interdependence or power." This division and balance of powers has traditionally been understood to be a fundamental element of representative democracy, which has repeatedly been endorsed by the Commission as the best safeguard for the observance of human rights. Hence the importance of remembering this general postulate embodied in the Paraguayan Constitution as a basis for evaluating the extent to which it is or is not applied in the government's practice, especially in regard to the independence of the judiciary.

Articles 40 and 41 impose restrictions on the exercise of power. Those articles provide that:

Article 40. None of the powers of the state may even arrogate to itself or grant to another power, or to any person whatsoever, special rights beyond those envisaged in this Constitution, or the public power as a whole, or supreme authority giving power of decision over the life, freedom, honor, and property of persons. Dictatorship is outside the law.

Article 41. Higher government authorities, officials and employees shall at all times act in accordance with the provisions of this Constitution and the laws. These persons shall exercise the duties within their competence in conformity with the latter and shall be personally responsible for the violations, crimes, or misdemeanors they commit in the performance of their duties, without prejudice to the responsibility of the state, which shall be regulated by law. A special law shall regulate the responsibility of government officials in order to ensure their effectiveness.

Chapter VII of the Constitution designated the three branches of the state and defines their jurisdiction. This chapter starts by addressing the legislative power. Pursuant to Article 133, this is exercised by a Congress composed of the Senate and the Chamber of Deputies, consisting of thirty and sixty members, respectively. Both senators and deputies are elected directly.

As defined by the Constitution, the functions of both chambers are those usually included in present-day constitutions. It should be noted, however, that the executive power retains the initiative in legislation granting "concessions for the establishment of new industries or national public services, as well as for the extraction and processing of raw materials" (Article 149, paragraph 10); "military ordinances and the organic law of the military courts" (Article 149, paragraph 14); and the transfer of the capital of the republic to another site (Article 149, paragraph 19).

A significant factor, for reasons explained in the following section, is the size of the necessary majority stipulated by the Constitution for the adoption of legislation on important matters. It should be noted in this respect that a two thirds majority is required by the Constitution to approve legislation concerning the following topics: the reprimanding or removal of one of its members from either chamber of the Congress (Article 14); the suspension of any member of either chamber who is arraigned by the courts, placing him at the disposal of the judge (Article 142); the requirement of a two thirds majority to declare guilty any members of the Supreme Court of Justice who are tried by the Senate (Article 151, section 3); the institution by the Chamber of Deputies of trial of members of the Supreme Court before the Senate (Article 153, section 4); reconsideration, after a lapse of one year, of any bill

vetoed by the Executive Branch (Article 158); rejection for the second time of a bill that has twice been approved by the Chamber in which it originated (Article 160); final approval of amendments to a bill when they have twice been voted down by the Chamber that presented the bill (Article 161); and final rejection, by either chamber, of the bill containing the budget (Article 163).

Closely linked to the provisions relating to the qualified majority is the system established by Law N° 886, entitled "Electoral Statute," Article 8 of which states the following:

The Senators and Deputies, and the members of Constitutional Conventions as well as those of Municipal Boards and Electoral Boards, will be elected in direct general elections, by means of the following complete list and proportional representation system:

- a. The system of representation adopted consists of assigning two thirds of all the positions to the party that obtains the greatest number of valid votes. The proportion for the remaining posts will be determined in the following manner: the total number of valid votes cast in favor of the minority parties will be added together and divided by the number of positions to be filled. The result will be the electoral quotient for the minority, and this quotient will serve as the divisor for the number of valid votes cast in favor of each of the minority parties.
- b. If, after the respective posts have been assigned, one or more remain to be filled, the first shall be adjudicated to the minority party whose surplus votes are closest to the quotient that received the largest number of valid votes. The system thus established shall apply also to the alternates.

As may be seen, by assigning two thirds of the chambers automatically to the majority party, the proportional representation system adopted establishes a mechanism whereby that political party can control the entire Congress. As will be evident when the subject of political rights is discussed, it must be born in mind that a singly party--the Partido Colorado--has systematically obtained the two thirds majority thanks to this system. The head of that party is President Stroessner.

In addressing the subject of proportional representation, it should be noted that the Constitution explicitly establishes this system in Article 111, considering it to be one of the essential bases of exercise of the right to vote. Article 115 also establishes the system of proportional representation to form the electoral bodies. It can be argued that the system authorized by Law N° 886 does so as well, since in effect it assigns parliamentary seats on the basis of proportion.

Nevertheless the purpose of the proportional representation system is to allow minority groups to participate in the decision-making process, since they would be excluded from the institutional and political life of the nation if the simple majority criterion were applied. The system adopted in Paraguay grants a determinant proportion (two thirds) to the majority party, irrespective of the percentage of votes it may have obtained, and this distorts the proportional representation system and the aims it pursues.

Chapter VIII deals with the Executive Branch, its composition, the way the presidents are elected, the duration of their mandates, and the powers thereof. Article 171 stipulates that executive power shall be vested in the President of the Republic, who is elected by direct vote. Article 167 of the 1967 Constitution limited reelection to a single additional period, whether consecutive or otherwise. As noted earlier, this article was changed by the National Constitutional Convention which on March 10, 1977 approved the amendment removing the limit on presidential reelection. It is thanks to this provision that President Stroessner has been reelected until the present time.

The possibility of indefinite reelection of the president is added to the broad authority which the Constitution confers on the Chief Executive, endowing this branch with clear preeminence over the others. Under the Constitution, the President is the Supreme Head of the State, Commander in Chief of the Armed Forces, and the person who appoints the members of the Supreme Court of Justice subject to approval by the Senate; the State Attorney General, with the opinion of the Council of State; and the members of the courts and other judges of the judiciary power, with the assent of the Supreme Court (Article 1809, section 8).

This system means that the judicial branch depends directly on the executive, particularly since magistrates are appointed for a period of five years, after which they can be "reelected" (Article 195 of the Constitution). As is obvious, the judges not only have no tenure under this system but--quite the contrary--they are kept in a permanent state of uncertainty regarding their future. This factor alone means that the rest of the authority conferred by the Constitution on the judiciary is radically diminished, particularly in regard to action designed to exercise any control over the president or persons close to him.

In addition to the broad authority that the executive branch has over the judiciary, it can also dissolve the Congress on the basis of any "serious events imputable to it that endanger the balance among the powers of the state or in some other way affect the regular enforcement of this Constitution or the free development of the institutions created by it" (Article 182 of the Constitution). As is evident, the president is given broad discretionary power to determine what acts are so "serious" as to warrant such a drastic measure.

The president's far-reaching authority over the institutional structure of the Paraguayan state, reflected in powers that affect the

judicial branch and Congress, are complemented by the authority over individuals the Constitution bestows on him by means of the declaration of a state of siege, which he can invoke pursuant to Article 181. Because of its impact on exercise of the rights recognized by the Constitution, the state of siege will be discussed in the second part of this chapter. For the time being, suffice it to say that this important mechanism is directly related to the way in which power is wielded within the framework of the Paraguayan Constitution.

The institutional supremacy of the executive branch over the other branches of the government, stemming from the provisions of the Constitution, is complemented by the absence of measures that hold the President responsible for possible illegal acts perpetrated during his incumbency. This lack of responsibility grants personal immunity to a well protected institutional primacy. When it is heightened, as will be seen in the chapter on political rights, by the fact that President Stroessner is also an acting General of the Army and head of the incumbent Colorado Party, it is easy to see that scant room for margin for political maneuvering is left to his opponents.

As may be seen, the formal statements set forth in Articles 1 and 3 concerning adoption of representative democracy and the division of powers are severely constrained by the group of measures that should, on the contrary, seek to defend such postulates, not to restrain and distort their application. Hence it may be concluded that the institutional order established by the Constitution grants excessive preponderance to the Executive Branch over the Legislative and the Judiciary, making them subordinate thereto. Thus the essential tenets relative to representative democracy and the division of power come to represent formal statements rather than principles enshrined in the Paraguayan constitutional order.

B. HUMAN RIGHTS AND THE PROTECTION THEREOF IN PARAGUAY'S LEGAL SYSTEM

1. The Rights that are Protected

The object of the present section is to present the juridical system that defines human rights in Paraguay's legal system. This includes a discussion of the instruments that guarantee the exercise of such rights. To that end, a general presentation of the system will be used as a framework for specific consideration of each right addressed by the respective chapters of this report.

The juridical system that defines acknowledged rights establishes certain institutional recourse for their protection, and sets limits on the force thereof in the fact of exceptional situations. In essence the system is embodied in Chapter V of the Constitution of the Republic of Paraguay, which has been in effect since August 25, 1967. Chapter III defines the right to nationality in adequate terms.

The aforementioned Chapter V deals with the rights, guarantees and obligations of individuals. It refers separately to what it calls individual rights, also known as civil rights; to the social rights that include norms relevant to family, education and culture, and the right to health; economic rights; the rights of workers; and political rights, including provisions concerning voting rights, political parties, and political asylum. This Chapter of the Constitution ends by establishing the obligations incumbent upon the inhabitants of Paraguay.

Section N° 1 of Chapter V, dealing with what it terms individual rights, defines some of them exhaustively while others are simply mentioned. Thus the rights to life, physical integrity, freedom, security, property, honor and reputation are mentioned as a group in Article 50, which provides that all individuals are entitled to have such rights protected by the State.

Article 50 is partially complemented by Article 65, which states that "in no case shall the death penalty be applied for political reasons." It is interesting to note that the death penalty has not been applied by Paraguayan courts for at least fifty years.

Article 65 also complements Article 50 in regard to personal integrity by saying that "no one shall be subjected to torture or to cruel or inhumane treatment." The same Article 65 also addresses the right to property, prohibiting the confiscation thereof; and, in conjunction with personal freedom, it calls for the penitentiary system to see to the rehabilitation of convicts.

The right to residence and movement is recognized in Article 56, while Article 58 is devoted to the right to intellectual property. The right to personal freedom is addressed in Article 59, but it is interesting to note in this connection the protracted interval allowed for the police to tell the accused the reason for his detention (24 hours); the possibility of indefinitely prolonged incomunicado status is equally inadvisable, even when authorized by judicial order.

Articles 60 to 64 adequately regulate the various areas involving the right to justice and due process. Article 67 precludes the retroactivity of penal laws except in cases where they are more favorable to the accused. Article 68 enshrines the inviolability of the home and Article 69 that of papers, correspondence and personal communications. Freedom of conscience and religion are recognized in Article 70, limiting their exercise to the dictates of public order and good customs.

Article 71 recognizes the right to freedom of thought and opinion, but it is limited by the text of the article stating that "it is forbidden to preach hatred, or class struggle among Paraguayans, or to defend crime or violence." Article 72 authorizes the right to freedom of speech and information, but with two limitations: those stemming from the previously quoted Article 71, and the censorship of matters relating to national security and defense in time of war. The series is completed by Articles

73 and 74, which codify the free practice of journalism and the ban on subsidies from foreign countries for news media enterprises. Article 76 recognizes the right to freedom of association and assembly, limiting them when they infringe on the rights of others or disturb the public order.

This first section of Chapter V also includes rules about equality before the law (Article 54) and the constraints on the exercise of rights derived from generally accepted criteria, such as the rights of third parties and the public order (Article 49). It also establishes the principle that excludes from the authority of the courts such private actions as do not offend public order, morals, or the rights of third parties, as well as the one whereby no one may be forced to do anything that the law does not require, or be prevented from doing anything not forbidden by law (Article 49).

From the legislative point of view, Article 80 of the Constitution --which marks the close of Section 1--is important. We quote it in its entirety:

The enumeration of the rights and guarantees contained in this Constitution shall not be construed as denying others which, not specifically mentioned therein, that are inherent in the human being. Absence of a regulatory law shall not be invoked to deny or impair any right or guarantee.

Section 2 of Chapter V is devoted to the social rights. As noted earlier, it includes norms for the protection of the family, motherhood and minor children, as well as the family's patrimony and the social security system. It also addresses the right to education and culture, establishing compulsory elementary education and the freedom to impart it. Practical elements are also considered in these areas, such as the creation of scholarships and financial assistance to those who need it. Constitutional status is conferred on the State's commitment to protect and promote the use of the guarani language. The right to health is recognized in Article 93 of the Constitution.

Section 3 regulates a series of rights which the Constitution classifies as "economic." Except for Article 96, which deals with the right to own property, the others are norms outside the area of human rights, as they concern private initiative, economic development, the exploitation of natural resources, and the like.

Section 4 of Chapter V of the Constitution addresses the rights of workers, and starts by establishing the ban on servitude "or personal dependency incompatible with human dignity." This section also sets forth various fundamental concerns about working conditions to be provided for by the law. It speaks in particular of the protection to be given women, and the requisite social security system. It also recognizes the right of workers to form unions and to strike.

Section 5 of this chapter refers to political rights and addresses suffrage, political parties, and political asylum. Paraguay's Constitution considers voting to be the "right, duty and public function of the voter," asserting that it is "the basis of the system of representative democracy," predicated on "the universal, free, direct, equal and secret vote; and on the system of proportional representation." (Article 111). This is also the system indicated by the Constitution for forming the electoral bodies (Article 115). The opinion of the Commission regarding the proportional representational system as regulated by Law N° 886 was discussed earlier, in connection with the powers of the Paraguayan Congress.

The subject of the electoral capacity of Paraguayan citizens is adequately covered by the Constitution, which even allows foreigners to vote in the case of municipal elections (Article 112). It also recognizes the voter's right to peaceful demonstrations (Article 116).

The section in the Constitution that regulates the political parties --Articles 117 through 121--elicits observations concerning the restriction contained in Article 118, according to which "subordination of Paraguayan political parties to, or their alliance with, similar organizations of other countries is prohibited. Nor may they receive subsidies or directives from abroad." This clause will be examined in greater detail when we discuss the exercise of political rights. For the time being, then, suffice it to say that this is an anachronistic constraint without any particular justification at a time when international relations feature the participation of numerous political organizations that focus on doctrinal and ideological affinities, but could not be considered as an element that would subordinate the exercise of important political rights inside Paraguay to external decisions.

In addition to this regulation, another norm appears in Article 119 that states that "no political party may proclaim abstention that would signify non-participation of citizens in elections." Both rules leave it to the courts to cancel or suspend the legal status of political parties that might be affected by these measures, pursuant to Article 121, which represents a clearly negative situation for the functioning of political parties.

2. Limitations on the exercise of recognized rights

Paraguay's legal system limits the validity of the rights recognized by the Constitution through three different types of instruments. The first is the declaration of the state of siege, addressed by Article 79 of the Constitution; the second is Law N° 294 of 1955, entitled "Law for the Defense of Democracy"; and the third is Law N° 209, known as the "Law of Public Peace and Freedom of the Individual." The Commission will discuss them in the following paragraphs.

a. The State of Siege

As noted earlier, the state of siege is established by Article 79 if the Constitution, the text of which appears below.

Article 79. In order to defend this Constitution and the authorities created in conformity therewith, the state of siege is instituted, to be imposed only in cases of international conflict or war, foreign invasion, domestic disturbance, or serious threat of any one of these events. A state of siege may be complete or partial, depending on whether it affects the entire territory of the republic or only a part thereof, and during the time it is in effect persons suspected of participating in any of those events may be arrested, or they may be transferred from one point in the republic to another, and public meetings and demonstrations may be prohibited. Those arrested by virtue of a state of siege shall be held in healthful and clean premises not intended for common criminals, and transfers shall always be made to localities that are populated and healthful. The declaration of state of siege shall be for a limited time and shall in all cases serve the purpose for which it was instituted. The fact that a state of siege is in effect shall not interrupt the functioning of the powers of the state or affect the exercise of their prerogatives. The imposition of a state of siege shall be regulated by law.

The article transcribed above is complemented by Article 181 of the Constitution, which states the following:

Article 181. In the cases stipulated in Article 79 of this Constitution the executive power may decree a state of siege, in which case it must set forth the reasons therefor, the guarantees that are being suspended or restricted, and whether it is in force for the entire national territory of a part thereof, and may adopt the measures authorized in the aforementioned article. The executive power shall inform the Congress of the corresponding decree within five days following its publication.

The Inter-American Court of Human Rights has on many occasions addressed the difficult subject of the states of exception in the different OAS member countries. The IACHR has always acknowledged the need that governments may face, in exceptional circumstances, to suspend the exercise of one or several rights recognized by their legal system. For their part, modern international instruments also acknowledge this type of situation.

Insofar as Paraguay is concerned, it should be noted that the American Declaration of Human Rights and Duties of Man--which is applicable to Paraguay--does not contemplate the possibility of restricting or suspending certain rights. The Commission will consider

this subject in the light of doctrinary criteria derived from the American Convention, which--although not applicable to Paraguay, which failed to ratify it--in its day embodied the hemisphere's thinking on this subject. Other doctrinary criteria that have been applied in this delicate area will also be used.

The evolution of the treatment of this topic has given rise to the development of detailed guidelines as to the way governments must act in these exceptional circumstances. In the first place, it was found that certain rights can never, under any circumstances, be abolished or their exercise suspended. In the inter-American sphere, they are the ones listed in section 2 of Article 27 of the American Convention on Human Rights.¹

In addition to this recognized prohibition on the suspension of certain rights, the Commission, following unanimous doctrinary thinking, has found that any restriction or suspension of rights must be limited in time and appropriate to the seriousness of the situation that triggers the adoption of such measures. The American Convention, while regulating the states of exception mentioned in Article 27 stipulates that they can be applied when there is a situation "of war, public danger, or other emergency that threatens the independence or security of the State Party," and that the measures adopted by each State Party must be "to the extent and for the period of time strictly required by the exigencies of the situation." The phrase "to the extent" refers to the criterion of proportionality and "for the period of time" to the temporariness criterion.

The Commission will now examine the way in which the Government of Paraguay has applied the measures of the state of siege. The foregoing criteria will be used for this purpose: situations that give rise to the proclamation of the state of siege, the proportionality of the measures adopted and the temporary nature thereof. It will also examine the rights whose exercise can be suspended in accordance with Paraguay's Constitution and the way the decisions taken by the executive power have been put into practice.

Article 79, transcribed above, starts by citing the end to be achieved by implementation of the state of siege: defense of the Constitutions and the authorities created pursuant to it. It also establishes the causes that can lead to the adoption of such a measure: international conflict or war, foreign invasion, domestic disturbance, or a serious threat of any one of these events. As may be gathered from

1. Right to Juridical Personality; Right to Life; Right to Personal Integrity; Freedom from Slavery and Servitude; Principle of Legality and Retroactivity; Freedom of Conscience and Religion; Rights of the Family; Right to a Name; Right of the Child; Right of Nationality; and Political Rights. Neither does the Convention authorize the suspension of the judicial guarantees essential for the protection of such rights.

the text, the domestic disturbance must be so serious as to endanger the validity of the Constitution or the authorities created in conformity therewith.

The text of the Constitution in regard to the rights whose exercise is suspended is consistent with the requirements of the international instruments and the doctrine relevant to human rights. According to Article 79, during the time the state of siege is in effect, "persons suspected of participating in any of those events may be arrested, or they may be transferred from one point in the republic to another, and public meetings and demonstrations may be prohibited." This provision is complemented by the one designed to regulate the conditions under which the persons arrested by virtue of a state of siege shall be held: "in healthful and clean premises not intended for common criminals, and transfers shall always be made to localities that are populated and healthful."

The criterion of temporariness is also reflected in Article 79, when it stipulates that the state of siege shall be for a limited time --although it does not specify the length thereof. The criterion of proportionality is acknowledged as well when it is stated that the state of siege "shall in all cases serve the purpose for which it was instituted."

A particularly significant clause in Article 79 is the one cautioning that the state of siege "shall not interrupt the functioning of the powers of the state or affect the exercise of their prerogatives." This type of provision is highly important when it is a matter of regulating exercise of the executive power in the face of a state of exception, for it tends to preserve the balance of powers inherent in a democratic system of government, thus ensuring the protection of individuals by the judicial branch to protect them from any excesses that might result from the declaration of a state of siege by the administrative or political authority. The part played by Congress in this institutional game is set forth in the final provision of Article 79 when it says that "the imposition of a state of siege shall be regulated by law."

This balance of powers is strengthened by the contents of Article 181, which call for the executive power to inform the Congress of the decree declaring a state of siege within five days following its publication. The same article also established the requirements to be met by such a decree: a statement of the reasons for its issue, the guarantees that are being suspended or restricted, and the portion of the national territory affected thereby.

The Commission will now examine the method used by the Paraguayan Government to put these constitutional measures into practice. Before doing so, however, it is indispensable to discuss two laws that represent important elements in the practice of the Paraguayan Government because of the severe limitations they impose on the exercise of the rights recognized by the Constitution.

b. Law N° 294/55 and Law N° 209/70

October 17, 1955 marked the promulgation of Law N° 294, entitled the "Law for the Defense of Democracy." It was partially amended by Law N° 209 of September 18, 1970, known as the law "for Defense of the Public Peace and Personal Freedom."² Both laws have serious impact on numerous rights recognized by the Paraguayan legal system. They must therefore be carefully examined as a complement to the considerations cited concerning the state of siege.

Article 1 of Law 294/55 established penalties ranging from five to ten years of imprisonment for "those who rise in arms against the constituted powers to replace, in whole or in part, the republican democratic organization of the nation by the communist system or any other totalitarian regime." Articles 4 to 6 establish penalties for those attending meetings of the organizations mentioned, or for persons engaging in propaganda or displaying emblems or insignia thereof.

The same law also dictated penalties for government officials who willfully or as a result of negligence fail to prevent the perpetration of such acts or to arrest the perpetrators (Article 7); for publications, radio broadcasts and news agencies when "any of the crimes cited in this law are committed through the press" (Article 8); and for members of the armed or police forces that spread the communist doctrine (Article 10), as well as government officials (Article 10) or naturalized foreigners (Article 14) who commit such crimes.

Law 294/55 also forbids public institutions, municipalities or utility companies to hire employees or workers who belong to the Communist party or to the organizations mentioned in Article 1, or those who have been found guilty of any of the crimes cited in this law (Article 10). It further orders the closing down of "any private teaching establishment that fails to exclude from its directive, teaching or administrative personnel" members of the organization cited (Article 13).

Two additional provisions that are exceptionally serious complete this law: Article 16, which precludes "release on bail or substitution of the penalty, except in the form of commutation by exile decreed by the executive power"; and Article 17, which deals with the creation of a "court of the first instance and a criminal prosecution agency exclusively to consider the crimes contemplated by this law." As is evident, the latter is tantamount to the creation of a special statute to judge political behavior, which is a serious infringement of the right to justice and due process of law.

2. The discussion that follows includes the current provisions of Law 294/55.

Law N° 209 of 1970 partially amends the previous law, adding new criminal concepts involving clearly political behavior. It establishes sanctions for anyone who instigates the commission of crimes (Article 1), or defends a crime or the person found guilty of a crime (Article 2); anyone who incites others to violence or violation of the laws (Article 3); anyone who preaches hatred or "destruction of the social classes" among the Paraguayans (Article 4); and anyone engaged in illegal association (Article 5).

Law N° 209/70 imposes especially severe penalties--from three to six years of prison--on those who slander or defame the president, the ministers of state, members of the legislative branch, and members of the Supreme Court (Article 6), as well as anyone affronting the symbols of the country (Article 7).

Article 8 prescribes sanctions for those associated or affiliated with "any communist party or organization which proposes to destroy the republican democratic regime of the nation" (paragraph 1). It also imposes penalties on anyone knowingly assisting the performance of those activities; those who rent or provide premises for the holding of meetings designed to carry out the activities sanctioned by this article; those who receive or send instructions to that end from foreign governments, organizations or persons; and "those who with such intent introduce, print, store, distribute or sell leaflets, magazines, posters, newspapers, cinematographic or television films of the doctrine or system referred to in the first paragraph of this article."

Articles 9 through 15 of Law N° 209/70 address the crime of kidnapping, its aggravating circumstances, and the penalties for complicity therein. Article 16 specifies sanctions for anyone provoking riots or detonating bombs or explosives, while Article 17 penalizes the illegal occupation of public or private establishments.

As may be seen, the broad scope afforded by the description of the acts or events considered to be punishable in both laws is matched only by the seriousness of the penalties incurred. Freedom of thought and expression is stringently limited, as are the right of assembly, political rights--and even the right to work, which is enshrined in the Constitution itself. The lack of precision in defining punishable conduct grants broad discretionary powers to the judicial authority responsible for applying the law. This is even more marked as a result of a special jurisdiction created for the cases covered by Law 294/55.

If we add to these items the ample authority bestowed on the executive power during the state of siege, it is easy to discern the narrow margins remaining for the exercise of the rights recognized in the Constitution. It is for this reason that the true reality of human rights must be sought in the specific practices of the Paraguayan Government in this area. The following section is devoted to that topic.

3. The states of exception and the practice of the Government of Paraguay

Within the limits set for the present report, the Commission has deemed it necessary to examine the various aspects of the Paraguayan Government's practice since the date when the previous IACHR report was approved, in other words, from 1978 until the present. The examination revealed numerous and serious anomalies stemming from the Government's conduct. Hence the Commission will address the Government's compliance with the constitutional provisions transcribed earlier in this text, especially those dealing with the reasons for declaration of the state of siege; the temporary nature of that measure; the extent of the rights whose exercise is suspended or restricted; and the control exercised over the action of the executive branch by the other branches of the state.

It should be noted first of all that, according to the contents of Article 79 in fine of the Constitution, a law should regulate the exercise of the state of siege. That law was never discussed nor approved, despite numerous bills submitted by opposing members of the Congress. Thus the provisions of the state of siege have been applied broadly and in an ad hoc manner, according to the specific needs of the political moment and the assessment thereof by the executive power.

We come now to the reasons for declaring a state of siege. It is interesting to note that in its 1978 report³ the Commission reproduced two decrees which extended the state of siege, invoking as the reasons the existence of "international organizations whose principal objectives are subversion of the legal order as well as the use of violent means in order to destroy the basic foundations on which our society rests." In both decrees, the existence of such organizations was "proven by events that are public knowledge." The decrees reproduced in the IACHR report were dated January 3, 1973 and March 13, 1975.

On July 27, 1985--ten and twelve years after the decrees cited--the Decree that extended the state of siege for ninety days included the following concepts:

That clandestine groups and organizations still exist whose objectives are subversion of the legal order and the use of violent means in order to destroy the basic foundations upon which our society rests.

That the organization, activities and financial aid from foreign extremist agencies in recent times are public knowledge, constituting a threat which the State is compelled to repress and prevent within the country, and the reason for which it is obliged to utilize the measures set forth in the Constitution to meet such emergencies.

The repetition of causes over such a protracted period, using the same concepts and even the same phrases, compels the Commission to address certain considerations. In the first place, it must be pointed out that at no time are any details provided that permit a serious evaluation of the gravity of the threat invoked by the Government, since the action undertaken by the groups mentioned is not specified, nor are those groups--or their locations--identified. Secondly, these asseverations are in flagrant contrast to the Government's repeated assurances as to the social peace which the regime currently in power in Paraguay has managed to establish and preserve in that country.

These two observations and the absence of serious social incidents in Paraguay between 1979 and the present lead the IACHR to conclude that the premise of domestic disturbance required by the Constitution for declaration of the state of siege is neither justified by the facts nor does it flow from the reasons adduced by the Government. Moreover, it is public knowledge that during the interval covered by the present report there has been no conflict or international war nor foreign invasion--which are the other reasons for declaring a state of siege.

Accordingly, the Commission can but conclude that the reasons invoked by the Government of Paraguay for declaring a state of siege do not comply with the constitutional requirements, since the premises it postulates simply do not exist in Paraguay. The absence of justified causes makes it irrelevant to assess the proportionality of the measures adopted under the state of siege from the stand point of the motives that led to the declaration thereof.

In this context, neither is it relevant to examine the criterion of temporariness, since at no time have events or situations occurred that call for imposition of a state of siege. Nevertheless, it must be underscored that this state of exception has existed uninterruptedly from the time General Stroessner took office until April 1987, when that measure was not renewed. The Government's practice has been to declare the state of siege for sixty or ninety days and renew it ritually on the date of its expiry. The constitutional state of exception was lifted for 24 hours once every five years, on the day when general elections were held in the country.

In the light of the factors cited, the Commission finds it reasonable to conclude that adoption of such a serious measure as imposition of a state of siege is designed to impede the free play of the democratic institutions which the Constitution promises to establish and defend.

As stated earlier, the rights whose suspension or restriction is authorized by the Constitution are the right to personal freedom, the right to residence and movement, and the right of assembly. Such suspension or restriction of the validity of a right, however, cannot continue indefinitely, particularly in regard to the right to personal freedom.

The practice of the Government of Paraguay in this respect has been characterized by a permanent lack of compliance with reasonable criteria in applying the provisions of the state of siege. It is these measures that have served as a pretext for indefinitely protracted deprivation of freedom, as described in the corresponding chapter of the present report. By way of example, suffice it to say that Sergeant Guillermo Escolástico Ovando, after serving a fifteen year sentence in prison, was kept there for another seven years by virtue of the measures imposed under the state of siege.

The right of residence and movement, for its part, has suffered from the combined action of Article 79 of the Constitution on the state of siege and the regulation contained in Law N° 294/55. The practice of the Government of Paraguay in this respect has been to condemn political opponents pursuant to the provisions of that law and then, under the aegis of Article 16 thereof, to commute the sentence to one of exile and expel the accused from the country. The imposition of so drastic a measure, for an indefinite period or for a length of time the state of siege has been in effect, has constituted a veritable perversion of the reasons that warrant imposition of exceptional measures. The result has been a violation not only of the right to residence and movement, but also of the right to justice and due process, since those affected have been deprived of the most essential means of defense.

Such grave violations were made possible by another serious anomaly that contradicts the express stipulations of the Constitution. Emphasis was placed earlier on the importance of the precept in Article 79 of the Constitution, whereby the existence of the state of siege "shall not interrupt the functioning of the powers of the state nor affect the exercise of its prerogatives." Despite this express constitutional stipulation, the courts of justice have expressly refused to receive and process writs of habeas corpus when cognizance of the measures decreed by the executive branch under the state of siege is at issue. This--with few exceptions--has been the norm. The gravity of such conduct by the branches of the Paraguayan State cannot be overemphasized, for in practice it leaves individuals utterly defenseless in the face of the president's omnipotence, destroying the balance of powers that characterizes the democratic system of government recognized by the Paraguayan Constitution itself.

The absence of justification for imposition of the state of siege, the continued existence of such a draconian measure for almost thirty-three years, the infringement of rights of which the Constitution does not authorize the suspension or restriction, and the lack of judicial recourse for individuals in the face of the presidential powers--all of these elements allow the Commission to conclude that the state of siege in Paraguay has not been an instrument for meeting exceptional situations, but a tool in the service of a dictatorship, in overt conflict with the constitutional provisions and international instruments applicable to that country.

CHAPTER II

THE RIGHT TO LIFE AND PERSONAL SECURITY

A. GENERAL CONSIDERATIONS

In this chapter, the Commission will examine the right to life and its corollary, the right to personal security. After quoting the Paraguayan laws governing these areas, the Commission will specifically address the right to life, the problem of the disappearances in Paraguay and, finally, the practice of torture, in that order.

The Declaration of the Rights and Duties of Man, an international instrument that is applicable to Paraguay states the following in Article I:

Article I. Every human being has the right to life, liberty and the security of his person.

The succinct nature of this statement in the American Declaration makes it necessary to spell out certain factors needed for accurate assessment of the various elements involved in such important rights as life and personal security. To this end, the Commission will draw on the pertinent doctrines derived from the American Convention on Human Rights. Although this instrument is not applicable to--since it has not been ratified by--Paraguay, the Commission considers it to be the most widely accepted doctrine in the Americas in the field of human rights.

The right to life is enshrined by the Convention in Article 4, which states that it must be protected by law "in general" from the moment of conception. It also states that no one should be arbitrarily deprived of life. The same article establishes various restrictions on application of the death penalty, stipulating that it should not be applied in the case of political offenses or related common crimes.

The right to personal security is acknowledged by the Convention in Article 5, where it is defined in broad terms in order to encompass the physical, mental and moral aspects of the individual. This article prohibits the application of torture and cruel, inhuman or degrading punishment or treatment. Article 5 also deals with regulation of the way sentences depriving the accused of liberty must be carried out to avoid violating the right to personal security.

The Constitution of the Republic of Paraguay addresses the matter in these terms:

Article 50. Every person has the right to protection by the state in respect to his life, his physical integrity, his freedom, his security, his property, his honor and his reputation.

Article 65. In no case shall the death penalty be applied for political reasons. Confiscation of property is not permitted. No one shall be subjected to torture or to cruel or inhuman treatment. Penal institutions must be adequate to the purpose, healthful, and clean, and shall be designed to rehabilitate the confined person by means of a complete program that shall be determined by law.

B. THE GOVERNMENT'S PRACTICE

Capital punishment for political crimes does not exist in Paraguay, and few flagrant violations of the right to life have been documented during the period covered by this report.

The best known case (N° 6812) in recent years occurred in March 1980 in Caaguazú, where a group of 20 campesinos from Acaray-í, in the Alto Paraná, took over a bus in the mountains and drove it to Asunción to protest in regard to agrarian disputes. Some of these peasants carried old firearms. When the bus neared the village of Campo 8 in the Caaguazú Department, the police opened fire on it, forcing it to stop. The area was then closed off by the police and the campesinos were pursued as far as the village of Guyrua-guá. On March 10, ten of those who had taken part in the bus highjacking were killed.

The Government responded by alleging that the persons involved were common criminals and that the deaths had occurred in a shoot-out with the authorities. But the bodies were never turned over to the families, and no death certificates were ever issued. The ten who died were: Adolfo Cesar Brítez, Gumersindo Brítez Coronel, Fulgencio Castillo Uliambre, Concepción González, Federico Gutiérrez, Reinaldo Gutiérrez, Mario Ruiz Díaz, Secundino Segovia Brítez, Estanislao Sotelo, and Feliciano Verdún.

The Commission considers that an incident as serious as this--in which the police prevent anyone who might later serve as a witness from entering the area, and the Government later acknowledged the death of ten persons, but fails to produce the bodies or to issue any document substantiating its statement that they died in a shoot-out--points to clear responsibility of the Government in the death of the ten campesinos. The procedure described also suggests that it is designed to create an atmosphere of terror in the population, thus preventing the recurrence of

this sort of incident. That terror is heightened by another factor which emerges from the event: the impunity granted by the authorities to the perpetrators of the deaths.

This incident was followed by mass detention of some 200 to 300 campesinos. Further reference to this case will be found in the section on torture in this chapter. For the moment, suffice it to say that one of the persons detained in the raid, Marcelino Casco, died in a police hospital after reportedly being forced to stand in the sun for hours on end and, later, beaten on the shoulders and head and made to run up and down some stairs. Casco was more than 70 years old.

Another of those arrested in the Gaaguzú raid, Leonidas Bogado de González, died of cancer during his detention. He was denied proper medical care. He was 50 years old.

A further case involving the right to life is that of Carlos Bogarín who was arrested together with other young people in the city of Puerto Presidente Stroessner, Alto Paraná Department on the night of August 8, 1983 on suspicion of having taken part in an automobile theft.

One hour after his arrest, the family of the young man, age 23, was notified of his death and told that they could pick up his body at the morgue in Hermandarias, his birthplace. Eulalio Rojas, another suspect who was arrested at the same time as Bogarín, was taken to the Asunción hospital in serious condition. His body was so covered with wounds and bruises that he could not eat or urinate. The suggestion of Government responsibility for the death of Bogarín is enhanced by the fact that there was never an official document certifying his death, nor were any details given as to its causes. Neither were independent persons allowed to verify such causes.

The upshot of these abuses of police authority was the arrest of ten officers who admitted having beaten Bogarín, Rojas and the other detainees upon instructions from the Chief Inspector. The charges against the police, however, were eventually withdrawn.

A more recent case (N° 9714) involving the right to life is that of Rodolfo González, a law student at the National University who died on April 10, 1986,

Pertinent portions of the complaint received about this case and sent to the Government on May 9, 1986 appear below:

At these times of labor union, student and political demonstrations, manifestations, strikes and parades, we wish to report the murder by police authorities of a young student at the School of Law, RODOLFO GONZALEZ, whose death on April 10, 1986 has been shrouded in mystery and false allegations by the police. To the point where, as reported to the press

when his death was made public, they said that he had died as a result of injuries received in a traffic accident, whereas the truth, according to an autopsy, is that a 22 caliber bullet was lodged in his cranium, and the body bore another bullet wound as well as signs of torture. It was for this reason that the authorities themselves, using the pretext of the doctors' and nurses' strike at the Hospital de Clinicas, a few days later arrested the doctor who had performed the post mortem on the body of student González, Dr. José Bellassi, in order to intimidate him.

We demand the immediate release of this well known physician, and an investigation and punishment of those responsible for the death of our schoolmate, González.

The response of the Government of Paraguay, dated June 2, 1986, was simply this: Case N° 9714, Rodolfo González, Preliminary hearing assigned to the Judge of the First Instance in criminal proceedings, Dr. César Garay.

Other reported cases of violations of the right to life include the death in July 1985 of a sailor while detained by the police, supposedly because his firearm went off by accident. His corpse, however, bore traces of torture, and his parents' efforts to have the matter investigated were to no avail.

Also in July of that year, a man suspected of theft died in Concepción, in an alleged attempt to escape. Two policemen have been accused in this matter, but the results are not known.

Earlier that year, in February, a police commissioner and two officers were accused of murdering a common criminal, Pablo Martínez Díaz, who was being held by the police (Case N° 9500). In their defense, the police alleged that the inmate had committed suicide by hanging himself. But the inquest showed that the victim had died of a serious head injury. The judge in this case ordered preventive detention of the three police officers on September 10, and two of them were later sent to prison in 1986.

In the middle of July 1986 a large group of campesino families from the Juan E. O'Leary District in the Department of Caaguazú invaded part of the Englewart ranch, consisting of 2,800 hectares owned by Mr. Humberto Englewart.

On July 11 of that year, two of them died of gunshot wounds when the police evicted the invaders. They were Francisco Martínez, 21, and Aurelio Silvero, 24. When asked about this, the Government replied that the shots had been accidental, and that the policemen responsible had been indicted pursuant to the law. The result of such indictment has not been reported to the Commission.

On August 4, Judge Farias ordered the withdrawal of the squatters and the arrest of five men: Raimundo Espinola, Ramón Rolón, Bruno Galarza, Carmelo Araujo, and Epifanio Riveros, who were accused of assault, trespassing, rustling, and threat of homicide.

On Saturday, August 23 at 1:30 p.m., hundreds of soldiers and police cordoned off the area. One hour later, some 50 persons surrendered and were given bus tickets to leave the area. About two hundred remained, but at midnight they agreed to withdraw as well. Ten of them were arrested and the other received safe conduct passes to leave the ranch. The remaining ten were removed from the site.

Later on, other arrests involved 20 of the people who had been taken to an area of the Englewart ranch and tied to orange trees, where they spend the night. In the next few days a number of them were set free, while others remained tied to the trees for four days.

According to allegations reported to the Commission, during their detention those individuals were repeatedly submitted to the following forms of torture: beating administered by soldiers and police with the use of clubs, bludgeons, sticks and their feet. Later, they were all released except for the following five: Silvino Rolón, Fermín Cabanes, Ramón Rolón, Raimundo Espinola Brites, and Domingo Cornelio de Guerrero.

The Government maintains that those individuals were accused of trespassing on private property, willful damage, theft and rustling, and that they were held in the Tacumbú penitentiary in Asunción while awaiting trial.

C. DISAPPEARANCES

During the period to which this report is confined, a number of Paraguayan citizens disappeared. Since such disappearances almost always indicate that the victims have been murdered and the corpses secretly disposed of, the study of this topic is a logical part of this chapter on the right to life. It should also be noted that most of the cases of Paraguayans who disappeared occurred prior to 1980, and this has no longer been common practice in the country in recent years.

The disappearances of Paraguayans are divided into at least three categories. The first is the classic case in which the victims are arrested by individuals in civilian dress, and are simply never seen again.

The second consists on those who have been openly arrested, held, and then disappear from all official records of the authorities who conducted the arrests. They are taken from ordinary jails and prisons and all traces of them are lost. Every inquiry as to their whereabouts meets with silence, surprise, or official denial that the victims had ever been arrested.

The last category comprises Paraguayan citizens who disappeared in Argentina during the recent military dictatorship in that country. In some cases, the Paraguayan victims were expelled from their country by its authorities, and then disappeared after reaching Argentina.

A list appears below of the Paraguayans who have disappeared in Paraguay. Most of these missing persons were apprehended before 1978. The Commission nevertheless insists that the Government of Paraguay has an open-ended obligation to investigate and report on these cases and call to account those responsible for such acts, which the OAS General Assembly terms "crimes against humanity." The Commission also wishes to state for the record that it has not been informed of any new disappearances since 1979.

Data supplied to the IACHR by different sources, including the World Council of Churches, made it possible to compile the following list of persons detained in Paraguay who have disappeared:

<u>Name</u>	<u>Date of Arrest</u>	<u>Site</u>
1. Bienvenido Arguello	12 May 1978	Clorinda, Argentina
2. Américo Villagra	November 1975	Clorinda, Argentina
3. Martín Ramírez Blanco	1976	Asunción DIPC
4. Martín Rolón	4 April 1975	
5. Diego Rodas	14 April 1976	San Juan (Misiones)
6. Adolfo López	13 May 1976	San Juan (Misiones)
7. Elixto López	13 May 1976	San Juan (Misiones)
8. Francisco López	13 May 1976	San Juan (Misiones)
9. Policardo López	13 May 1976	San Juan (Misiones)
10. Ramón Pintos	May 1976	
11. Rubén González Acosta	December 1975	Acaray (Alto Paraná)
12. Rodolfo Ramírez Villalba	November 1974	Asunción DIPC
13. Benjamín Ramírez Villalba	November 1974	Asunción DIPC
14. Miguel Angel Soler	30 November 1975	
15. Derlis Villagra		
16. Amilcar Oviedo	15 November 1974	
17. Carlos José Mancuello	25 November 1974	Asunción
18. Lorenzo López	9 April 1970	
19. Darío Goni Martínez	17 April 1979	
20. Faustina Torres de Quintana	10 May 1970	

In its observations the Government of Paraguay indicated the following with respect to the above mentioned list:

1. Bienvenido Arguello and Américo Villagra: Resided in Clorinda in Argentina and the Government of Paraguay had nothing to do with their alleged disappearance.

2. Martín Ramírez Blanco: Was released and crossed over to Brazil by way of the Port of President Stroessner, together with Rodolfo and Benjamín Ramírez Villalba, Amílcar Oviedo and Carlos José Mancuello.

3. Martín Rolón Centurión: Died the morning of April 4, 1976, in a shot out with the police at Valle Apua, a southern suburb of Asunción. His death was published in the newspapers and his cadaver was turned over to family members.

4. Diego Rodas and Adolfo, Elixto, Francisco and Policarpo López and Ramón Pinto: All belonged to a subversive organization called the Political-Military Organization (OPM). On being pursued they left Villa Florida in canoes down the Tebicuary River to its mouth whereupon they fled to Argentina.

5. Octavio Rubén González Acosta and Lorenzo López: Currently wanted. Notices have been published in Asunción newspaper, Hoy, to either turn themselves in personally or through their legal representatives to participate in a legal proceeding called a 'Declaration of Absence, with the presumption of death' which is pending before the Court of First Instance in Civil and Commercial Matters of the 6th Circuit, Judge Eduardo Benítez Colombo and Secretary of Mr. Ernesto Velásquez Argaña.

6. Faustina Torres de Quintana: No information available about this case. Totally unknown.

7. Miguel Angel Soler and Derliz Villagra Arzamendra: Secretary General and member of the so-called Communist Party of Paraguay. Both left the country many years ago and never returned.

8. Darío Goñi Martínez: Uruguayan citizen: Deported from the country with a Lebanese man with the surname of Mesconi in May of 1979.

The Commission, in addition, believes it must point out that the Working Group on Forced or Involuntary Disappearances of the U.N. Human Rights Commission, in its Report dated December 24, 1986 (Doc. E/CN.4/1987/15, pp. 38 and 39), indicates that it considered 23 cases of alleged disappearances in Paraguay, of which, as of the date of the Report, only two remained unclassified by the Government.

D. TORTURE

Police brutality in Paraguay is the rule, and not the exception. In all fairness, however, it must be said that there have been a number of recent instances of police who have been indicted, and at least one case in which a policeman was sentenced to prison for mistreating detainees. This trend is encouraging.

It is interesting to note that these cases coincided with periods of relative freedom of the press, seemingly in response to the pressure of public opinion. Given the restrictions on such freedom (which we will address in greater depth in the pertinent chapter of this report), however, most of the cases of torture and degrading treatment of prisoners really go unreported, and in practice this permits the police to act with impunity.

The matter of police brutality is common. Persons suspected either of common crimes or supposed political infractions, are arrested and submitted in the first or second week of their detention to systematic torture to secure information. The techniques include beating with fists and sticks, kicks, and the use of electric prods, at times accompanied by immersion in the "swimming pool" of filthy water. The prisoner is often forced to stand in the sun for long periods of time without food or water, and incommunicado. At other times his feet are beaten, or he is confined in a small box or crate; or forced to adopt the so-called "fetus" position for hours on end. The psychological torture includes threats against the victim's relatives and friends. At least one prisoner was hung by the feet in the so-called "bat" position. Some of the prisoners have had their ankles handcuffed for long periods, restricting their physical movement and exercise. Women prisoners have been subjected to sexual abuse and rape. At least one prisoner has become so desperate as to try to commit suicide. In another recent case, ten campesinos were arrested and forced to walk a great distance in the rain and beaten: nor surprisingly, they became seriously ill, with high temperatures, thereafter. There is also the "cicada" position, in which the prisoner is hung by the wrists from a tree, facing the trunk. Another method, called "the horse," consists of tying a very heavy object to the person and forcing him to haul it.

The truth is that Paraguay has a special terminology for torture: "the cattle prod," "the swimming pool," "the crate," "the bat," "the fetus," "the cicada," and "the horse." A macabre folkloric vocabulary.

Those held in police and military barracks are subjected to extremely poor conditions. Small dark cells await the newly arrested. Medical attention at this stage is almost always denied. In general, once the prisoners have been formally accused they are transferred to ordinary prisons where the overall conditions are better. The maximum security sites are administered by the Ministry of the Interior; and those of the Asunción police force--more specifically the Department of

Investigation--on the other hand, are austere and reserved for opponents accused of political crimes. One of the most infamous is the Guardia de Seguridad, located in the capital. Another is the Comisaría Segunda. Ordinary prisons, however, are inspected periodically by judicial authorities and are accessible to the Red Cross International Committee.

The Commission has received information from various sources indicating that the following persons are among those tortured during the period covered by this report.

VICTIMS OF TORTURE

<u>Name</u>	<u>Date Arrested</u>	<u>Circumstances</u>
Capt. Modesto Napoleón Ortigoza	1962	Sentenced to 25 years of prison for murder and conspiracy to overthrow the President. Beaten by guards in 1983. Suffers from severe mental disturbances. Tried to commit suicide.
Sgt. Guillermo Escolástico Ovando	1962	Accused jointly with Capt. Ortigoza. Kept in prison for years after serving the sentence; confession extracted by torture.
Remigio Giménez	Dec. 1978	Arrested in Brazil, turned over to Paraguayan authorities. Tortured. Held 15 months. Again arrested and interrogated in 1971 and brutally beaten.
Virgilio Barreiro	1978	Engineer. Held for long period and tortured.
Juan Crisóstomo	1979	Held, beaten and robbed of property amounting to \$3,000.
Angel Austacio Rodríguez	30 May 1980	Arrested and tortured for 3 months; held incommunicado. Later transferred to Tucumbí Nat'l Penitentiary. Sentenced to 3 years of prison pursuant to Law 209.
Andrés Centurión Luis Centurión Ramón Paiva Acosta Eliodoro Gimenez	Mar 1980	Arrested in connection with bus high-jacking at Caaguazú. Tortured. Went on hunger strike. Continued to be held without trial beyond the legal limits allowed for sentencing.

Hernando Sevilla	1981	Argentine newspaperman. Tortured. Set free on 30 September 1980 after 18 months' imprisonment without being charged.
Sever Fermin Pastor Gimenez	Feb.19	Mason, accused of connections with a Maoist party. Tortured.
Antonio Gonzalez	Feb.82	Accused of being Maoist, tortured by the DIPC. Sentenced to four years of prison in June 1984. Given conditional freedom in December 1985.
Maria Margarita Baez Romero	Feb.83	Hung from the bars of a window in the sun with a rope tied to handcuffs for six days. Burned and beaten. Tied to a chair at night. Widow of one of the Caaguazú victims, she suffered from headaches and hallucinations as a result.
Eulalio Rojas	8 Aug 1983	Tortured. Taken to hospital by police when he could not eat or urinate because of blows to the stomach and kidneys.
Enrique Goosen	11 May 1983	Paraguayan Data Bank employee, accused of subversion. Flogged, hooded and submerged in the "swimming pool."
Roberto Villalba	11 May 1983	Paraguayan Data Bank employee. Flogged on thighs and back. Stripped, tied and put in the "swimming pool." Had heart attack.
Ruben Lisboa	11 May 1983	Paraguayan Data Bank employee. Beaten and held incommunicado.
Fermina Zunilda Gonzalez	May 1983	Servant, and a mother at 17. Held for 50 days when accused of theft by her employers, for the first 8 days at Asunción Investigation Department, where she was beaten for four days until she signed a confession.
Alba Antonia Rojas Noguera	Feb. 1985	Age 31, mother of three. Accused of theft. Tortured. When transferred from police barracks to "Good Shepherd" women's prison, had to remain in bed 8 days to recover from wounds inflicted.

Regina Chaparro	25 May 1986	Maid who claims to have been arbitrarily held and tortured on suspicion of theft. Central Police Investigation Department (DIPC) "applied wires to my little fingers. I tried to explain that I hadn't stolen anything but they kept given me electric shocks that caused body spasms and contractions." Set free 5 June, she signed a complaint but her torturers were never indicted.
Brazilian and Paraguayan Colonizers	1986	Implicated in land disputes of Indian campesinos. Mass arrests, beatings. Claims that needles were stuck under prisoners' fingernails and "the horse" used (individual is harnessed like a pack animal and made to haul extremely heavy objects).
Mby'a Indians	13 Nov 1986	Forced to evacuate privately owned "Golondrina" ranch in Caaguazú Dept. Indians were threatened with death and a woman was raped.
Quintín González Escobar	25 Apr. 1986	Member of MOPOCO minority party. Detained for 5 days on entering Paraguay from Argentina. Tortured and expelled from country.
Marcelino Corazón Medina	1 May 1986	Repeatedly arrested and tortured in the 70s and 80s. Arrested again this time, he was brutally beaten with sticks by men in civilian clothes, then released.

E. CONCLUSIONS

During the period covered by this report, the Commission has observed a decrease in the number of Paraguay's violations of the right to life. When they do occur, they stem from excessive abuse of police or military authorities rather than a strategy to eliminate members of the political opposition. Nevertheless there have been cases in which opponents have died without any explanation thus far of the circumstances. The Commission has also been unable to discover what penalties have been imposed on police officers found guilty of violating the right to life.

As to personal security, the survey has enabled the Commission to conclude that torture and maltreatment are routinely applied, both to political opponents and to individuals accused of common crimes. This reprehensible practice of Paraguay's authorities is made easier by the judiciary's refusal to process writs of habeas corpus when a state of siege is in effect. The Commission therefore deems it essential that the Government of Paraguay investigate the cases of torture and maltreatment in order to punish the perpetrators in an exemplary way.

With respect to the right of physical integrity, the investigation conducted by the Commission leads it to conclude that torture and abuse are routinely applied, both to political opponents as well as persons accused of common crimes. This contemptible practice by the Paraguayan authorities has further eroded the judiciary's ability to process writs of habeas corpus under the state of siege. Therefore it is imperative in the view of the Commission that the Government of Paraguay investigate cases of torture and abuse and sanction those responsible as an example to others.

CHAPTER III

THE RIGHT TO PERSONAL LIBERTY

A. GENERAL CONSIDERATIONS

The right to personal liberty is recognized by Articles I and XXV of the American Declaration of the Rights and Duties of Man in the following terms:

Article I. Every human being has the right to life, liberty and the security of his person.

Article XXV. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.

No person may be deprived of liberty for nonfulfillment of obligations of a purely civil character.

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

The Inter-American Commission of Human Rights has underscored the fundamental importance of this right to personal liberty and has stated that "unless all citizens are guaranteed the exercise of that right, all other rights are in jeopardy."¹

Article 59 of the Paraguayan Constitution defines protection of the right to personal liberty in the following terms:

Except when caught in the act of committing a crime, persons may be arrested only by written warrant issued by a competent authority. No person whatsoever may be detained for more than twenty-four hours without being advised of the reason for his detention, nor shall he be kept detained other than in his domicile or in a public place designated for this purpose. The detention shall be brought to the knowledge of

1. The IACHR, Ten Years of Activities, page 317.

the competent judge within forty-eight hours. If the arrested person is held incommunicado, this condition may in no case be prolonged beyond that period of time, unless by judicial order.

The right to personal liberty is nevertheless severely restricted by the provisions of Article 79 of the Constitution of the Republic concerning the state of siege. It states that the executive power can detain "persons suspected of participating" in the events which--according to that article--justify declaration of this state of exception. Article 79 also provides that "those arrested by virtue of a state of siege shall be held in healthful and clean premises not intended for common criminals."

As noted in Chapter I of this report, the provisions governing the state of siege are complemented by the norms contained in Law N° 294/55 and Law N° 209/80 which, in addition to tightening the restrictions on acknowledged rights, introduce new elements allowing individuals to be deprived of their freedom.

The recourse of habeas corpus is officially guaranteed in Article 79 of the Constitution:

The right to habeas corpus is recognized and guaranteed. Any person who is unlawfully detained or coerced in any way in the exercise of his individual freedom, or any other person acting on behalf of that person, without need for power of attorney, shall have the right to petition the competent judicial authority, verbally, in writing or in a delivery-report telegram, that he be made to appear in order for his freedom to be restored. When the judicial authority considers it desirable, he shall make the appropriate verifications in the place where the detained person is found. The procedure shall be brief, summary, and without cost. The regulatory law shall afford the maximum guarantees for this institution and shall impose sanctions against anyone who opposes it arbitrarily.

For its part, the judicial branch has opted against exercising jurisdiction over cases involving detention during a state of siege. Thus, in a decision of October 12, 1983 on the case of a writ of habeas corpus presented on behalf of newspaperman Alcibiades González Delvalle, detained by virtue of Article 79 of the Constitution, Paraguay's Supreme Court issued an opinion in favor of the Government's position that it did not have to bring the individual before the court nor explain the reasons for his detention. The Court maintained that imposition of the state of siege is the exclusive purview of the executive branch.

It is in the context of this gravely weakened juridical position --both in the extension of the right to personal liberty and in the efficacy of the recourses established for the protection thereof--that

the Commission will proceed to present the features that characterize the practice of Paraguay's Government in this area. To that end the IACHR will address detentions for short periods; those of a more protected nature; the quantitative aspects of deprivations of personal liberty; and the social groups or sectors that have been most affected by the Government's practice.

B. SHORT-TERM DETENTIONS

a. Case N° 9826: Alejandro Stumpfs

As an example, in case N° 9826, concerning Alejandro Stumpfs, the second vice president of the Movimiento Popular Colorado (MOPOCO), the plaintiffs allege that Mr. Stumpfs was detained without a court order and was not accused of any crime. The petition, presented on October 30, 1986, states the following:

In the latest wave of illegal detentions recently used to intimidate the citizenry and prevent any sort of protest, movement, meeting or political action on the part of opponents to the present Government, on October 6, 1986 Mr. Alejandro Stumpfs, Second Vice President of the Movimiento Popular Colorado (MOPOCO), was again detained--as usual, without order from a competent judge and without allegation of any motive or justified reason. This time it occurred when he was peacefully traveling on an international passenger bus from Foz de Iguazú, Brazil to the Paraguayan capital, Asunción.

His illegal arrest took place in the city of San Lorenzo about 15 kilometers from Asunción, whence he was taken to the Guardia de Seguridad maximum security prison center for political prisoners, located in the outskirts of the capital. We demand that, if there are any charges against him, they be made and that he be placed at the disposal of the competent courts; or, to the contrary, that he be released forthwith.

The leaders and members of MOPOCO and other political parties are often subjected to harassment, short term detention, and internal exile. Mr. Stumpfs was previously detained on December 10, 1984 and again on September 6, 1985. No reason was even given for these arrests.

On November 19, the Paraguayan Government responded to this petition:

CASE 9826 ALEJANDRO STUMPF'S STOP DETAINED AT THE
DISPOSAL OF THE EXECUTIVE POWER BY VIRTUE OF THE STATE OF SIEGE
ARTICLE 79 OF THE NATIONAL CONSTITUTION STOP HE IS IN THE
CAPITAL POLICE GUARDIA DE SEGURIDAD STOP

In a note dated December 22, 1986, the Paraguayan Government informed the Commission that "Mr. Alejandro Stumpfs, who had been

detained by virtue of Article 79 of the National Constitution, has been released." In another note, dated January 6, 1987, the Paraguayan Government again told the Commission that Mr. Stumpfs had been released, giving no justification for the arrest other than the fact that he had been detained pursuant of the laws governing the state of siege. The message this time was:

CASE 9826 ALEJANDRO STUMPF'S STOP SAID PERSON WAS
DETAINED BY VIRTUE OF ARTICLE 79 OF THE NATIONAL CONSTITUTION
(STATE OF SIEGE) STOP HE IS NOW COMPLETELY FREE STOP NO
PROCEEDINGS WERE INSTITUTED AGAINST HIM STOP

It was later learned that Alejandro Stumpfs had been released on December 19, 1986 after having spent two months incommunicado, without judicial process and without having been informed of the reasons for his detention.

A writ of habeas corpus was presented to the Supreme Court on behalf of Mr. Stumpfs, but the Court simply stated that Alejandro Stumpfs had been detained by virtue of the state of siege and by decision of the executive branch, without giving any explanation regarding the motive or the reason for his detention.

b. Case N° 9729: Dr. Carlos Filizzola Pallares

Case N° 9728, involving Dr. Carlos Filizzola Pallares, President of the Hospital de Clínicas Medical Association, is an instance of a person who was detained twice in 1986, once because of the state of siege and the second time pursuant to Law 209. On May 6, 1986 the first complaint was submitted to the Commission:

Dr. Carlos Filizzola was arrested on May 2 and then transferred to the Departamento de Investigaciones, where he is being illegally detained in the absence of charges. He must be released immediately or be arraigned before the competent courts and judges if he is considered responsible for a criminal act. The attempt to intimidate him is due to his present position as President of the Hospital de Clínicas Physicians' Association, whose just, civic and peaceful strike for salary increases the Government wishes to end. His support of this legitimate strike action is his only crime. We have also learned that one of the reasons the strike of the hospital staff has been extended rather than ending the work stoppage is to protest against the illegal detention of Dr. Filizzola and obtain his release.

The plaintiffs later informed the Commission that Dr. Filizzola had been transferred from the Departamento de Investigaciones to the Guardia

de Seguridad in Asunción, and that he was being kept incommunicado pursuant to Article 79 of the Paraguayan Constitution's provisions on the state of siege.

In a note dated June 2, 1986, the Government of Paraguay apprised the Commission that Dr. Filizzola had been released on May 23, 1986:

PHYSICIAN CARLOS FILIZZOLA WHO WAS DETAINED ON ORDERS FROM THE EXECUTIVE POWER (ART. 79 OF NATIONAL CONSTITUTION) WAS RELEASED LAST FRIDAY MAY 23 STOP NO CHARGES ARE BEING PRESSED.

In a note dated September 11, 1986, the Paraguayan Government again reported that Dr. Filizzola had been set free:

CARLOS FILIZZOLA HAS BEEN COMPLETELY FREE FOR A LONG TIME. HE WAS DETAINED PURSUANT TO THE PROVISIONS OF ARTICLE 79 OF THE NATIONAL CONSTITUTION.

The plaintiffs submitted a new claim in a note dated December 4, 1986, telling the Commission that Dr. Filozzola had again been arrested on November 29:

With further regard to our original accusation concerning Dr. Carlos Filizzola who had been arrested on May 2, 1986 and released on May 23, 1986, we wish to advise you that he was again arrested on November 29, 1986 and is being held incommunicado in the Central Police Barracks in Asunción.

Dr. Filizzola is President of the Physicians' Association of the Hospital de Clínicas, and we have been told that he was arrested solely for the purpose of intimidating him since, as is public knowledge, the doctors, nurses and other staff of the hospital have held periodic demonstrations to seek popular support for their request for salary increases.

The Government reported in a note dated January 21, 1987 that Dr. Filizzola had been arrested this time pursuant to Law 209, and was being arraigned:

CARLOS FILIZZOLA WAS ACCUSED OF VIOLATING LAW 209 STOP HE WAS ARRESTED AND SENT TO THE TACUMBU NATIONAL PENITENCIARY AND PROCEEDINGS WERE INSTITUTED BEFORE THE JUDGE OF FIRST INSTANCE IN CRIMINAL COURT WHO ORDERED HIS PREVENTIVE DETENTION WITH THE RIGHT OF FREE COMMUNICATION STOP SUBSEQUENTLY THE PRESIDING JUDGE ORDERED HIS RELEASE ON DECEMBER 23, 1986 STOP

The judge ordered his release, but, as in the first incident, the authorities gave no reason for his arrest or his release, and in Paraguay

there are no legal mechanisms whereby an individual can claim damages for having been imprisoned without cause.

Later on the Commission received more information about Dr. Filizzola's arrest:

Filizzola was stopped on the street near his home last November 29 and detained without a court order. The doctor was intercepted by plainclothes police when he was on his way to work at the hospital. He was forced to drive his own car to the General Barracks of the Police where he was held prisoner and incommunicado.

One of the police who stopped him got into his car and went with him to the Central Barracks. According to a relative, when his mother appeared there, she was told that he had been arrested and that she could not see him, but could bring him food and clothing.

The police told Mrs. Alba de Filizzola that her son was being held incommunicado "by orders from higher up." On December 1, 1986 a writ of habeas corpus was requested on his behalf from the Supreme Court of Justice. Attorney Pedro A. Rolón, of the Comité de Iglesias, presented the request in writing to the court, denouncing the solitary confinement in which the doctor was held "without telling him--or even his mother--why."

The lawyer emphasized that at the guardhouse of the Central Police Barracks, as always, the trite phrase 'detained by order from above' was used, and he asked the Court to order police headquarters to produce and release Filizzola. The court order called for Filizzola to appear before it on Wednesday, December 3. He did not appear, however, and his lawyer then asked for the arrest of Police Chief General Alcibiades Brítez Borges for contempt of court.

That same day the trade union leader was transferred to the Tacumbú national penitentiary, accused by the police of a supposed violation of Law 209.

(...)

Doctors, nurses and staff of Clínicas, together with medical students from the Asunción National University, have organized mass demonstrations, permanent assemblies, work stoppages and other means of protest, demanding that the Government substantially raise their meager salaries. Unaccustomed to street demonstration of the populace, the

administration of General Alfredo Stroessner has answered the demands of these civil servants with violent police repression and the arrest of union leaders.

(...)

In this context, Dr. Filizzola has become one of the foremost leaders of the union's fight at Clínicas and one of the Government's most intransigent challengers. It has responded by accusing him of being "an agitator and subversive." This is the doctor's third arrest in seven months in connection with his leadership of the health workers.²

It is particularly noteworthy that although Dr. Filizzola was arrested in conformity with Law 209, he was never arraigned or formally accused of any crime.

A particularly typical example of the Paraguayan Government's habitual practice in respect to personal freedom is the case of Marcelino Corazón Medina, who was hospitalized in serious condition to recover after a hunger strike to regain his freedom.

c. Case N° 9627: Marcelino Corazón Medina

The case of Marcelino Corazón Medina, N° 9627, was originally presented to the Commission on October 7, 1985 in the following terms:

MARCELINO CORAZON MEDINA, Chairman of the "Farm Producers" Coordination Committee," an affiliate of the recently formed campesino organization known as the "Permanent Assembly of Landless Peasants," was arrested at his office in Paraguari on Friday, September 20, 1985. He was held incommunicado in the Technical Section of the Ministry of the Interior.

We have managed to learn that Marcelino is on a hunger strike which he started on Friday, September 27, 1985, one week after his arrest. He was taken to the Police Clinic at Asunción, where he had two visits: one from his mother and the other from Monsignor Melano Medina, but his health is in critical condition. We demand that he be released immediately, or that the authorities press the pertinent charges--if there are any--and that he be placed in the jurisdiction of the country's courts of justice.

2. Quarterly notes of the Comité de Iglesias, N° 3, 1986.

The Commission was informed that the campesinos had been the target of arrests in Paraguay since the 70s, when thousands of them were detained. Many were linked to the campesino organization Ligas Agrarias, which fought for agrarian reform. Land tenure disputes in the area of Paraguay's eastern border have been increasing since 1983, resulting in the arrest and detention of many of these peasants. A chairman of the Coordination Committee, Marcelino Medina, represents some 25,000 landless campesinos. In June 1985 the Commission learned that Mr. Corazón Medina had spoken publicly about the economic plight of cotton and soybean producers who receive less than 25 per cent of the officially recommended price for their output.

His protest was that the middlemen and exporters made most of the profit, and on August 15, 1985 he was arrested while attending a meeting of subsistence farmers who were discussing the problem of cotton and soybean production. It was said that the arrest was made because the campesinos had not asked for authorization to hold the meeting.

In October 1985, the Commission learned that Mr. Corazón Medina had ended his hunger strike when he became critically ill, because the authorities had assured him that he would be released. When his health improved, he was transferred from the Police Polyclinic to the Central Police Barracks, and on October 23, 1985 he was released.

The Paraguayan Government's note of October 24, 1985 reiterated that "Mr. Marcelino Corazón Medina, who was arrested pursuant to Article 79, was released completely." The note included an attack on Mr. Corazón Medina's activities: "It is to be noted, Mr. Secretary, that this person is a false farmer who incited the peasants not to raise cotton, a major export crop, by means of printed leaflets."

In November 1986, Case 9836 was opened in the name of Marcelino Corazón Medina, who had presumably been arrested on October 15, 1986. The Commission sent the following cable to Paraguay's authorities, requesting information about his situation:

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HAS RECEIVED THE FOLLOWING COMPLAINT: "WE REQUEST YOUR SWIFT INTERVENTION WITH THE PARAGUAYAN GOVERNMENT TO DETERMINE THE SITUATION AND OBTAIN THE IMMEDIATE RELEASE OF THE GENERAL SECRETARY OF THE NATIONAL CAMPESINO UNION, MARCELINO CORAZON MEDINA, WHO WAS ARRESTED AND DISAPPEARED ON OCTOBER 15 WHEN THE POLICE TOOK HIM PRISONER WITHOUT A COURT ORDER IN UNLAWFUL ENTRY INTO THE PREMISES OF THE UNION NACIONAL CAMPESINA.

The Government of Paraguay answered the Commission on December 9, stating that Mr. Corazón Medina had not been arrested:

MARCELINO CORAZON MEDINA NOT HELD AT ANY POLICE ESTABLISHMENT STOP THE (allegation of) POLICE PROCEDURE CITED IN THE ACCUSATION PRESENTED TO THE AMERICAN COMMISSION ON HUMAN RIGHTS IS FALSE.

In Mr. Corazón Medina's case, the practice of arbitrary arrest was followed by his being held incommunicado and later released, thus leading to contradictory reports about his situation.

The Commission was again told that Mr. Corazón Medina had been arrested--this time together with Bernardo Torales, in San Estanislao, San Pedro Department, on February 28, 1987. Later on the plaintiffs said that the two had been arrested on March 5, not February 28, and that they had been held at the Guardia de Seguridad in Asunción until March 17, when they were transferred to the Tacumbú National Penitentiary.

The petitioners also told the Commission that both were accused of breaking Law 209 by "promoting subversion among the campesinos." On March 30, Mr. Corazón Medina began a hunger strike to protest his detention.

On April 7, 1987 the Government of Paraguay answered the Commission's request for information with the following message:

MARCELINO CORAZON MEDINA AND BERNARDO TORALES ARE INDICTED FOR PRESUMED VIOLATION OF LAW 209 STOP THEY HAVE AN ATTORNEY FOR THEIR DEFENSE AND ARE BEING HELD AT THE TACUMBU PENITENTIARY STOP ON 6 APRIL MEDINA PRESENTED AN INQUIRY TO THE PRESIDING JUDGE, WHO WILL DECIDE WHETHER TO CEASE THE DETENTION OR CONVERT IT TO PREVENTIVE IMPRISONMENT STOP

On April 13, 1987 the Government of Paraguay sent the Commission the following additional information on the case:

BERNARDO TORALES INDICTED PRESUMED VIOLATION OF LAW 209 AND THE JUDGE IN THE CASE TERMINATED HIS DETENTION STOP MARCELINO CORAZON MEDINA APPEARED BEFORE JUDGE TO ADD TO HIS STATEMENT STOP

On May 5 the Commission received a telegram from the petitioners to the effect that Mr. Corazón Medina was in critical condition, having been on a hunger strike since March 30. The Commission then sent the following telegram to the Government, asking that he be moved to a hospital where he could receive the necessary treatment to save his life:

MARCELINO CORAZON MEDINA, WHO BEGAN A HUNGER STRIKE AT THE TACUMBU NATIONAL PENITENTIARY IN ASUNCION MORE THAN THIRTY DAYS AGO, IS IN CRITICAL CONDITION. HE WAS MOVED TO THE

RIGOBERTO CABALLERO POLICE POLYCLINIC HOSPITAL, WHERE HE WAS DIAGNOSED AS HAVING KETOACIDOSIS, WHICH CAN PRODUCE A COMATOSE STATE AND DEATH. HIS LAWYER HAS BEEN REFUSED PERMISSION TO VISIT HIM. AN APPLICATION FOR HIS RELEASE HAS BEEN SUBMITTED TO THE COURT OF APPEALS. WE HAVE BEEN INFORMED THAT MEDINA STARTED HIS FAST ON MARCH 30 TO PROTEST HIS ARREST. BECAUSE OF HIS WEAKENED CONDITION HE IS BEING GIVEN GLUCOSE INTRAVENOUSLY. PARAGUAYAN PHYSICIANS HAVE REQUESTED HIS IMMEDIATE TRANSFER TO A CIVILIAN HOSPITAL WHERE HE COULD RECEIVE THE PROTEINIC TREATMENT NEEDED TO SAVE HIS LIFE.

On May 11, 1987 the Government of Paraguay informed the Commission that Mr. Corazón Medina had been moved to the university hospital:

CASE N° 9838 STOP THE ACCUSED WAS TRIED IN THE ORDINARY CRIMINAL COURT STOP PRESIDING JUDGE ON THE FIRST INSTANCE IN CRIMINAL PROCEEDINGS IS DOCTOR TITO MEDINA STOP THE ACCUSED MARCELINO CORAZON MEDINA HAS HIS OWN DEFENSE LAWYERS, HIRED BY THE COMITE DE IGLESIAS STOP ACCUSED WAS ADMITTED TO RIGOBERTO CABLLERO POLYCLINIC WHICH IS ONE OF THE NATION'S MOST PRESTIGIOUS HOSPITALS STOP ON MAY 8 JUDGE TITO MEDINA ORDERED THE RELEASE OF THE ACCUSED AND HE WAS TRANSFERRED TO THE CLINICAL HOSPITAL OF THE ASUNCION NATIONAL UNIVERSITY SCHOOL OF MEDICAL SCIENCES STOP THE CASE AGAINST CORAZON MEDINA WAS FOR PRESUMED VIOLATION OF LAW 209 STOP

Once again, Mr. Corazón Medina was forced to risk his life in order to regain his freedom. The practice of arbitrary detention without a semblance of due process of law is a flagrant violation of the pertinent provisions of the American Declaration.

C. LONG TERM DETENTIONS

Abuse of the state of siege as a pretext for arresting numerous persons for relatively short period of time is only one of the factors in Paraguay's practice of arrest without due process or justice. The other is the detention of persons who are deprived of the right to due process, submitted to trials involving many irregularities, and held for periods of more than twenty years. Such is the case of Captain Napoleon Ortigoza, who has been incarcerated longer than almost any prisoner on this continent--since 1962, serving a 25-year sentence--and Guillermo Escolástico Ovando, a cavalry sergeant who was arrested with Captain Ortigoza.

a. Case N° 1843: Napoleón Ortigoza and Guillermo Escolástico Ovando

Case 1843, involving Captain Ortigoza and Sgt. Ovando, was submitted to the Commission in 1974. According to the original accusation, both

were reportedly arrested in 1962 at police headquarters in Asunción. The Commission asked the Paraguayan Government for information about the case. Receiving no reply to its repeated requests, the Commission resolved to apply Article 51 of the regulations and apprise the Paraguayan Government that these accusations constituted a grave violation of Article XXV of the American Declaration, which stipulates the right of protection against arbitrary arrest. The Commission included this resolution in its 1975 annual report as well as in its report on the Situation of Human Rights in Paraguay for that year. Faced with inclusion of the resolution in the report, the Government of Paraguay informed the Commission that:

CAPTAIN NAPOLEON ORTIGOZA TOGETHER WITH GUILLERMO OVANDO AND OTHER PERSONS PERPETRATED A MILITARY COUP IN DECEMBER 1962 THAT WAS DISCOVERED BY CADET ALBERTO ANASTASIO BENITEZ, WHO WAS THEN CRUELLY MURDERED. BOTH HAVE BEEN INDICTED AND SENTENCED BY THE MILITARY COURT OF FIRST INSTANCE, AND THE CASE IS NOW BEFORE THE APPEALS COURT OF THAT JURISDICTION.

The version of the events related by the petitioners is that Ortigoza, a political rival of General Stroessner, is in prison for his part in a political conspiracy to overthrow the Government. The Government maintains that Ortigoza and Ovando killed a military cadet--who had allegedly intercepted a conspiratory message--by hanging him from a tree. The petitioners say the authorities found a message from Ortigoza that had been in the cadet's possession, and took Ortigoza to the Police Investigation Department, where he died from the torture inflicted by the authorities in trying to force him to reveal the supposed plot.

The Representative of the Government of Paraguay made the following statement about Captain Ortigoza's case at the OAS General Assembly in 1980:

Here is the sentence. The case started on December 13, 1962 with the accusation of a brutal crime in the military jurisdiction, and a sentence of 25 years was given to Mr. Napoleón Ortigoza. To be more specific, in addition to the 25-year sentence for having killed a first-year military cadet, there is another. In the course of the inquest, the political implications were discovered, so that apart from the verdict of homicide there is another for conspiracy. The latter charge calls for a sentence of 4 years, which is the one handed down by the Superior Court.

In a note dated October 27, 1982 the Commission asked the Government of Paraguay for a "copy of the proceedings against former Captain Ortigoza and former Sergeant Ovando, and for the confirmatory sentences of the second instance cited by the Representative of Paraguay." The Commission never received a copy of the file, and this is the only

reference on record to the putative additional sentence of four years on the charge of conspiracy.

According to information provided by the petitioners on July 22, 1969, Ortigoza was given the death penalty for the crime of homicide. The final sentence was registered under the number four on July 22, 1963 in conformity with Article 203 of the Military Penal Code.

The petitioners state that Ortigoza was denied the right of justice, on the premise of the following irregularities in the judicial proceedings:

1. Torture. All of the statements of those accused were made as a result of dreadful torture. The judge not only failed to order an investigation of such unconstitutional practice; he also accepted those statements as valid.
2. Jurisdiction. The death of a person is a civil crime, and must be tried by a civil--not a military--court.
23. Defense. a) Because he had asked the coroner to testify as to the victim's fractured skull, the counsel for the defense, Dr. Alberto Varessini Clossa, was first publicly threatened by the then Police Chief, Col. Duarte Vega, and thereafter arrested, beaten, and expelled from the country. (Years later Dr. Varessino received permission to return to Paraguay, but is not permitted to practice law.) b) Ortigoza was never allowed to testify before the court: he was sentenced in absentia.

The sentence was not carried out, thanks to the intervention of a Franciscan priest, Fr. Josua Arquetta, who had stated on the Radio Caritas program called "Heart to Heart" that Ortigoza and the other officers were completely innocent of the cadet's death, and that if the sentence were executed he would reveal the names of the real perpetrators. The father had received this information in the confessional and was covered by the confidentiality of that religious rite. The plaintiffs reported that, given the priest's ultimatum, the Government had not carried out the sentence. It did, however, proceed to deal with the priest by confining him to a city in the interior (Villarrica). According to another witness, Dr. Edgar L. Insfran, who was Minister of the Interior at the time, gave precise instructions to Engineer Guanes, an official of ANTELCO (Paraguayan Telecommunications Administration) for reprisals against the Radio Caritas broadcasting station. Captain Ortigoza and the others who had been sentenced spent the next seven years expecting to be executed at any moment. Finally, on November 20, 1969, a military court reduced the death penalty to 25 years in prison for Ortigoza and 15 for Ovando (Britez, the driver, died in prison as a result of the injuries he had received during the torture sessions).

In 1983 the plaintiffs asked the Commission to intercede on behalf of Sgt. Ovando, who had served all of his 15-year sentence (in December of 1977), but had not been released. The Government continued to hold him pursuant to Article 79 of the Constitution, which allows the executive branch to detain individuals when a state of siege has been declared. As his lawyer, Miguel Abdon Saguier, pointed out, there was no way Ovando could have participated in any acts responsible for the declaration of a state of siege, since he had been in prison for the past 21 years.

On November 14, 1982 Guillermo Ovando began a hunger strike as a protest against his continued detention after having served his sentence. In mid-December of that year, the regional delegate of the International Red Cross Committee and one of its physicians came from Buenos Aires to Asunción, and met with him on December 16. The Red Cross representative asked that he be released on humanitarian grounds.³

On January 6, 1984 the Government of Paraguay informed the Commission that:

ESCOLASTICO OVANDO IS HELD PURSUANT TO ARTICLE 79 OF THE NATIONAL CONSTITUTION.

In January 1984 Sgt. Ovando's lawyers submitted a writ of habeas corpus to Paraguay's Supreme Court for their client. The Supreme Court refused to comply, and the lawyers, Dr. Francisco José de Vargas and Dr. Miguel Abdón Saguier, were sued for libel by Supreme Court President Dr. Luis María Argana because of certain statements they had made when it was announced that the Court had rejected the writ of habeas corpus.

A note from the Paraguayan Government dated May 22, 1984 advised the Commission that "Escolástico Ovando, who was being held pursuant to Article 79 of the National Constitution, State of Siege, has been released." Ovando was set free on May 21, 1984 by order of General Stroessner, after spending 21 years in prison. He was 57.

The case of Captain Modesto Napoleón Ortigoza is not yet closed. Ortigoza and Ovando were originally sentenced by a military court to death by a firing squad, but the sentence was commuted to 25 years of prison.

Captain Ortigoza is reportedly still imprisoned at the Guardia de Seguridad, a top security military barracks in the outskirts of Asunción, and will complete his 25-year sentence in December 1987. According to the statement made by the Representative of Paraguay to the 1980 OAS General Assembly, Captain Ortigoza will have to serve an additional sentence of four years for "conspiracy."

3. Annual Report of the ICRC for 1983, page 36.

Paraguay's new Military Penal Code states that a prisoner originally condemned to death whose sentence has been commuted may be given conditional freedom after serving three quarters of his sentence. Presentation of a power of attorney (given by the prisoner to a lawyer) in the presence of a notary is a prerequisite for consideration of a request for conditional freedom.⁴ Napoleón Ortigoza cannot meet this condition since no lawyer has been allowed to enter the Guardia de Seguridad to see him. Napoleón Ortigoza, now 55 years of age, has spend most of the last 24 years incommunicado. He is reported to have mental problems, and has tried to commit suicide on several occasions.

At present, Dr. Digno Brítez, the Comité de Iglesias lawyer, is the professional who is helping Captain Ortigoza. He succeeded attorney Varessini Clossa, who was exiled, and Felino Amarilla, who tried to have the case reviewed by the Supreme Court of Justice, but the file could not be found.

On August 20, 1986, Dr. Brítez submitted a request for the conditional release of Ortigoza to the Supreme Court of Military Justice. Ortigoza had signed the petition through third parties, since the lawyer was never able to see the prisoner due to his incommunicado status.

The attorney presented the writ to the Secretary of the Supreme Court of Military Justice, Col. Marecos, on August 20, 1986. It was returned to him on August 26 because Ortigoza's signature had not been "certified". Dr. Brítez then tried again to communicate with Mr. Ortigoza at the Ministry of Justice Guardia de Seguridad. He was told at police headquarters that the case was not his responsibility, and his requests for an interview with the Minister of the Interior were not granted.

In this instance, despite the existence of a law in Paraguay that potentially favors the prisoner, the fact that the authorities refuse to let him see a lawyer nullifies the purpose of the law and keeps the prisoner under arrest at the exclusive pleasure of the executive branch. As the Commission has said on previous occasions:

The detention of individuals for an indefinite period, without formulating specific charges and with no effective means of defense, is unquestionably a violation of the right to freedom and due process of law... To maintain that the executive branch may prolong an individual's detention indefinitely, without submitting him to legal procedures, would turn that branch into the judicial branch, thus terminating the separation of public powers which is a characteristic of the democratic system.⁵

4. Article 66 of Military Penal Code.

5. Annual Report on the Status of Human Rights in Argentina, 1980, pp. 140-141.

D. DETENTIONS: QUANTITATIVE ASPECTS

While there were some 600 political prisoners in Paraguay in 1977, that number has progressively declined.

In 1983, according to information published by the International Committee of the Red Cross (ICRC), visits were made to 55 prisoners held for security reasons in two prisons administered by the Ministry of Justice (the House of the Good Shepherd and the Tacumbú Penitentiary) and three administered by the Ministry of the Interior (the Department of Investigations, the Technical Affairs Department, and the Tacumbú Guardia de Seguridad).

In 1984 the International Committee of the Red Cross visited 112 prisoners who had been arrested for security reasons, some of whom were later ICRC released. In 1985 the ICRC visited 57 in the three detention centers, thereafter requesting that one of them be released because of his precarious state of health.

The ICRC has repeatedly asked the Paraguayan authorities to free Captain Ortigoza since he is suffering from serious mental problems.

Since the Government of Paraguay has not allowed the Commission to conduct an on-site investigation in the country or to make personal visits to those being held for security reasons, the Commission must rely on information provided by other sources. The Latin American Human Resources Office of the World Council of Churches published a report on "The Situation of Human Rights in Paraguay" in February 1987, which says that:

As this report is being written, there are a total of 80 political prisoners in the prisons, police stations and the National Penitentiary, and the police are looking for another 7 subjects of accusations.⁶

E. GROUPS AFFECTED BY ARRESTS

A 1986 report published by the Committee of Churches for Emergency Aid, entitled "Lists of Political and Social Prisoners and Individuals Expelled and Exiled," gives the names of 218 detainees and five subjects who have been forced to leave the country and live in exile.

According to information given to the Commission, most of them belong to organizations that oppose the Government:

⁶ The list of those detained appears in Annex I at the end of this Chapter.

Social Movements

1. Labor Unions: Movimiento Intersindical de Trabajadores
Sindicato de Empleados y Obreros del Comercio
Agrupación Independiente de Trabajadores
Sindicato de Trabajadores de Eirday-Ute (Yacyreta)
2. Professional: Asociación de Médicos, Enfermeras y Empleados
del Hospital de Clínicas
Frente Independiente MEUC-FEDUC
Encuentro Permanente de Organizaciones Sociales
3. Lay Groups: Movimiento Juvenil Salesiano
Movimientos Juveniles Laicos
4. Peasants: Movimiento Campesino Uruguayo

Political Parties

Partido Liberal Radical Auténtico--PLRA (129 arrested in 1986)
Partido Liberal (PL)
Partido Revolucionario Febrerista--PRF
Movimiento Popular Colorado-MOPOCO
"Ethnical" Sector of the Partido Colorado

Members of the Press

El Pueblo; the foreign press; Radio Ñandutí; and Channel 13.

As may be seen from the affiliation of many of those arrested, authorities of the Stroessner regime arrest these people to keep political parties or organized social groups from meeting. In 1986 more than 200 persons were arbitrarily arrested for political activism. Of that number, 129 were arrested as a result of unauthorized meetings of the Authentic Radical Liberal Party (PLRA). In May 1986, 48 PLRA members were arrested during a meeting, but most of them were released the next day. In November 1986, 62 were arrested as a result of a PLRA meeting. The same tactics were used against members of other political parties and organizers of workers and campesinos.

Despite the constitutional guarantees of freedom of assembly and association, the authorities insist that a permit be obtained for political meetings, but they do not grant permits to those parties which are not officially recognized. Under the state of siege, police permission is required for any meeting of more than five persons who are not related, but such permission is routinely denied to parties and organizations that criticize the administration. As the Commission says in its 1985-86 report, "as stated by the accusers, police and parapolice

authorities acted with unjustified violence in repressing and breaking up groups of demonstrators, shooting just over the heads of the participants, beating them with brass knuckles, clubs and rifle butts, using cannons that emitted powerful jets of water and extremely strong tear gas and asphyxiants." When violent repression does not suffice to present a demonstration, the participants are arrested and held.

Although persons detained pursuant to Law 209 are presumably entitled to a certain amount of protection--which is denied to those detained by virtue of the state of siege--many individuals are routinely deprived of such protection.

For example, as the cases described indicate, the prisoners are kept incommunicado; they are not told the reasons for their arrest; they are not permitted to have a lawyer; and they are not arraigned within the 48 hours stipulated by the Constitution. As a result of this system, the United Nations cite Paraguay as the country in the region with the highest index of unsentenced prisoners (94%).⁷

F. CONCLUSION

The discussion throughout this chapter reveals a clear pattern of violations of the right to personal freedom stemming from the conduct of the Government of Paraguay. The analysis of the practices of that Government and its judicial branch shows the citizens to be completely defenseless in the face of the measures which the state agencies may use against them.

Under the permanently current state of siege, the executive branch has detained numerous persons without the required legal formalities, particularly those who have expressed critical opinions of the Government. In a large number of such cases, the Government has released the prisoners after holding them without even stating the charges, always using the premise of the state of siege. The executive branch has also used those provisions for prolonged incarceration of prisoners who have already served out their sentences, keeping them incommunicado sine dia and thus adding a further cruel punishment to the deprivation of freedom suffered by the victims.

7. United Nations Report "The Unsented Prisoner in Latin America and the Caribbean, cited by Dan O'Donnell: "The Judiciary Power" in SIJAU: Paraguay, Un Desafío a la Responsabilidad Internacional (1986).

ANNEX I

List of Political Prisoners and Accused

Campesinos from Alborada

- | | | | |
|----|-------------------|-----|-------------------|
| 1. | Santiago López | 11. | Antonio Paiva |
| 2. | Silverio Benítez | 12. | Fortuoso Martínez |
| 3. | Andrés Anzoátegui | 13. | Felipe Duré |
| 4. | Leonor Ramírez | 14. | Manuel Ruiz Díaz |
| 5. | Felipe Irala | 15. | Narciso Barúa |
| 6. | Juan B. Ruiz Díaz | 16. | Marcial Vega |
| 7. | Teófilo Cubas | 17. | Estanislao Vega |
| 8. | Luisa Benítez | 18. | Aníbal González |
| 9. | Darío Cubas | 19. | Miguel Gómez |

Campesinos from Otaño

- | | | | |
|-----|-----------------|-----|--------------------|
| 1. | Julián Alcaraz | 14. | Venancio Cáceres |
| 2. | Gaspar Espínola | 15. | José Gamarra |
| 3. | Juan Ruiz Díaz | 16. | Eulalio Romero |
| 4. | Manuel Ruiz | 17. | Mariano Romero |
| 5. | Silvio Román | 18. | Ramón Troche |
| 6. | Ignacio Colmán | 19. | Bernardo Riveros |
| 7. | Carlos Arce | 20. | Elvio Romero |
| 8. | Eugenio Obregón | 21. | Demetrio Centurión |
| 9. | Julián Troche | 22. | Calixto Reyes |
| 10. | León Barreiro | 23. | Ramón Ayala |
| 11. | Baltazar Grance | 24. | Simeón Báez |
| 12. | Angel Saavedra | 25. | Leopoldo Troche |
| 13. | Claudio Cáceres | 26. | Aníbal Silguero |

Citizens of Lambaré - Asunción

- | | | | |
|----|---------------------|-----|---------------------|
| 1. | Fidencio Balbuena | 7. | Gerardo Rivas Chena |
| 2. | Ireneo Amarilla | 8. | Julián Domínguez |
| 3. | Heriberto Villalba | 9. | Ernesto Oviedo |
| 4. | Pedro Pablo Aguirre | 10. | Gustavo Lezcano |
| 5. | Federico Ozuna | 11. | Mario Mendoza |
| 6. | Lorenzo Olmedo | | |

Workers of Yacyreta

- | | |
|----------------------------|-----------------------------|
| 1. Robert Bereiro | 6. Hilario Gayoso |
| 2. Isabelino Cáceres | 7. Juan C. Báez (Uruguayan) |
| 3. Inocencio Marín | 8. Alfaro (Argentinian) |
| 4. Osvaldo Martínez | 9. Pedemonte (Argentinian) |
| 5. Jorge Sanabria González | |

Political Prisoners

- | | |
|-------------------------|---------------------------|
| 1. Miguel Abdón Saguier | 4. Antonio González Arce |
| 2. Napoleón Ortigoza | 5. Flora de González Arce |
| 3. Remigio Giménez | |

Released, but still under indictment

- | | |
|----------------------|-----------------------------|
| 1. Oscar Acosta | 6. Elsa Mereles |
| 2. Héctor Lacognata | 7. Alberto Rodas |
| 3. Alejandro Stumpfs | 8. Marcelino Corazón Medina |
| 4. Luis Gorosito | 9. Raquel Aquino |
| 5. Carlos Filizzola | |

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CHAPTER IV

THE RIGHT TO RESIDENCE AND MOVEMENT

A. GENERAL ASPECTS

The Inter-American Commission on Human Rights believes that the right to residence and movement is closely linked to the right to personal liberty and may, in a sense, be considered as one of the manifestations thereof.¹ It should be noted that in Paraguay the exercise of this right has been associated with the right to personal liberty in important legal provisions² and in the Government's practice. Accordingly, in this chapter the Commission will examine the modalities assumed by this practice of the right to residence and movement, having discussed the peculiarities that characterize the right to personal freedom in the previous chapter.

B. APPLICABLE NORMS

Article VIII of the American Declaration on the Rights and Duties of Man recognizes that right in the following terms:

Article VIII. Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

The right to residence and movement is recognized by Article 56 of the Paraguayan Constitution, which says:

All inhabitants may travel freely throughout the national territory, change their domicile or residence, absent themselves from the republic and return to it, bring their property into the country or remove it therefrom, without any limitations, in this last case, other than those established by law.

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1. Report on the Situation of Human Rights in Chile, 1985, page 129.
 2. See Article 16 of 1955.

This general principle undergoes two types of limitations in Paraguay. On the one hand, it is subordinated to the provisions of Article 79 of the Constitution, which provides that if a state of siege is in effect, persons "may be transferred from one point in the republic to another." Moreover, Article 16 of the Law N° 294 of 1955 stipulates that those charged with the crimes set forth in that law cannot be released from prison nor can the sentence be changed "except by commutation thereof to that of exile upon orders from the executive branch."

C. THE PRACTICE OF THE PARAGUAYAN GOVERNMENT

Based on these measures, during the period covered by the present report the Government of Paraguay adopted various steps violating the right to residence and movement, of which the Inter-American Commission on Human Rights was informed. Thus Mr. Gunter Otto Portenshlag-Ledermayr, an Austrian national, was expelled from Paraguay on July 24, 1979 after having been arrested. Mr. Luis Alfonso Resck, one of the chief leaders of the opposition to President Stroessner, was expelled from Paraguayan territory on June 27, 1981. Mrs. Saturnina Almada, who had been tried and sentenced under Law 209 of 1970, was evicted from the country on May 12, 1982. The renowned Paraguayan writer, Augusto Roa Bastos, was expelled from the country on April 30, 1982. And Mr. Domingo Laino was expelled following his arrest on December 9, 1982.

Another modality adopted by the Government of Paraguay that affects the right to residence and movement has been to deny a passport to persons considered to hold critical positions in the Government. Thus Mrs. Carmen de Lara Castro, Chairwoman of the Paraguayan Commission on Human Rights, was not granted a passport until 1983, after three years of fruitless efforts. In the same year, Mrs. Ligia Prieto de Centurión, a former member of Congress, was given the document only after waiting for a year.

In February 1983, the Government of Paraguay allowed the political opposition leaders who had been in exile for 20 years or more to come back. Those who returned to the country under the aegis of this measure included Dr. Miguel Angel González Casabianca, leader of the Movimiento Popular Colorado (MOPOCO); Hermes Rafael Saguier, of the Partido Liberal Radical Auténtico; and other distinguished Paraguayan politicians, including Antonio González Prieto, Mario Paredes, Mario Mallorquín, Juan A. Aranda, Silvestre Gómez Rolón, Andrés Gómez Galeano, Guido Arce Bazán, and others.

The exiles returned with the Government's guarantee that they could resume their political and personal activities with no restrictions on their freedom to move from one part of the country to another, and that they could also enter and leave Paraguay whenever they wished to do so.

This guarantee was reaffirmed in January 1984 by the Asunción Chief of Police in an interview with Mr. Waldino Ramón Lovera, a member of MOPOCO.

In the cases of Messrs. Domingo Laino, Chairman of the Partido Liberal Radical Auténtico, a writer and university professor; Luis Alfonso Resck, Chairman of the Partido Demócrata Cristiano; and Augusto Roa Bastos, writer, the reasons for having denied them entry into the country, as cited by the Minister of the Interior, Mr. Sabino Montanaro, were illustrative of the Paraguayan Government's conduct. In an interview granted to the press on February 22, 1983--a copy of which was given to the IACHR by the Paraguayan Foreign Office--Minister Montanaro stated that Mr. Laino had been deported "for painting political slogans on walls in the public streets, which was considered to mark the start of a campaign to unseat the Government"; that Luis Alfonso Resck had been deported because he was "mentally unbalanced and an instigator of rebellion," and that writer Roa Bastos "has connections with Soviet and Cuban elements, and wished to give a lecture at a college and a university," so that "before he could indoctrinate young people to organize guerrillas or rise up against the Government, we expelled him from the country."

In 1986 the Government removed the ban that had kept writer Augusto Roa Bastos and Christian Democrat Party Chairman Luis Alfonso Resck from returning to the country. The latter came back to Paraguay on April 20, 1986.

A particularly illuminating instance of the Paraguayan Government's procedure in regard to personal freedom, the right of residence and movement, and the exercise of political rights is the case of Mr. Domingo Laino. Its nature is such that the Commission will present it in greater detail.

Mr. Domingo Laino is neither imprisoned nor legally indicted. He is confined to the locality of Mbuyapey in the Department of Paraguari, 182 kilometers from the capital. He is free to move about in that locale. His relatives, fellow members of the church, and lawyers visit him there. His wife spends several days at a time with him when she wishes. His lawyers have submitted writs of habeas corpus and an appeal of unconstitutionality to the Supreme Court of Justice. He is confined (a classic institution in Paraguay's domestic life) by virtue of Article 79 of the National Constitution (state of siege). The national press reports instances of this almost every day.

Mr. Laino--a radicalized leader of the Authentic Liberal Party, a small group that broke away from the other liberal opposition parties and is not legally recognized by the Central Electoral Board--was not arrested by the police nor at any time held in prison or in the Capital Police Investigation Department. He was invited to go to the Technical Affairs Directorate of the Ministry of the Interior itself. There he

was asked for information about his latest activities, and later he was confined to the area of Mbuyapey. The official in the case was the Technical Affairs Director himself, Dr. Antonio Campos Alum.

The cause of Mr. Laino's confinement is public knowledge in the country. In his day, the Ministry of Foreign Affairs issued an official communique on the matter. He was not confined simply because of persecution by his opponents as it is claimed. Laino took advantage of a lecture he gave in Curitiba, Brazil to insult the President of the Federative Republic of Brazil and the President of the Republic of Paraguay. Without any basis for doing so, he said at that time that His Excellency the President of the Federative Republic of Brazil had not attended a visit to the Itaipu hydroelectric dam works because he did not wish to meet with His Excellency the President of the Republic of Paraguay. The accusation is easily proven false. One of the opposition parties, the February Revolutionary Party, was holding a meeting at the time. The party is affiliated with the International Socialist Party. Well-known foreign social democrats or socialist leaders were invited to attend the meeting. All of this information was printed in the daily newspapers, it is not secret. This proves that the opposition is free to act. Its official weekly, "El Pueblo," not only appears regularly, but even uses practically subversive language.

The right to freedom of expression enjoyed by Mr. Laino in making such statements and the arbitrariness of his arrest and confinement led the Commission to adopt a Resolution stating that the Government of Paraguay had violated Articles IV and VII of the American Declaration of the Rights and Duties of Man by its actions in respect to Mr. Laino.

Freed on December 21, 1979, Mr. Domingo Laino was again arrested on September 30, 1980, along with Miguel Abdón Saguier. After several hours, Dr. Saguier was released, but Mr. Laino was held until October 15, 1980. According to the Government of Paraguay, he had been detained for questioning. The plaintiffs stated at that time that his house had been entered illegally, he was denied legal counsel, and he was held incomunicado.

On December 9, 1982, Mr. Laino was arrested once again, and for the last time. On December 15, 1982, the Government advised the Commission that Mr. Laino had been detained by virtue of Article 79 of the Constitution, and that:

He was informed that the executive branch would transfer him from one point to another of the national territory, in conformity with the provisions of that article. Dr. Laino chose to go abroad. Since yesterday, December 14, he has been

in Clorinda, in the Republic of Argentina, where he is at liberty. No restrictions have been placed on his family's freedom of movement.

The Commission received the plaintiffs' version of Domingo Laino's arrest and expulsion on January 25, 1983, in which it was reported that various provisions of the Paraguayan Constitution had been violated.

At about 8:30 on the morning of December 9, 1982, a large contingent of police invaded the home of Dr. Domingo Laino, located at the intersection of Avenida España and San José. The forcible entry was made without a court order, expressly violating the provisions of Article 68 of the National Constitution.

Mr. Laino returned to his home while the raid was in progress. He was immediately arrested and taken to the Capital Police Investigation Department on Calle Presidente Franco between Nuestra Señora de Asunción and Chile.

His detention violates Article 59 of the National Constitution.

The police also seized the supply of Dr. Laino's new book, entitled "El General Comerciante" (for which the scheduled publication date was December 10), thereby violating Articles 71 and 72 of the National Constitution.

From that moment on, the Government's security services proceeded to mobilize their forces.

During the proceedings, the following persons were arrested: Mrs. Rafaela Guanes de Laino, for several hours; Mrs. Cecilia Gondra de Juárez; and the owner of the printing press, Mr. Enrique Velilla--who was kept incomunicado for eight days, simply because he had printed the books in question.

From that time onward, Dr. Laino was held strictly incomunicado. The only one to see him during that time, and very briefly, was his wife.

The next day, Friday, December 10, 1982 Mrs. Rafaela Guanes Gondra de Laino was again summoned by the police to warn her that the release of the book "El General Comerciante" was forbidden.

At the time set for the official release of the book, police forces cordoned off Dr. Laino's house, the site of that event, preventing the large number of persons in attendance from entering.

On December 14, 1982, Dr. Domingo Laino was taken by the police to the border with Argentina, where he was told that he was being expelled from the country by order of General Alfredo Stroessner. He remains in exile up to the present time. This measure is illegal and arbitrary and it contravenes express provisions of the Republic's Magna Carta.

In May 1983 the petitioners contradicted the Government's version of the events, stating that Domingo Laino had not chosen exile, as proven by the fact that he had tried to return to Paraguay in March of that year, but the Paraguayan authorities had not allowed him to get off the plane.

On May 17, 1984 the Committee approved a resolution on this case which cited the obvious contradiction between the versions presented by the plaintiffs and the Government of Paraguay. It declared that the Paraguayan Government had violated the articles guaranteeing Mr. Domingo Laino's right of residence and movement, the right to justice, the right to protection against arbitrary arrest, and the right to due process of law, all of which are recognized by Articles VIII, XVIII, XV and XXVI of the American Declaration.

The Government of Paraguay refused to admit Laino during his various subsequent attempts to return and give himself up to the Paraguayan authorities. On March 9, 1985, Mr. Laino tried to return but was not allowed to alight from the plane. He tried to enter the country by crossing the Clorinda-Puesto Falcón border on December 23 and 24, but was told that "his entry was strictly forbidden by higher orders."

Domingo Laino made his fifth attempt to return to Paraguay on June 24, 1986. He was accompanied at that time by the former United States Ambassador to Paraguay Robert White, and other persons. Mr. Laino was brutally beaten by Paraguayan policemen in plain clothes, who attacked his companions as well. Mr. Laino was forced to reembark and return to Uruguay, although White and the other members of the group were allowed to disembark.

When the Government lifted the state of siege on April 8, 1987, Mr. Laino was allowed to return to Paraguay, where he is now residing.

D. CONCLUSIONS

The events described in this chapter reveal a clear pattern of violations of the right of residence and movement by the Government of Paraguay. The practices of Paraguay's Government and Judiciary have abandoned the citizens, leaving them at the mercy of any measures the state agency may take to oppose them.

The Paraguayan Government's conduct in regard to personal liberty, discussed in the previous chapter, is in fact complemented by the usage concerning the right to residence and movement. After first harassing its opponents by means of repeated arrests, the Government has proceeded to confine them in places in the interior of the country and to expel them therefrom. This penalty has been applied without due process of law, and it has remained in effect as long as the state of siege, or the President's wish to prolong it. The reasons adduced for such cruel punishment border on the ridiculous, as is evident in the statements made by Minister Montanaro in the cases of Laino, Resck and Roa Bastos.

In the face of this clearly arbitrary scenario, individuals have been abandoned by the judicial branch which, in palpable abdication of its constitutional responsibilities, has repeatedly stated that the recourse of habeas corpus does not apply to measures adopted by the President under the provisions of the state of siege. Given this situation, the Commission can but conclude that such important rights as the freedom of individuals and their prerogative of remaining in the country where they were born have remained in Paraguay in the hands of the President of the Republic or his ministers, against whom individual citizens are bereft of defense.

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CHAPTER V

THE RIGHT TO FREEDOM OF OPINION AND OF THE
EXPRESSION AND DISSEMINATION OF IDEAS

A. GENERAL CONSIDERATIONS

Article IV of the American Declaration of the Rights and Duties of Man acknowledges that "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."

In turn, the Inter-American Commission on Human Rights has stated in developing the concept of freedom of expression that it consists of "the right to transmit events and ideas through any means of social communication; but, on the other hand, freedom also demands the right for everyone to receive information without interference of any kind."¹

Enlarging on those concepts, the Commission added:

The interdependence of the American peoples calls for greater understanding among them. For this to be achieved, freely circulated information about ideas and news is indispensable. To accomplish those ends, the means of information have to be free from any kind of pressure or imposition, and those who make use of the information media assume a heavy responsibility toward public opinion and must therefore report the true facts faithfully.

Freedom of expression is universal, and its concept embodies the legal right of all persons, individually or collectively, to express, transmit and disseminate their thoughts; parallel and correlative thereto, freedom to become informed is also universal, and entails the collective right of individuals to receive the information communicated to them by others without any interference that might distort it.²

One point that the Committee has repeatedly stressed is that freedom of expression cannot be fully exercised if there is an atmosphere of fear

1. 1981 Annual Report of the Inter-American Commission on Human Rights, p.121 (spanish version).

2. Ibid., page 122 (spanish version).

and insecurity, such as is generated by the protracted state of siege. Under these circumstances, says the Commission, freedom of expression cannot develop genuinely, nor can citizens become adequately informed. This in turn helps to create conditions under which other human rights are violated.³

In the specific case of Paraguay, freedom of expression and opinion, especially when exercised through freedom of the press, becomes singularly important, for it may--as has been the case on certain periods of Paraguay's recent history--provide the means of reporting news which could help to correct abuses on the part of the authorities. This possibility is particularly noteworthy in a society characterized by a concentration of political power, an absence of truly independent institutions and the impotence of the legislative and judicial branches to monitor and control the executive branch.

In this chapter the Commission will examine the legal system applicable to the freedoms of opinion and expression in Paraguay and the situation of the various current means of communication, with special reference to certain specific restrictions placed on Paraguayan communications media and journalists.

B. THE LEGAL STRUCTURE

Article 71 of the 1967 Paraguayan Constitution addresses freedom of expression and thought in the following terms:

Freedom of thought and of opinion are guaranteed on equal terms to all inhabitants of the republic. It is forbidden to preach hatred or class struggle among Paraguayans, or to defend crime or violence. The laws may be criticized freely, but no one may proclaim disobedience to their provisions.

The articles that follow regulate this right in the manner indicated below:

Article 72. Freedom of expression and of information without prior censorship are inviolable, and no law shall be enacted that limits such freedom or prevents it except in matters connected with the prohibitions contained in the preceding article. In time of war, information on matters relating to the security of the republic and national defense may be censored.

Article 73. Journalism in any of its forms may be practiced freely. Press organs lacking responsible direction shall not be permitted, nor shall the publication of immoral subject matter be allowed.

Article 74. No person or enterprise that publishes a newspaper and no radio or television broadcasting station may receive a subsidy of public or private funds from abroad without authorization by the government.

Article 75. In suits brought on account of publications of any nature that may affect the honor, reputation, or dignity of individuals and that refer to offenses subject to private penal action, or to acts of private conduct that this Constitution and the law declare to be exempt from the authority of the magistrates, evidence of the truth or of the notoriety of such acts shall not be admissible. Such evidence shall be admitted when the suit is brought because of the publication of criticism of the official conduct of public functionaries, and in the other cases expressly provided by law.

Despite the constitutional guarantees cited, exercise of the freedoms of opinion and of expression and dissemination of thought have met with serious legal obstacles stemming from the general legal situation described in Chapter I. The restriction included in Article 71 --that it is forbidden "to preach hatred or class struggle among Paraguayans, or to defend crime or violence"--has been repeatedly used by the Government to silence simple statements of disagreement by the opposition. The same result has been achieved through the prohibition on proclaiming disobedience to the provisions of the laws. These provisions have in turn served as a basis for clearly repressive legislation.

Laws 294 of 1955 and 209 of 1970 place especially important restrictions on the exercise of those rights. Article 8 of Law 294 provides that if any of the crimes punishable by that law on the "Defense of Democracy" are committed "by the press, radio broadcasting stations, or news and information agencies, the services of those responsible will be suspended for a period of one to six months. In the event of a repetition or recurrence it will be closed, without prejudice to the legal penalty to which the guilty party or parties might be liable. Any books, leaflets, newspapers and other printed matter involved will be confiscated."

In turn, Law 209 of 1970 on "Defense of Public Order and Freedom of Individuals" contains provisions that because they are excessively vague and general may constitute--and in fact have already done so--serious restrictions on the freedoms of expression and opinion. Such is the case of its Article 4, which stipulates one to six years in the penitentiary for anyone who "through any means shall publicly preach hatred among Paraguayans or destruction of the social classes."

The text of Article 8 of Law 209 (1970) is even more draconian. The crime of opinion is punishable by up to five years of imprisonment for anyone "who introduces, prints, stores, distributes or sells leaflets, magazines, posters, newspapers, movie or television films about the

doctrine or system... of any communist party or organization whose goal is to destroy the republic democratic regime of the Nation."

If the authoritarian nature of the Paraguayan regime has ever been evident, it is precisely because of the severe restraints it has placed on the exercise of the freedoms of expression and thought. Such restrictions, as will be seen in the following paragraphs, not only appear in the legislation cited, but have existed in practice as well.

C. DE FACTO SITUATION OF SOCIAL COMMUNICATIONS MEDIA

To understand the current status of the freedoms of expression in Paraguayan practice, it is important to note that most of the communications media are owned by people with close ties--including those of kinship--to President Stroessner, or those who at least conform to the present regime. As will be seen later, although there have been, and still are, dissident media, they have suffered persecution making the free exercise of independent journalism extremely difficult.

As to the written press, after the "ABC Color" newspaper was shut down in August of 1984, and with the closing of "La Tribuna" as well, the only four major daily newspapers currently published in Asunción are "Ultima Hora," "Hoy," "Diario Noticias," and "La Patria." Except for the first--which has an independent line and sporadically prints items containing criticism of the Government--the others have family connections with President Stroessner or, as in the case of "La Patria," are official organs of the Government's Partido Colorado.

The only printed media that disagree with the regime are the Partido Revolucionario Febrerista weekly newspaper and "Sendero," published twice a month by the Catholic Church. Their circulation, however, is relatively limited.

Another in that category is the monthly "Nuestro Tiempo," whose editor is the Bishop of Chaco, Monsignor Medina. Published in Foz de Iguazu, Brazil, it is therefore subject to the restrictions on circulation of foreign publications. Special authorization is required for their entry into the country, and the permit is usually refused for any publication containing articles or information not acceptable to the Government.

There are approximately fifty radio stations in Paraguay. Except for Radio CHARITAS, which belongs to the Catholic Church, Radio Primero de Marzo, and (until January 1987) Radio Nandutí, all of them belong to the Government party or to persons connected with the regime. Accordingly, their information and comments are generally favorable to the Government and do not reflect the viewpoints of opposition groups.

At present there are only two television stations in Paraguay. One is owned by the State and the owner of the other is closely affiliated

with the present regime. Its news programs are carefully self-censored, and do not include any information or comments that might be unfavorable to the Government.

The ownership of the communications media--mainly concentrated in the hands of persons close to the President--and the serious difficulties met by the independent or dissident press explain the pervading climate of self-imposed censorship that generally characterizes mass communications media in Paraguay.

It must be added that, particularly after April 1983, there was a strong resurgence of government oppression of independent media operators, with illegal arrest, detention or harassment of journalists and closing of newspapers and radio stations. The most drastic instances were the closure of the "ABC Color" newspaper and suspension of Radio Ñandutí broadcasts.

D. THE "ABC COLOR" CASE

The indefinite closure of "ABC Color" is possibly the most flagrant instance of violation of freedom of expression and opinion, for this was the country's most important newspaper. It had a daily circulation of 75,000 copies, which rose to almost 100,000 on Sundays.

On March 16, 1984, its director, Aldo Zucolillo was arrested for refusing to reveal the name of the reporter whose article quoted some antigovernment statements made by MOPOCO party leader Miguel Angel González Casabianca. Then on March 22, the Minister of the Interior, Dr. Sabino A. Montanaro, ordered publication of the daily ABC Color to be suspended for an indefinite period starting that very day.

The Minister of the Interior invoked the constitutional and legal provisions that expressly forbid anyone "to preach hatred or class struggle among Paraguayans," and "to defend crime or violence" and state that "the laws may be criticized freely, but no one may proclaim disobedience to their provisions." This draconian step was predicated on the premise that the Diario ABC Color had "systematically and knowingly violated the precepts of the Magna Carta in its zeal to subvert public order, jeopardizing the peace of the Republic and the stability of its institutions with its daily harangues of seditious opinions, either in its editorials or as the permanent spokesman for irregular political groups that have no legal or institutional base, thus fostering a state of confusion and disquiet in the mind of the public and giving rise to social alarm." The newspaper was still closed at the time the present report was approved.

The indefinite closure of ABC Color was followed by other measures adopted by the Government that clearly revealed its unmistakable intention

to prevent future reappearance of this important newspaper. Those tactics included dismantling of the AZETA publishing firm, also owned by Aldo Zucolillo, and a ban on other publications of that company, such as the sports magazine "Extra Deportivo" and the "Suplemento Educacional" for children, shut down by the Government "for reasons of internal security."

The indefinite closure of ABC Color was reported in a claim to the Inter-American Commission on Human Rights, which thereupon opened Case N° 9250. In the pertinent resolution, adopted on May 17, 1984, the Commission considered indefinite suspension of the ABC Color newspaper --in the absence of any substantiation of the accusations presented against it, and with no opportunity given to its representatives to defend themselves--to represent a serious violation of the provisions in the American Declaration of the Duties and Rights of Man concerning the rights to freedom of investigation, of opinion, expression and dissemination of ideas, as well as that of the right to due process of law.

In that resolution, the Commission recommended that the Government of Paraguay rescind the Ministry of the Interior's resolution 227 of March 22, 1984 and observe laws currently in force by allowing unrestricted printing and distribution of the ABC Color daily newspaper.

E. THE CASE OF RADIO ÑANDUTI

One of the cases that best illustrates the adverse conditions for the exercise of the freedoms of expression and opinion is that of Radio Ñandutí, which habitually included news items and comments criticizing the Government in its broadcasts.

From 1983 until its temporary shut down in January 1987, Radio Ñandutí was the object of harassment and other tactics constituting a clear violation of the rights discussed in this chapter, such as the following:

On July 9, 1983, the Ministry of the Interior ordered the station to be closed for a period of 30 days. On September 22 its program entitled "SUPERONDA" was canceled and the station manager, Mr. Humberto Rubín, was forbidden to take part in his programs. This measure remained in effect until November 10, 1983. But on November 5, 1984 he was forbidden to speak on radio programs in general.

On January 17, 1984 Mr. Humberto Rubín was ordered to appear before the Director of the National Telecommunications Administration (ANTELCO), Mr. Angel Barbosa, who warned him not to broadcast news of groups that were not officially authorized political parties. An ANTELCO order, in the form of Resolution N° 1009 of August 9, 1985, closed the station once more, this time for a period of 10 days.

Humberto Rubín was again arrested on December 3, 1985 and held for a few hours at the Central Police Station in Asunción, where he was warned by the Director of the Public Order Department, Mr. Carlos Schrieber, that unless he changed his editorial outlook he would be expelled from the country. The radio station was again closed early in January 1986, for a period of 15 days, accused of helping create "public discord."

In April 1986, Humberto Rubín accused the police of refusing him protection, despite repeated death threats against him, the members of his immediate family, and coworkers at the radio station. Official spokesmen had previously accused Radio Ñandutí of responsibility for street demonstrations that had taken place in the capital in the preceding few weeks. Early on the morning of April 30 a mob of some fifty Government sympathizers attacked the facade of the radio station building, throwing stones, shooting firearms into the air, and breaking almost all of the outside windows. On May 3 a group of five armed and hooded individuals again attacked the radio station, this time destroying its plant and transmitting equipment and stealing a part thereof. Two days later the station's communications facilities were cut off, with all of its telephones disconnected.

Later on, the station began to be the object of a series of interruptions resulting from "radio interference" that became increasingly louder until it drowned out more than 90% of its broadcasts. It was also forbidden to transmit information or comments criticizing the Government.

On the other hand, and according to reports received by the Commission, Government authorities began to put pressure on a number of businessmen to force them to withdraw their support by canceling their advertising. Toward the end of May 1986, the pro-Government program entitled "The Voice of the Colorado Party" (aired throughout the country from Mondays through Saturdays) began to read the list of Radio Ñandutí advertisers, some of whom gave in to this type of blackmail and canceled their contracts with Ñandutí.

Finally, on January 14, 1987, Radio Ñandutí Director Humberto Rubín announced his decision to cease broadcasting, given the lack of guarantees on the part of the Paraguayan authorities, whom he accused of evincing no interest or willingness to solve the problems of which he had complained. This had brought the station to the brink of bankruptcy, to the point where it was economically impossible to continue its operation. He was therefore announcing the temporary suspension of its broadcasts, trusting that justice would be done and that at some future time he would be given the requisite guarantees to resume operations.

The Commission was apprised of these events and opened a file on case N° 9642, adopting a resolution on March 28, 1987.

In that resolution, the Commission states that neither the administrative nor the judicial authorities of Paraguay--either because of

inaction or inefficient procedures--have yet been able to identify, much less punish, any of the culprits in the attacks and arbitrary acts suffered by Radio Nanduti, thus leaving the company legally defenseless as well as bankrupting it and compelling it to close temporarily.

The Government of Paraguay has formulated its observations on the Commission's resolution, and in due course the IACHR will approve a final resolution in the case.

F. ADDITIONAL SUSPENSIONS AND SHUTDOWNS OF MASS MEDIA.

In addition to the ABC Color newspaper and Radio Nanduti cases just described, the Paraguayan Government has used existing legislation in the last few years for temporary or final suspension of other mass media. Some examples appear below:

On June 18, 1979, Minister of the Interior, Dr. Sabino Montanaro, issued Resolution N° 435, ordering a 30 day suspension of the Ultima Hora and La Tribuna newspapers. The vague nature of the accusations leveled against these two papers, in which no criminal conduct is cited, is evident in the text of the preambular paragraphs transcribed here:

For some time now, the "Ultima Hora" and "La Tribuna" newspapers, in addition to their biased and profit-motivated criticism of governmental decisions and high state officials, have created a loss of morale and confusion in the public mind by means of the sensational printing of false and tendentious news:

Moreover, high dignataries of the Nation have on numerous occasions been slandered and defamed, made to appear ridiculous and not given the respect due their positions as custodians of the common weal;

It is undeniable that by publishing international news focusing on dramatic incidents in other nations featuring a malicious mode of expression and absurd comparisons, the editors of those newspapers are trying to create an atmosphere of panic, anguish and tension in the public mind; ...

In 1980, Radio Itapirú was suspended for one month for broadcasting news items about the assassination of General Somoza, which aroused the anger of the Government. In October of that year as well, publication and distribution of the "El Pueblo del Partido Febrerista" weekly were banned until July 1982.

La República newspaper was closed on December 30, 1980 upon orders from the Minister of the Interior for "attempting to destabilize the Government." It has not been reopened.

In 1981, the Liberal Party's weekly newspaper "El Enano" was temporarily shut down and has not yet resumed publication.

On December 26, 1985 the Government suspended the weekly "Aquí," which specialized in the publication of police news. The reason given was that the magazine was morbid. Later on this weekly, the oldest in Paraguay, with a circulation of 25,000, was closed permanently.

G. ARRESTS, DETENTIONS, HARASSMENT, AND EXPULSION OF JOURNALISTS

Another serious restraint placed in practice on the freedom of expression and opinion in Paraguay has been the series of frequent arrests, detentions, harassments and expulsions of journalists and mass media owners. Needless to say, such measures have had an intimidating effect that is largely responsible for keeping the media from performing its function of publishing and discussing the news freely and objectively. As a result, most of them have opted for self-censorship.

On November 5, 1979 Alcibiades González del Valle, an ABC Color columnist, was arrested and held incomunicado until December 21, 1979. He was detained again on July 25, 1980 by court order, and kept in the Tacumbú prison until September 2, 1980.

ABC Color newspaperman Héctor Rodríguez was detained on February 29, 1980 and kept under arrest until September 2, 1980.

On October 30, 1980, Chilean newsman Rafael Melia La Torre, a reporter for "Hoy" newspaper, was detained and held under arrest for three months at the Investigation Department, where he alleges that he was tortured. He was then transferred to the Guardia de Seguridad prison and confined to a 1 x 3 meter cell, under provisions of the state of siege (Art. 79 of the 1967 Constitution). Finally, in June 1984, charges were presented against him pursuant to Law 209 of 1978 on "Defense of the Public Peace and Freedom of Individuals" for having taken pictures of the assassination of General Somoza. He was then transferred to Tacumbú prison to await trial.

Hoy newspaperman Hernando Sevilla was detained on February 6, 1981 and kept under arrest incomunicado for a year and a half. He also claims that he was tortured while in prison.

On February 20, 1981, La Tribuna editor Juan Andrés Cardozo was arrested.

In March 1981, Rolando Chaparro, a journalist for the newspaper Hoy, was arrested. Another reporter, Félix Ruiz, managed to escape to Brazil as the police searched for him.

On the 26th of November, 1981 Félix Humberto Paiva, a journalist of the paper Ultima Hora, was arrested and held in jail until December 2, 1981.

Ultima Hora director Fernando Cazenave was detained on November 26, 1981 and kept under arrest until December 24, when he was released.

On August 17, 1982, Hoy reporter Hernando Sevilla, who had been in prison since February 1981, was expelled from the country, without any charges ever having been made against him.

On April 9, 1983, Uruguayan newspaperman José María Orlando, an advisor of the ABC Color daily newspaper, was expelled from the country. The same fate overtook a reporter from Brazil's "O Estado de Sao Paulo," who had come to Asunción to write about the siege laid to ABC Color.

ABC Color newsman Gustavo Codas was forced to take refuge in the Venezuelan Embassy and leave the country in June 1983 while the police were looking for him to arrest him.

On June 6, 1983 about a dozen graphic artists and printers from the Litocolor printing company were arrested and held for 48 hours. The firm published the Nueva Línea journal of the Catholic University's sociology department, which was closed at the time.

On July 15, ABC Color editor Aldo Zucolillo was arrested and incarcerated for 15 days in the Tacumbú prison.

In September 1983, Raquel Rojas of "Hoy" newspaper was arrested and held for two months at the Buen Pastor prison.

Journalist Alcibiades González del Valle was arrested for the third time on September 23, 1983. This time he was kept semi-incomunicado until December 8, 1983 at the Investigation Department.

Jesús Ruiz Neszoza, ABC newspaperman, was arrested on December 20, 1983 and remained incomunicado in the Investigation Department until December 24, 1983.

Another ABC Color staff member, Héctor Guerin, was arrested on December 31, 1983. Held incomunicado at the Third Police Station until January 2, 1984; he was then released.

Radio Ñandutí director, Humberto Rubín, was taken to the Investigation Department for questioning on January 17, 1984, and held there for several hours.

As noted earlier, Aldo Zucolillo, director of ABC Color, was again detained on March 16, 1984 and remained under arrest for 11 days at the Investigation Department.

The former director of the weekly newspaper "El Pueblo," publicity organ of the Partido Revolucionario Febrerista, Juan José Ríos, was

detained on April 10, 1985 and remained under arrest at the Army Escort Battalion Barracks until his release on May 27, 1985. Apparently the reason for his arrest was that he was loading party propaganda in his truck, despite the fact that this is one of the parties legally recognized by the Government.

Edwin Brítez, a reporter for the weekly magazine *Nuestro Tiempo* --published in Brazil under the direction of Catholic Bishop Monsignor Malarío Medina--was arrested at his home on July 16, 1985 and taken to the Investigation Department and held until the following day when he was released. Similarly, five months later, Francisco Barboza was arrested as he was entering Paraguay via Ciudad Stroessner because he was carrying several copies of *Nuestro Tiempo*. Held *incomunicado* for two days, November 4 and 5, 1985, he was warned by the government authorities that the next time he "might be imprisoned for several years" if he continued to bring the magazine into Paraguay.

In addition to the past detentions of ABC Color director Aldo Zucolillo, he was picked up again on November 4, 1985 upon his return from New York. He had just received Columbia University's Maria Moore Cabot journalism award for his contribution to freedom of the press. According to the Government's official communique, the statements he had made in accepting the prize constituted an incitement to subversion as a means of changing the country's political structure. Police Chief General Francisco Brites Borges, for his part, "advised" Zucolillo to leave the country if he did not agree with President Stroessner's Government.

In the course of 1986, attacks on and harassment of the press were stepped up. Nicolás Arguello and Miguel Angel Arguello, of *La Tarde* newspaper and Radio Ñandutí, respectively, were beaten as they covered a demonstration by law students at the National University on April 24, 1986. The same thing happened to newsmen Osvaldo Fonseca and Roberto Bazán of Television Channel 13 and Martin Ciccano of the *Diario de Noticias* during another act of protest by the same students on April 28. Also beaten, taunted and detained were José Luis Simón of the weekly *El Pueblo*, publicity vehicle of the opposition Partido Revolucionario Febrerista, together with four members of a team from German state television's Channel One (Nikolaus Brender, Peter Wendt, José Antonio Vulin and Eduardo Johnson). So was the Press and Culture Attache of the West German Embassy, Armir Stever, who accompanied them as they covered the peaceful demonstration organized on April 27 by opposition Partido Liberal Radical Auténtico (PLRA). Although the Germans were released a few hours later on the same day and their equipment (with damage estimated at some \$40,000) was returned to them, newsman Simon was kept under arrest and *incomunicado* for two days before he was freed. At the same time, although *Diario de Noticias* reporter Clemente Cáceres was not arrested, his recording equipment was also seized.

A national television reporter for a Channel 13 news program, Pedro Ferreri, was arrested on May 28, 1986. After several days of house arrest

he was moved to the Investigation Center where he was held for one week by virtue of the regulations governing the state of siege. Although no official explanation was made as to the reasons for his arrest, it was thought to be due to the fact that he had sent a film abroad which showed police agents and members of the "red militia" brutally attacking participants in the recent public manifestations with clubs and electric cattle prods. His lawyer presented a writ of habeas corpus on June 4 and he was released on June 5, 1986 without charges having been made.

Another critical attack on freedom of expression took place in 1986 when Radio Caritas Director, the Reverend Father Javier Arancón, a Spanish Franciscan priest, was prevented from returning to Paraguay. He had previously been warned by the Minister of Culture and Worship, Carlos Ortiz Ramírez "to change the information approach of the station and fire the head announcer, Mr. Guillermo Yaluff, if he wished to remain in Paraguay." Fr. Alarcón was first detained in Puerto Falcón, where all of his Paraguayan identity documents were seized, forcing him to leave the country as he was returning from a congress he had attended in Argentina.

Husband and wife Benjamín Ramón Livieres, reporter for La Tarde newspaper and a member of the Paraguayan Journalists Union, and María Herminia Feliciangeli, of the Commerce Trade Union, were arrested by several armed plain clothes policemen without a warrant on October 24, 1986 at 10:30 a.m. as they left the Hoy newspaper building. They were arrested and held incomunicado, without charges, at the Asunción Police Investigation Department. The Government maintained that both were active communists and that they were being held for a presumed violation of Law N° 209, later adding that by order of the Criminal Court Judge of First Instance they had been set free, respectively, the wife on December 18 and the husband on December 30, 1986.

Newsman Luis Alberto Gorosito and the popular singer Alberto González Rodas were arrested on November 28, 1986 pursuant to anti-subversion Law N° 209 for their participation in the traditional Ypacarai Folklore Festival. It took place in Posadas, Argentina, after its celebration had been banned that year in Paraguay by Interior Minister Dr. Sabino Montanaro "because it had become highly politicized." Both were kept at the Tacumbú National Penitentiary until December 19, 1986 when they were released.

Radio Ñandutí newsman Oscar Acosta, a member of the Journalists' Union, was detained on December 21, 1986 along with student Nicanor Felipe Duarte during a mass for political prisoners in an Asunción church. They were taken to, and held under arrest at, the capital police Investigation Department. Duarte was released on December 30 while Acosta was kept at the Tacumbú Penitentiary, accused of having violated the provisions of Law N° 209 against subversion. Early in January 1987, he was arraigned before the regular criminal court, where the presiding

judge confirmed his arrest and order the seizure of his property, a preventive measure routinely employed by some officials to harass members of the opposition. He was released on bail January 14.

Finally, mention should be made of radio announcer and master of ceremonies Isaac Villalba, arrested on December 31, 1986 pursuant to Article 79 of the National Constitution (state of siege) and released a few days later on January 9, 1987.

CONCLUSIONS

The cases cited lead the Commission to conclude that during the period covered by this report, the freedoms of expression, opinion and dissemination of ideas were severely curtailed in Paraguay, resulting in stringent limitations on the news media. Using the umbrella of repressive legislation that grants excessive discretionary powers to the executive branch, the Government has closed a number of the mass communications media and arrested or expelled journalists and media entrepreneurs, or adopted harassment tactics to prevent them from performing their work.

Such action on the part of the Paraguayan Government not only violates the rights guaranteed by the American Declaration of the Rights and Duties of Man, but creates an atmosphere that makes journalism difficult and dangerous, requiring courage and daring from those who would exercise it freely. At the same time, the situation described has produced generalized fear in the press media, frequently leading to self-censorship that keeps those responsible from doing their job objectively.

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CHAPTER VI

TRADE UNION RIGHTS

A. APPLICABLE LEGAL REGIMEN

Article XXII of the American Declaration of the Rights and Duties of Man states that:¹

Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

The International American Charter of Social Guarantees (Articles 26 and 27) stipulates as follows:²

Article 26. Workers and employers, without distinction of sex, race, creed or political ideas, have the right to associate freely for the defense of their respective interests, forming professional associations or trade unions which may in turn federate among themselves. These organizations have the right to enjoy a legal personality and to be duly protected in the exercise of their rights. Their suspension or dissolution cannot be imposed except by due process of law.

The conditions of substance and form that may be required for the establishment and functioning of the professional and trade union organizations must not inhibit the freedom of association.

The establishment, operation and dissolution of federations and confederations shall be subject to the same conditions prescribed for trade unions.

1. Ninth International Conference, Bogotá (1948), Resolution XXX, II Supplement (1945-1954), p. 203 et seq. The same right is recognized in Articles 20 and 23 (4) of the United Nations Universal Declaration of Human Rights (Paris, December 1948).

2. Idem. Resolution XXIX, p. 195 et seq.

Trade union officers, in the number established by the respective law, and during their term of office, cannot be fired, transferred or downgraded in their working conditions without just cause, previously determined by the competent authority.

Article 27. Workers have the right to strike. The conditions and exercise of such right are regulated by law.

The Charter of the Organization of American States (OAS), as amended by the Buenos Aires Protocol (1967) establishes the following (Art. 43 c):³

c. Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws.

Trade union freedom is furthermore regulated internationally by current instruments of the International Labour Organisation (ILO), which after ratification by the countries form part of the domestic law fully and directly applicable in the State Party. Thus, for example, Paraguay has ratified Conventions 87 (1948) on Trade Union Freedom and Protection of the Right to Unionize (entered into effect on July 4, 1950) and 98 (1949) on Application of the Principles of the Right to Unionize and Collective Bargaining (effective on July 18, 1951).⁴

Hence the right to unionize, the right to collective bargaining, and the right to strike are part of the positive law of Paraguay, with the scope and characteristics granted thereto by Conventions 87 and 98, the basic principles of which are summarized below:

a) Workers have the right to form the organizations they deem expedient, as well as to join those organizations, with the sole condition that they observe the by-laws thereof;

3. Basic Instruments of the OAS, Treaty Series N° 61, OAS/Ser.X/II: Social Standards, p. 12. This provision corresponds to Article 44,c of the Protocol of Cartagena de Indias [OAS/Ser.P/AG/doc.16 (XIV-E/85)] Rev. 2, February 26, 1986.

4. Ratified by Laws of August 31, 1961, respectively. See also ILO Conventions and Recommendations, Geneva, 1966, pp. 707 and 831, respectively.

b) The organizations have the right to draw up their by-laws, to elect their representatives freely, and to organize their management and activities and their program of action.

c) Labor organizations cannot be dissolved or suspended by administrative action;

d) The organizations have the right to constitute federations and confederations and to join international workers' organizations;

e) The organizations have the right to obtain legal status without being subjected to any conditions that would limit trade union freedom;

f) The national legislation of a State Party may not limit nor lessen the guarantees set forth in international agreements;

g) Workers must enjoy adequate protection against discriminatory acts that might affect trade union freedom, especially the dismissal of workers for reasons of their trade union activities;

h) The authorities of the States Parties must not interfere in the activities of the trade unions;

i) Agencies consistent with national conditions must be created to guarantee respect for the right to form trade unions as well as the full implementation of voluntary negotiation procedures to regulate working conditions by means of collective contracts;

j) Union organizations must respect the national laws of the respective country, but these laws must be compatible with the principles of trade union freedom;

k) The workers and, particularly, the trade union leaders must enjoy adequate protection against discrimination or acts that conflict with their trade union duties in respect to their employment.

In light of the principles and bases listed above, the purpose of this chapter is to survey the status of trade union rights in Paraguay since 1978 (when the IACHR published its last report on the Situation of Human Rights in that country).⁵

B. THE CONSTITUTION AND TRADE UNION FREEDOM

Chapter V, Point 4 of the Constitution of Paraguay⁶ addresses the Rights of Workers (Articles 104 through 110).

5. OAS/Ser.L/V/II.43, doc. 13, corr. 1, cit.

6. Official edition, 1969.

Article 109 guarantees the "freedom of manual, intellectual and professional workers, and of those who are engaged in a similar activity as a means of livelihood, to form trade unions in the defense of their group aims," adding that "Such unions shall be subjected to no requirements other than those established by law for the purpose of ensuring their democratic organization and functioning and guaranteeing the rights of their members."

Article 110 stipulates the right of workers to strike, although it transfers the regulation of that right to the law "to assure that it is exercised according to democratic procedures and solely to defend trade-union interests."

Although those provisions could be considered to conform to the principles of trade union freedom recognized by the ILO Constitution and the Declaration of Principles appended thereto,⁷ closer examination suggests the following considerations:

a) The Paraguayan Constitution does not establish a guarantee for the right to collective negotiation of labor contracts. This is an important omission, particularly since it involves a right closely linked to the right to strike.

b) Article 107 gives the authorities "control" of "work contracts, minimum wages, and the application of social security and social welfare benefits." This seems to embody a restriction that exceeds the limits compatible with trade union freedom, one which might give rise to interference or action on the part of the public powers that could impair the principles of ILO Conventions 87 and 98 as well as other pertinent instruments.

c) The text of Article 110, on the right to strike, assigns the regulation thereof to the law in such ambiguous terms as "democratic procedures," or broadly restrictive ones, such as "solely to defend trade union interests." This terminology--the interpretation of which is obviously left in each instance to the authorities--could in practice become a severe constraint on this basic labor right.

d) The constitutional norms do not guarantee the right of trade unions to recognition of their legal status and protection of their freedom and independence. This is another important omission that could have pertinent practical consequences on the trade union regime. For this reason it would be preferable to have this right expressly stipulated in the Constitution.

7. Philadelphia, 1944.

e) Neither does the Paraguayan Constitution expressly guarantee the right to work without any discrimination; nor the right that trade unions may be suspended or dissolved only by due process of law, as established in Article 26 of the International American Charter of Social Guarantees, approved with the concurring vote of Paraguay. These principles coincide with those included in Article 43 (Social Standards) of the OAS Charter (a treaty that has been signed and ratified by Paraguay). This is a further omission that conveys an idea of the restrictive nature of the Paraguayan constitutional provisions in respect to labor, and the limitations thereof when compared with applicable international law.

C. THE LABOR CODE⁸

Approved by Law N° 729 of August 31, 1961, it has not been altered since then.

The Code recognizes the principles of trade union freedom and the right to unionize ("without the need for prior authorization"--Art. 281). It should nevertheless be stressed that Articles 291 through 299 are excessively stringent as to the requirements for the formation of trade unions, the administration thereof, the admission and exclusion of members, the removal of officers, and even the procedure necessary for amendment of the by-laws, all of which seems to encroach on the intrinsic freedom of the trade unions.

The Code also recognizes (Art. 303) the unions' rights to set up federations and confederations, applying the same requirements for formation and administration as for the trade unions (Art. 305).

Article 347 et seq., which address the right to strike, have markedly restrictive features that give public authorities considerable leeway in limiting the right in question, judging by the tenor of Article 350. Articles 353 and 354 are also very strict in their requirements for the declaration of strikes, which in practice are impediments to the exercise of this right with the freedom stipulated by the ILO (Convention 98), the International American Charter, and the OAS Charter.

As in the case of the Constitution, the Labor Code could be termed a legal cover that is more in the nature of a statement than an effective guarantee of the rights listed therein.

8. Law 729 of August 31, 1961, reedited.

D. STATUS OF TRADE UNION FREEDOM

A summary follows of events and situations relevant to trade union freedom in Paraguay, based on information and data made available to the Commission.

The Confederation of Workers of Paraguay (CPT) was formed in 1951 by elements of the Colorado, Federista and Communist parties. It was dissolved in 1959, and its officials were persecuted and exiled. It now operates in exile in Brazil and Argentina. The official Confederation is an instrument of the regime and of the Partido Colorado, and its officers have been imposed by the Government. The National Council of Delegates does not operate, and the leaders do not even belong to the labor area. In general, the CPT is considered comparable to the Ministry of Labor.

All of the CPT leaders were reelected in 1986. The General Secretary of the Journalists' Union (which the Government has refused to recognize) stated in ABC Color that the Confederation Paraguaya de Trabajadores is a group set up to repress any attempt on the part of the workers to defend their rights.

Paraguay has a long history of labor conflicts. After the suppression of the independent workers' confederation (in 1959), its leaders were arrested and exiled. Since then, the abovementioned Paraguayan Workers' Confederation (CPT), protected by the Government, has dominated the labor movement--despite the fact that it is considered to represent only about 2% of the trade union movement, since the Government, not the workers, elect its officers. Not one strike has been called since it was formed. As a result, the International Confederation of Free Trade Unions expelled the CPT in 1979.

On September 27, 1985, the police attacked the Workers' Assembly, arresting Sebastián Rodríguez, General Secretary of the Organization of Bus Drivers N° 21. Union leader Félix Sosa and lawyer Marcial González Safstrand were also detained.

In November 1985 the police continued their arbitrary arrests, detaining workers at Yacyretá, a hydroelectric plant on the border with Argentina. Juan C. Paez, Isabel Cáceres and Concepción Rodríguez were taken to Asunción and held at the Investigation Department without a court order for a number of days, according to information reported to the Commission.

The Confederation Paraguaya de Trabajadores is the country's only labor organization that is recognized by the Government: it is dominated by the pro-Government Partido Colorado. Very few of the trade unions that include Government opponents belong to the CPT. Observers have noted that in recent years this Confederation has never exercised the right to strike, despite indications of a shift toward independence and a more active position in the defense of the workers.

Sources have also indicated that there is no real trade union movement in Paraguay since the Confederación Paraguaya de Trabajadores (CPT), the only one to be recognized, is controlled by the Government and the Partido Colorado.

The same situation prevailed in 1981, and the CPT trade union leaders elected that year enjoyed full-fledged Government support. Meanwhile, it is noted that strikes are not permitted and that collective bargaining of labor contracts was thwarted by interference from private companies, despite (and contrary to) the guarantees set forth in the laws.

It has also been reported that no progress was made in 1982 and 1983 in regard to trade union freedom: the same restrictive conditions described for previous years continued to obtain. In 1984, however, certain developments within the Paraguayan trade union movement might cautiously be considered as an incipient show of free trade union activity, in spite of strict surveillance by Labor Ministry security forces, in which the leaders are frequently summoned for interrogation as to their activities. As mentioned earlier, in some cases they have been warned that they must change or moderate their conduct.

Despite the apparent trade union progress in 1984, a visit to Paraguay by the International Confederation of Free Trade Unions late in 1983 ended with a highly critical analysis of the situation, and the statement that the Government of Paraguay was systematically violating the rights of workers.

The International Labour Organisation (ILO) made a visit to Paraguay in June 1985 to verify the application of Convention 87 (Freedom of Association) and 98 (Right to Trade Union Organization and Free Collective Bargaining by Labor).

As a result of that visit the ILO expressed serious concern over the lack of guarantees for the rights protected by those conventions, particularly the prohibition of strikes in public sectors and dismissal without prior indemnification.

Although acceptance of that direct observation mission represented progress, it should be noted that up to that time the Government had ignored the ILO decisions. The ILO made a number of recommendations for wider and better implementation of Conventions 87 and 98.

One of the documents considered by the Commission examines the contradiction between the guarantees of trade union freedom and other labor rights provided in the Paraguayan Constitution and the Labor Code and the actual situation or rights in the country's everyday life.⁹

9. Mbarete. En guaraní, "The Arrogance of power." The higher law of Paraguay, International League of Human Rights, 1981, pp. 191 et seq.

It is said in this context that, generally speaking, there is no trade union organization in Paraguay that operates independently of the Government. Although the Confederación Paraguaya de Trabajadores (CPT) claims to be a free agency, this is highly debatable. Articles 109 and 110 of the Constitution guarantee the workers the right to strike and the right of free association for the defense of their trade objectives. At the same time, Articles 104 and 108 guarantee a wide range of social and economic rights. The present situation of trade union rights nevertheless suggests that such rights are far from being recognized in practice.

In August 1978, the CPT leaders themselves stated that it had failed to accomplish its basic aims putting the workers' interests at the service of causes other than labor and "very often contrary to the spirit and reason for existence of an institution such as the CPT, which begins and ends with the struggle for the well-being of thousands of men and women whose efforts and daily labor are strengthening the present and future of the homeland."

In the Villarrica area between 1979 and 1980, a number of repressive acts by the Government against the peasant labor organizations were reported. They were characterized by their arbitrariness and violence as a means of convincing these campesinos to leave their farms, without any basis for such eviction.

Among those arrested and killed in these incidents were well known leaders of the Ligas Agrarias (Agrarian Leagues--unions of farm workers), whose members have long been threatened and subjected to arbitrary arrest and torture. Amnesty International addressed the President of the Republic, telling him of its concern over such detentions and attack and the safety of the prisoners held by the Villarrica Infantry Division, given the record of that armed unit in previous detentions of peasants. On April 2, announced publicly that such acts were apparently designed to reactivate the Government's repressive apparatus to quell the peasants' attempts to organize themselves in leagues or trade unions.

The Commission was also informed that the trade union leader, Constantino Coronel, who was released on September 5, 1980, had been exiled. The authorities had originally accused him of common crimes.

The IACHR was also informed of the concern over the persecution of the Ligas Agrarias, an organization sponsored by the Catholic Church which had been the target of intense Government efforts to eliminate it. The efforts finally succeeded, for its directors have been jailed or compelled to leave the country, as in the case of Emilio Roa Espinosa and Antonio Maidana, who are living in exile in Buenos Aires.

In 1980 the detention of journalists, political leaders and students was accompanied by that of Ange? Eustacia Rodríguez Benítez, a bricklayer and trade union leader who was arrested on May 30 of that year on his way back from Argentina to Asunción. He was reported to have been taken to

the Investigation Department where he was held for several months and tortured before he was transferred to the Tacumbú National Penitentiary. Tried in August 1981 pursuant to Law 209, he was accused of being a communist and sentenced to three years of prison.

A number of public petitions were organized in May 1983 on behalf of more than 30 persons detained in Asunción. They included several trade union leaders employed by the Paraguayan Data Bank (BPD) and the Estudio Gráfico, a printing company. In September of that year, three of the detainees were still in the Tacumbú National Penitentiary: Roberto Antonio Villalba, Enrique Gossen Martens and Desiderio Arzamendia López. All three were accused of violating Law 209 of 1970, which, it was said, "is applied indiscriminately against any person who attempts to exercise his rights."

In April 1986, Amnesty International sent a delegation to Paraguay to investigate the alleged arbitrary detention and torture of peasants who had taken part in the land disputes and evictions. The victims were usually communal leaders who had been negotiating these issues with the Rural Welfare Institute (Instituto de Bienestar Rural--IBR). In this instance, Pedro Ayala (Chairman of the Local Committee) was detained in June 1984 and released in 1985. As a result of its visit, Amnesty asked the Government to protect the peasant communities to avoid evictions from their land.¹⁰

A report of the International Labour Organisation's Administrative Council¹¹ refers to Case N° 854, presented by the Central Latinoamericana de Trabajadores and the Confederación Mundial de Trabajadores against the Government of Paraguay.

The case involves the detention of Domingo Melchor and Santiago Rolón Centurión, brothers of the murdered trade union leader, Martino Rolón Centurión; the proceedings instituted against union member José Gil Ojeda Falkan; and allegations of torture of various union members during their detention.

The Government alleged that the detention order for Ojeda Falkan had been issued in 1976 for violation of Law 209 (of 1970) on public peace and personal freedom. No information was given, however, about the Rolón Centurión brothers or the allegations or torture of the other union members.

The report says that in its examination of the case, the ILO Committee noted "the considerable delay between the detention order (for Ojeda) and the time when he was brought before a judge to answer the charges

10. Amnesty International Report, 1986, p. 185.

11. ILO GB 213/8/13, May-June 1980, pp. 12 and 13.

against him." The Committee recommended that he be tried promptly and that the sentence be announced. There was also a recommendation that the Government report on the situation of the Rolón brothers and the alleged torture of the other union members who had been arrested.

Finally, the Committee expressed its deep concern over the fact that on several occasions the Government had offered to furnish the information necessary for examination of the case, but that it had never been received, which meant that the Committee had to pursue its study of the case without such data.

As to the detention of the Rolón brothers and Mr. Ojeda Falkan, the Committee said that "the arrest of trade union leaders, even for reasons of internal security, constituted a serious interference with the right to trade union freedom unless the detainees were given adequate legal guarantees." It asked the Government to submit as detailed as possible a report on the accusations and especially on the legal procedures to which the accused had been submitted, as well as the texts of the sentences or verdicts issued, so that the Committee could examine the case with the necessary data.

A report of the ILO Administrative Council¹² summarizes the complaint or denunciation presented by the International Confederation of Free Trade Union Organizations, jointly with the Confederation of Paraguayan Workers in Exile (CPTÉ), on the Government's attempts to block the formation of a trade union by workers at the Itaipú dam, given the suppression of all initiatives to that end, thus violating ILO Conventions 87 and 98. A complaint was also lodged about the violation of other trade union norms in such fields as hygiene, housing, hospitals, teaching, day nurseries, and mothers' training centers.

The Government's reply denied the charges. Although the committee was concerned about the events, it decided not to continue examining the case.

An ILO bulletin includes the following:¹³

The Secretary General of the Movimiento Intersindical de Trabajadores (MITP) was detained on Wednesday, March 18, for having convened and participated in a trade union meeting organized under the slogan of "trade unionism, fair wages and work for all."

12. Case N° 1027, March 1982, GB 219/6/17.

13. March 1987, Vol. I, N° 2, p. 4.

Comrade Víctor Báez was held incomunicado for 36 hours in a common cell at the Asunción Central Police Barracks. It goes on to say "Comrade Báez was released for lack of evidence and pressure of the trade union movement. ICFTU/ORIT immediately launched an international campaign, sending protest cables against the Stroessner regime and complaints to the ILO, demanding his unconditional release."

According to the chronology of events in Paraguay, this is what happened:

- a) Ardulfo Coronel, coordinador of the Movimiento Sindical Campesino del Paraguay, was arrested (without charges) in his home town of Santa Rosa, Misiones. He and his nephew Hilarión were held incomunicado until March 9.
- b) Dr. Carlos Filizzola (26), President of the Asociación Médica de Hospitales, was arrested on May 2 and held incomunicado at the Investigation Department in Asunción pursuant to Article 79 of the Constitution (state of siege). On May 31, 1986, he was transferred to the Guardia de Seguridad. On May 23, he was released, presumably because a strike was called at the Hospital de Clínicas and through the intervention of Archbishop Ismael Rolón.
- c) On October 31, 100 medical students marched to the Palace of the Congress to ask for increased salaries at the Hospital de Clínicas. The participants were violently put down, and 11 were wounded.
- d) Medical student Héctor Lacoznata, representative of the Clinical Hospital Doctors and Nurses Association, was arrested by the police and then transferred to Tacumbú prison, where he was held incomunicado and could be visited only by his mother. He has been accused of subversion pursuant to Law 209, and was paroled on December 23 by Penal Judge Soto Estigarribia.
- e) María Herminia Feliciangeli and her husband, Benjamín Ranson Livieres, a reporter of La Tarde and member of the independent journalists' trade union, were detained without a warrant by men in civilian clothes near the Hoy newspaper on October 24, 1986. Both belong to independent unions. They were taken to Investigaciones and then transferred, respectively, to Buen Pastor and Tucambú. Only the mother of one of them was allowed to visit--otherwise they were held incomunicado. A writ of habeas corpus was presented to the Supreme court of Justice. Both were accused under

Law 209. The wife was released on December 17, but her trial continues. Mr. Livieres was given conditional freedom on December 30, 1986.

In the interview, he indicated that there was no opposition from the Ministry of Labor to his return, in which the ILO also intervened.¹⁴

The following was also reported in the Daily Report:¹⁵

Several trade unions have published a press communique denouncing the arrest of Pedro Salcedo, Secretary General of the Paraguayan Cotton Company Trade Union (CAPSA), by the police on March 28, 1987. The Movimiento Intersindical (MIT) has stated that "this is a case of persecution and harassment of CAPSA union leaders because both the police and the Confederación Paraguaya de Trabajadores are using every possible means to keep CAPSA from holding a general assembly. It went to say: "It should be remembered that CAPSA was attacked last February by the CPT Secretary General, accompanied by Senator Manuel Fontos Pane."

Other sources reported that Raquel Aquino, member of the Business Workers sector and of the Employees' Trade Union (SEOC) had been subjected to mental torture, clearly for the purpose of dominating or controlling her activities, violating her fundamental human rights.

The arrest of Pedro Salcedo, mentioned earlier, was also reported, with the added news of the constant police attacks on the cotton trade union and the arrest of the TAVAPY II agrarian settlement and the Sindicato Nacional Campesino union leaders, who were also incommunicado. Joint army and police forces ousted the peasants from the TAVAPY II settlement by force, subjecting them to all sorts of mistreatment. The peasants had been refusing to leave their land.

A report on the situation on human rights in Paraguay cites the following events involving trade union freedom and the peasants' trade organizations' "struggle for their land and their lives":¹⁶

a) The prelate of Encarnación (Itapua Department, at the border with Argentina) issued a statement categorically denouncing the mass violation of the peasants' rights. He said that roughly 650 families had been the victims of arbitrary measures, kidnapping, destruction and seizure of land—which gives an idea of the oppression suffered by the country's campesino population.

14. September 3, 1986, pp. H2 and 3, Vol. VI, N° 170.

15. April 9, 1987, Vol. VI, N° 068, p. H1.

16. Office of Human Rights for Latin America, World Council of Churches, Switzerland, February 1987, pp. 8-10.

b) An article dated September 3, 1986 and entitled "Landless Peasants" includes the following statement:

A group of representatives of local and international human rights agencies, journalists, religious organizations and trade unions has confirmed that unarmed peasants have been violently evicted from their land by police and army forces. As a result, twenty peasants were seized, and their whereabouts are not known.

c) The great majority of the workers trade unions have no legal standing. They are simply considered to be de facto groups who are constantly fighting for minimal rights. "In labor circles, the most recent repression was directed toward the workers at the Clinical Hospital, particularly the nurses, whose financial straits forced them to ask for an increase, since they were being paid less than the legal minimum."

The systematic persecution of the hospital staff continued throughout 1986. In October of that year the police used truncheons on the demonstrators, leaving many wounded and others bruised. "The brutality of the police attack gave observers an example of how the right of meeting and association is respected in Paraguay."

d) Another union group being persecuted is that of the journalists. Two members of that union are under arrest now, as noted by Sendero (the Catholic Church magazine). "Detentions of this sort are part of the repressive action taken against the trade unions by the police, who once again acted without authorization from the competent authority, thus violating the basic trade union freedom that is guaranteed by the Constitution and the law."

e) Workers of the recently established trade union at Yacyretá, a hydroelectric plant on the border between Paraguay and Argentina (built with financial aid from Italy, France, the United States and Canada) were arrested only two months after setting up the union.

During the 17th session of the International Labour Organisation (ILO), held in Geneva in 1985, the Paraguayan Government requested the Committee on Conventions and Recommendations to send a 'direct contact' mission to Paraguay to observe the way in which the country was applying Conventions 87 and 98 on trade union freedom and the rights of collective bargaining and strike.¹⁷ The discussion of that petition emphasized the advisability of having the on-site mission examine the cases pending before the Committee on Trade Union Freedom as well.

17. Report submitted to the ILO Committee on Trade Union Freedom by Geraldo Von Potobsky, chief of the Mission to Paraguay (1985).

The mission took place September 23-27, 1985, with a visit (September 21) to Buenos Aires to interview the officers of the Confederation in exile.

The mission visited high Government authorities, including the Minister of Justice and Labor, Mr. Eugenio Jacquet; the Director of Labor, Mr. Carlos Doldan del Puerto; and other officials in the Ministry of Labor. It also interviewed trade union leaders from the Confederación Paraguaya de Trabajadores (CPT); Federación de Producción, Industria y Comercio (FEPRINCO); Sindicato Nacional de la Construcción (SINATRAC); Federación de Empleados de Bancos (FETRAPAN); Movimiento Intersindical de Trabajadores (MIT), and, as noted above, the Confederación de Trabajadores Paraguayos en el Exilio (CTPE).

A summary of the highlights of the report follows:¹⁸

a) It was not possible to interview the Minister of the Interior, to whom the Mission wished to submit specific allegations within his purview, i.e., i) Case 1204, before the ILO since Mayo 20, 1983, involving the arbitrary arrest of 19 members of the Sindicato de la Solidaridad (MSS) as part of a campaign of labor repression. Of that number, 13 were in prison for more than a year, charged with violating the principles of trade union freedom. As part of this case the Mission asked the Government to present its opinion on: the arrest of Stella Ufinelli, Margarita Elias, Damian Vera, Juan Carlos Oviedo, and María Herminia Feliciangeli, members of the MSS; the case of the Sindicato de Periodistas del Paraguay (SPP), which had tried for four years to secure legal status; the threats of exile to its leaders; the arrest and trial of director Alcebiades González del Valle, Aldo Zucalillo, Dr. Jorge Alvaranga and Mr. Carlos Cuevas during a trade union meeting; the arbitrary dismissal of workers at La Americana S.A. following the presentation of various petitions by the workers; the threat of dismissal of 800 workers at FRISA S.A., followed by the request for payment of back wages; and the shutdown of Radio Ñandutí for transmitting messages from the Confederation of Paraguayan Workers in Exile (CPTe); and ii) Case 1341 before the ILO, since June 1985, involving the police persecution of union leader Ricardo Esperanza Leyva, who since his return to the country after several years of exile has been constantly harassed by the authorities, preventing him from performing any union duties.

b) During the meeting with the CPTe in Buenos Aires (September 21), that Confederation stated the need for a guarantee of the safety of Mr. Julio Etcheverry Espinola, CPTe Secretary General, and asked that the ILO request this of the Government, since Etcheverry would soon be returning to the country.

18. ILO Committee on Trade Union Freedom, Report N° 241, 1985, pp. 218-236.

c) The Direct Contact Mission also addressed developments in Case N° 1275 before the ILO since 1984, involving employees of the Bank of Brazil trade union, particularly the firing of its members Rolando Duarte, Adolfo Virgili and Guillermo Cáceres. It was found in connection with this case that the new collective labor contract had reached an impasse.

d) Developments in cases Nos. 1328 and 1301, before the ILO since 1985 and 1984, respectively, were also investigated:

i) Case 1328, presented by CLAT, denouncing the constraints on trade union activities of construction workers (SINATRAC) in electing their representatives, plus another series of acts contrary to the interests of that union, such as the official refusal to recognize its by-laws.

ii) Case 1301, presented by the International Federation of Free Trade Union (ICFTU), denouncing the arbitrary arrest of union leaders Melanio Morel, Gregorio Ojeda, Pedro Zárate, Carlos Castillo and Nicasio Guzmán, members of SINATRAC, from whose posts they were removed by express order of the Labor Ministry.

e) The Contact Mission stated for the record its concern over the situation of trade union freedom in Paraguay.

E. CONCLUSIONS

Based on the foregoing data and information, the following prima facie conclusions may be drawn on the status of trade union freedom in Paraguay:

Constitutional guarantees, particularly those in articles 109 and 110, are inadequate and do not reflect the international commitments undertaken by the country. The wording is anachronistic: it should describe basic union rights more fully and precisely, without assigning the guarantees of such rights to the law when--20 years after those articles were promulgated and 28 years after the Labor Code was adopted--no legislation whatsoever has been adopted that incorporates into Paraguayan internal law the international norms the country is required to meet and respect.

In addition to the shortcomings and restrictions of the Paraguayan Constitution in the area of trade union freedom, the authorities neither respect nor implement the few guarantees stipulated by the Constitution. As a result, such guarantees may be said to represent simple declarative statements with no practical value or effective validity, retained for the deliberate purpose of serving as a "screen" or legalistic cover to conceal the disregard for union rights and the repression of both urban and rural working classes.

There is no constitutional guarantee that explicitly entitles the trade unions to recognition of their legal status.

Although Paraguay has ratified the OAS Charter, as amended by the Buenos Aires Protocol (which provides for basic trade union rights) and ILO Conventions 87 and 98, its workers cannot organize freely to defend their interests. They cannot choose their union leaders freely. They cannot meet without official interference. They are not free to affiliate with international trade union organizations. And they cannot freely and spontaneously adopt by-laws regulating their national organizations. All these factors constitute overt and repeated violation by the Paraguayan Government of its own pertinent legal instruments and relevant international commitments.

The union leaders enjoy no protection from the law for the performance of their union duties. To the contrary: many have been killed in violent circumstances, concomitant with trade union repression, while others have been arbitrarily thrown into prison and then forced into exile. In other all too frequent instances, union leaders have been subjected to threats, pressure, abuse and arbitrary detention by the Labor Ministry to force them to conform to the interests of the Government or of the Paraguayan Workers' Confederation (CPT), which has been controlled by the Government and the Partido Colorado since 1958.

The right to collective bargaining of labor contracts and the right to strike are set forth in restrictive terms, delegating the regulation thereof to the law. As with other union rights, this has meant an absence of regulation prejudicial to the workers' rights. In practice, the authorities quash strikes by violent means, as they did recently in the cases of the hospitals and the Agrarian Leagues.

The Labor Code (Law 729 of 1961) is another text that fails to reflect the country's international labor commitments. It follows the constitutional model, i.e., the formal, restrictive statement of dependence on public authority incompatible with the rights established by ILO Conventions 87 and 98, especially in regard to the right to strike (Arts. 347 through 363).

Paraguay's trade union system does not represent the interests of the country's workers, and is dominated by the public authorities. As a result of this scenario--which has existed since 1958 when the real Paraguayan Workers Confederation was dissolved by violence--the trade union movement and freedoms have been more or less constantly repressed. This is a complete violation of internal laws and international agreements, as substantiated by the ILO Direct Contact Mission's visit to Paraguay in 1985. The objectivity and professional relevancy of that Mission's report warrant full acceptance by the Commission.

CHAPTER VII

POLITICAL RIGHTS

A. GENERAL ASPECTS

The Inter-American Commission has on many occasions cited the importance of respect for political rights as a guarantee of the validity of the other human rights embodied in international instruments. The IACHR has also noted that it is the exercise of those rights that keeps social power from being monopolized by a single person or group.¹

The American Declaration of the Rights and Duties of Man, in this respect, recognizes in its Article XX that:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

The Preamble of the Charter of the Organization of American States had already established the relationship between the essential rights of man and the exercise of democracy, which is linked to continental solidarity in the following terms:

... the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.

The Commission finds it relevant to refer also to the Declaration of Santiago, Chile, adopted in 1959 by the V Consultative Meeting of Ministers of Foreign Affairs, at which the IACHR was created. The declarative portion, which lists "some of the principles and attributes of the democratic system in this hemisphere," stipulates the following:

1. See the Report on the Status of Human Rights in El Salvador (OAS/Ser.L/V/II.45, doc. 23, rev. 2, 17 November 1978, p. 126; 1980-81 Annual Report of the IACHR, p. 143; 1982-83 Annual Report of the IACHR, p. 25; and Report on the Situation of Human Rights in Chile, 1985, p. 277.

1. The principle of the rule of law should be assured by the separation of powers, and by the control of the legality of governmental acts by competent organs.

2. The governments of the American republics should be the result of free elections.

3. Perpetuation in power, or the exercise of power without a fixed term and with the manifest intent of perpetuation, is incompatible with the effective exercise of democracy.

4. The governments of the American states should maintain a system of freedom for the individual and of social justice based on respect for fundamental human rights.

5. The human rights incorporated into the legislation of the American states should be protected by effective judicial procedures.

6. The systematic use of political proscription is contrary to American democratic order.

7. Freedom of the press, radio, and television, and, in general, freedom of information and expression, are essential conditions for the existence of a democratic regime.

8. The American states, in order to strengthen democratic institutions, should cooperate among themselves within the limits of their resources and the framework of their laws so as to strengthen and develop their economic structure, and achieve just and humane living conditions for their peoples.

Later on, when the Convention on Human Rights was drafted, the link between the exercise of political rights under a democratic system of government and the effectiveness of the entire range of human rights was again acknowledged. The Preamble to the Convention thus affirms "the intention of the American states to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."

The Commission finds it useful in connection with political rights to refer to the provisions of Article 23 of the American Convention. Although not applicable to Paraguay--since it was not ratified by that country--it is considered by the Commission to contain the hemisphere's "most accepted doctrine" on human rights.

That article states that all citizens must be given the right and opportunity to participate in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected in genuine periodic elections, held through universal and equal suffrage and

by secret ballot that guarantees free expression of the will of the voters; and to have access, under general conditions of equality, to the country's public services.

Article 23 also provides that the law may regulate the exercise of the rights and opportunities mentioned in the preceding paragraph, but only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

The Organization of American States General Assembly has repeatedly recommended that "... member states which have not yet done so reestablish or improve the democratic system of government in which the exercise of power stems from the legitimate and free expression of the people's will, in accordance with the individual characteristics and circumstances of each country."²

The texts quoted above allow the Commission to situate the exercise of political rights in the larger context of the system of representative democracy. The hemisphere's legal tradition and the Commission's experience lead to the belief that the exercise of such rights implies participation by the population in the conduct of public affairs, either directly or through representatives elected in periodic and genuine elections featuring universal suffrage and secret ballot, to ensure the free expression of the electors' will. The voters must be given access, on general conditions of equality, to public functions.

Exercise of political rights is, in turn, an essential factor in the democratic system of government, which is also characterized by the presence of an institutional system of checks on the exercise of power, the existence of ample freedom of expression, association and meeting; and acceptance of a pluralism that would prevent the use of political proscription as an instrument of power.

This hemispheric vision of the exercise of political rights within the context of a democratic system of government is completed by the requisite development and promotion of economic, social and cultural rights. Without them, the exercise of political rights is severely limited and the very permanence of the democratic regime is seriously threatened.

The Commission will now present the scenario that characterizes the exercise of political rights in Paraguay, with particular emphasis on the way the country's Government has acted in this respect. First of all, we shall address the norms that are applicable in the Paraguayan legal structure.

2. Resolutions of the OAS General Assembly 510 (X-O/80); 543 (XI-O/81); 618 (XII-O/82); 666 (XIII-O/83), and 742 (XIV-O/84).

B. APPLICABLE LEGAL REGIME

The Constitution of Paraguay recognizes political rights in Article 111:

Voting is a right, a duty and a public function of the voter. It constitutes the basis of the system of representative democracy, and it is based upon the universal, free, direct, equal, and secret vote; on supervised counting of the ballots; and on the system of proportional representation. Its exercise shall be compulsory within the limits established by the law, and no one may proclaim or recommend abstention from voting.

As mentioned in Chapter I of this report, the proportional representation established in Article 111 was regulated by Law N° 886, known as the Electoral Statute. Article 8 on this subject provides the following:

Senators, Deputies and Delegates to the conventions, as well as members of the municipal and electoral boards, shall be chosen in direct general elections by means of the complete slate system and based on proportional representation, as follows: a) the representation system adopted consists of assigning two thirds of the offices to the party that has obtained the largest number of valid votes. To fill the remaining offices, the proportion shall be determined in the following manner: the total number of valid votes cast in favor of minority parties is divided by the number of posts to be filled; the result shall be the electoral quotient for the minority; this quotient shall serve as the divisor for the number of valid votes cast for each of the minority parties.

The right of Paraguayan citizens to organize political parties is recognized in Article 117, which says:

All Paraguayans who are able to vote have the right to organize themselves into political parties in order to participate, by democratic means, in the process of selecting the elective authorities and in the orientation of national policy. The law shall regulate the constitution and functioning of the political parties for the purpose of ensuring their democratic character and guaranteeing their equality before the law.

But the Constitution places limitations on the right to organize political parties by saying in Article 118 that:

The formation and operation of any political party whose purpose is to destroy the representative republic and

democratic system of government and the multiparty system shall not be permitted. The subordination of Paraguayan political parties to, or their alliance with, similar organizations of other countries is prohibited. Nor may they receive subsidies or directives from abroad.

These limitations are tightened by the regulatory law: Article 25 of the Electoral Statute provides that:

The formation or functioning of any political party supporting the communist ideology, or of any other party or association with similar purposes that openly or covertly seeks to destroy the representative and republican system of government, the multiparty system, or the political, ethical and social bases of the Paraguayan Nation shall not be permitted.

A further constraint on the functioning of political parties is derived from Article 26 of Law N° 886/81, when it states that:

The subordination or alliance of Paraguayan political parties with similar organizations of other countries is prohibited, alliance being understood to mean an agreement to develop programs and other political activities in common, and subordination to mean the participation as members of foreign or international political associations and the acceptance of directives and instructions therefrom.

Three basic factors emerge from the reading of the above transcriptions: the proportional representation relevant to conduct of the electoral processes; the proscription of certain doctrines concerning participation of certain parties in Paraguay's political life; and the prohibition of alliances between political parties with similar parties from aboard. The Commission will now address these factors.

a. Electoral processes

The subject of proportional representation as a result of implementation of the provisions of the aforementioned Electoral Statute, Law 886/81, was discussed in chapter I of this report. Under Article 8 of that Law, the party that obtains the majority of votes will be given two thirds of the seats for senators, deputies or delegates to conventions and the same proportion of the positions as members of the municipal and electoral boards. Those boards are responsible for organizing the elections, and their duties include the designation of the supervisors at the polls (Article 53 of Law 886/81). The electoral boards are chaired by a justice of the peace or a local civil court judge, who--as noted in Chapter I--are appointed by the President of the Republic for a period of five years, and may be "reelected," also by the President, for the same term. This means that the judges are directly subordinate to the President.

In the opinion of the Commission, the system instituted by the Electoral Statute seriously distorts the electoral process by giving a single party an absolute majority, not only in the legislative bodies, but also in those responsible for organizing the electoral process. Consequently this system lacks the necessary institutional controls to guarantee impartiality of the electoral acts.

As claimed by the opposition political parties, control of the entire election system by the Partido Colorado has been substantially responsible for the high percentages obtained by that party in the various elections. In the presidential elections of 1978, the Partido Colorado received 89.6% of the votes, while in 1983 the figure was 90.6%. It should be noted by way of example that the incumbent Partido Colorado received 88.2% of the votes in the 1985 municipal elections.

The lack of guarantees in the electoral results has led certain political parties and sectors to refuse to participate. Such was the case of the Partido Revolucionario Febrerista which--although officially recognized--has recommended electoral abstention until there is a system that guarantees the authenticity of the elections.

It must also be remembered that elections have been held under the current state of siege, which is lifted for 24 hours only, on the day of the elections. The many restrictions on the action of political opponents resulting from this situation have also been adduced to justify abstention from voting. Such restrictions include the arrest and harassment of political opponents and the ban on public meetings and party meetings, which are prohibited during the state of siege. Those provisions have not been applied, however, in the case of acts of the official party.

In addition to those restrictions, mass communications media are controlled directly or indirectly by party members or persons close to the President of the Republic, as discussed in Chapter V of this report. Even simple political information about the activities of opposition parties sufficed for numerous repressive measures to be taken against the ABC Color newspaper and Radio Ñandutí.

The serious limitations arising from the organization of the electoral system itself and the flawed conditions under which elections take place are accentuated when one considers the provisions that regulate the functioning of political parties, especially the practice of the Government of Paraguay, both in its relations with opposing groups and in the incentives implicit in joining and supporting the Partido Colorado. We shall now address these aspects.

b. The political parties accepted and those banned

The two traditional political parties in Paraguay have been the Partido Liberal and the Asociación Nacional Republicana, or

Partido Colorado. The latter is the one in power. Its head is General Stroessner, who was first elected President on August 14, 1954, and has been reelected continuously from then until the present.

The Partido Colorado is the organizational base that has enabled the Paraguayan Government to secure the necessary adherents to maintain its image of being chosen by popular vote. The Party, then, is the vehicle for the various incentives which the exercise of power allows it to administer. According to different sources, such incentives range from bureaucratic positions with the state to public works contracts and admissions to the university. Membership in the Partido Colorado is indispensable for promotions in the military and--according to information given to the Commission--the state withholds their dues from the salaries paid to its members as civil servants. Members of the party also control the communications media. The Party itself has daily programs that are transmitted over a nation-wide network.

A split in the Colorado Party in 1959 led to the formation of the Movimiento Popular Colorado, or MOPOCO, in opposition to the Government. MOPOCO is not recognized by the Central Electoral Board, and the Government has been particularly sedulous in persecuting its leaders, who were expelled from the country and lived in exile for periods of up to twenty-five years. In 1983 the Government authorized the return of MOPOCO leaders as well as those of other opposition groups whose political activities, as we shall see, were subjected to numerous restrictions. MOPOCO has not yet been legally recognized.

Paraguay's other traditional political party has been the Partido Liberal. It split into three factions, two of which are recognized by the Government: the Partido Liberal and the Partido Liberal Radical. These two comprise the legal opposition in Paraguay. Together, they account for the third of the senatorial and deputies' seats allocated by the existing system of proportional representation. The majority fraction of the old Partido Liberal, however, refused to play the role of formal opposition and founded the Partido Liberal Radical Auténtico, which has not yet been recognized.

The Partido Revolucionario Febrerista, although officially recognized, refuses, as noted earlier, to take part in the elections, adducing the impossibility of real election results because of the control exercised by the Colorado Party. The Febrerista group also believes that under such conditions, participation at the urns helps provide the Government with argument to support the putative existence of a formal democracy, despite the absence of true political content.

Another party that has not been recognized is the Partido Demócrata Cristiano, which in 1971 went to the Supreme Court of Justice to appeal the Electoral Board's refusal to admit its registration. In the intervening 16 years, the Supreme Court has not yet passed judgment on the appeal, and the Partido Demócrata Cristiano has still not been officially recognized.

Because of the restrictions stemming from the constitutional provisions discussed earlier, plus the severe restraints imposed by laws 294/55 and 209/70--on the Defense of Democracy and the Defense of Public Peace and Individual Freedom, respectively, addressed in Chapter I of this report--neither the Communist Party nor any political organization espousing Marxist tenets exist legally in Paraguay. As noted previously, such persons are excluded by law from holding any kind of a job, and the penalties for violations are extremely harsh.

In February 1979 a group known as the "Acuerdo Nacional" was formed jointly by the Partido Revolucionario Febrerista, the Partido Liberal Radical Auténtico, the Partido Demócrata Cristiano, and the Movimiento Popular Colorado (MOPOCO). This "national accord" constituted a first combined attempt by opposition forces "to set up a regimen that would ensure effective human rights, the commonwealth, and the freedoms and guarantees inherent in the republic-democratic system..." The objectives posited by the Acuerdo Nacional included the following:

1. Lifting of the state of siege throughout the Republic
2. Release of all political and social prisoners
3. A wide-ranging amnesty law
4. Abrogation of anti-freedom Laws 209, 294 and 323
5. Defense and promotion of human rights
6. An independent judiciary
7. Admission of the judiciary and the teaching profession to the civil service, with no requirements other than the proper qualifications, thereby nullifying the present requirement of membership in the official party
8. Dismantling of the existing repression apparatus
9. A new electoral law to prevent fraud and guarantee respect for the people's will, freely expressed at the polls
10. Statutes of the political parties, drawn up with the participation of the political organizations
11. Suppression of the government monopoly of mass communications media, allowing complete freedom of expression
12. Intransigent defense of national sovereignty
13. Implementation of the republican principle of alternativeness, abolishing indefinitely prolonged presidential reelection
14. Rejection of the antidemocratic process implanted by the regime as a means toward domestic and international legitimation of autocracy.

In April 1984, the political parties comprising the Acuerdo Nacional expanded their objectives to encompass the armed forces, economical and social factors, and international policy. That same year Minister of the Interior Sabino Montanaro made a speech entitled "Irregular Groups and Subversive Action." In it, he cited the Partido Demócrata Cristiano, the Liberal Radical Auténtico and MOPOCO--those forming the Acuerdo Nacional--as "irregular groups" whose operations were outside the law and therefore

violated the Constitution. Mr. Montanaro reiterated at that time the fact that only recognized political parties could operate legally.

As stated earlier, toward the end of 1983 the Government began to lift some of the restrictions on certain exiled opposition leaders. The permission to return to the country excluded writer Augusto Roa Bastos, Christian Democrat leader Luis Alfonso Resck, and Authentic Radical Liberal Party leader Domingo Laino. The status of the politicians who did return was evaluated in the following terms by the Commission in its 1984-1985 Annual Report:

Regarding political rights, the Commission must stress the fear and anguish of most of the political leaders who left the country. They complain of constant surveillance and acts of harassment by police officials and state that it is virtually impossible for them to move from one place to another because they are frequently detained, either without justification or for trivial reasons, to intimidate them.

Last year, the number of these arrests has increased. For example, there was the arrest January 11-12, 1985, of 14 members of the Authentic Radical Liberal Party (Bienvenido Benítez, Francisco Bigo, Pedro Sanabria, Félix Ramón Paya, Jorge Alcides Galeano, Julio César Parodi, Carlos Rubén Parodi, Leo Bigildo, Domingo Bigo, Julio Garcete, Prudencio Duarte, Blanca Torales, Juan Andrés Torales and Estela Torales) because they were attending an organization meeting of the party in San Pedro Altiges in the Department of Itapua; and more recently the arrest of Dr. Miguel Abdón Saguier, Secretary General of the Authentic Radical Liberal Party on September 8, 1985, in the interior of the country, in the locality of Aldana Cañada, while he was presiding over an organization meeting of young people of his party. While the number of these arrests of opposition political leaders, students, peasants and unionists has increased during the year, most of these persons have been held for only a few hours or at most one or two days, at the end of which they have been released or charges have been brought against them and they have been brought before the courts of Justice.

In addition, the Commission has learned that just this September there have been two new cases of banishment: leaders of the opposition Colorado Party, Drs. Alejandro Stumpfs and Enrique Riera have just been confined in the localities of Mbuyapey and Caraguatay, respectively, more than 100 kilometers from Asunción.

20 January 1985

Dr. Miguel González Casabianca, Sandino Gil Oporto, Antonio González Prieto and Dr. Enrique Riera, all of whom are members of MOPOCO, were

arrested for a few days. Dr. Riera was confined to Caragatay, about 80 km from Asunción, until February 13.

24 January 1985

Three MOPOCO members, Miguel González Casabianca, Antonio González Prieto, and Sandino Gil Oporto were again detained while at a cafe. They were jailed at the Asunción police headquarters, accused of violating a police restriction on their movements between the place of work and the residence. They were released on January 27.

3 March 1985

Eight PLRA and PRF militants were arrested as they returned to Encarnación after participating in the First Forum Southern Cone Democratic Youth, held in Posadas, Argentina on March 2-3, 1985. They were detained at the Government office in Itapua (where the state of siege is not in effect), and later transferred to Asunción. They were released on March 6.

8 April 1985

Following a PLRA meeting on April 7 attended by about 60 people at the home of Mr. Honorio Salinas, he was summoned before the police and held in the Tacumbú National Penitentiary for "allowing a secret meeting of the PLRA in his home." Mr. Salinas was freed a few days later.

10 April 1985

Partido Febrerista member Juan José Ríos was arrested and held incommunicado for transporting political party leaflets in his truck, although the Febrerista party is officially recognized by the Government. He was released on July 27 after more than three months of imprisonment.

21 April 1985

A meeting at San Pedro del Paraná was broken up by the police. A group of militant peasants from the PLRA youth sector, some of them members of the executive committee, were detained and held incommunicado at the local police station. The state of siege is not officially in effect at San Pedro del Paraná. They were presumably subjected to both physical and psychological torture and imprisoned in small dirty cells. Fourteen peasants were released on April 22 and the other two on April 25.

26 May 1985

Eusebio Basualdo, Chairman of the Itacurubi de la Cordillera PLRA Committee and Víctor Iglesias, a member of that Committee, were jailed at the mayor's office at the site of Compañía Rubio Ñu de Itacurubi de la Cordillera for having organized an assembly of the local PLRA Subcommittee.

They were transferred to the Government office at Caacupe and released on May 29. The state of siege is not officially in force in either the Itacurubi or the Caacupe area.

27 August 1985

PLR leader Julio Basualdo was detained and held incommunicado at the Police Investigation Department. He was transferred to the Tacumbú Penitentiary and accused, pursuant to Law 209 (Defense of the Public Peace and Freedom of Individuals) of "preaching hatred among Paraguayans in public" because he had reportedly given a speech openly criticizing corruption and injustice in the ruling Partido Colorado during a PLR convention. He was released on August 29, but the charges against him are still pending.

Humberto Rubín, director of the independent broadcasting station, Radio Ñandutí, and newspaperman Oscar Acosta were also accused under Law 209 of having aired the speech, but they were not detained.

6 September 1985

Enrique Riera, Vice Chairman of MOPOCO, was confined to his ranch at Caragatay, 80 km from Asunción, for the third time in 1985 by virtue of the provisions governing the stage of siege. Alejandro Stumpfs, second Vice Chairman of MOPOCO, was confined to the area of Mbuyapey, 170 km from Asunción. The orders of confinement imposed on both were set aside on October 16.

15 September 1985

Dr. Miguel Angel Casabianca, international secretary of MOPOCO, was detained when he crossed the border from Brazil at Foz de Iguazú. He was transferred to Asunción where he was held incommunicado at police headquarters. No charges were presented, and he was released on October 16, 1985.

6 December 1985

Cornelio López, Clemente Maciel and Optaciano Maciel were detained at the San Pedro police station. This town is not officially under the state of siege. The three were released on September 16.

13 December 1985

Aguedo Ocampos and Juan Ocampos were detained at the San Pedro del Paraná local police station in connection with the meeting mentioned above. They were released on December 17.

The following events that occurred in 1986 were reported to the Commission:

24 January 1986

The apartment building where the current chairman of the MOPOCO and Acuerdo National parties, Waldino Ramón Lovera, lives was surrounded by 20 policemen. At 10:30 a.m., four members of the police investigation unit entered Lovera's apartment, which is also the office of the MOPOCO political committee. They ordered Lovera to leave the office at noon, but did not produce a warrant. The police had no official papers showing the "higher orders" they said they had received. Lovera refused to leave his home. The noon deadline was extended. MOPOCO members who wanted to visit Lovera were prevented from entering the building. The 20 policemen left, ordering Lovera not to receive any MOPOCO visitors.

25 January 1986

Lovera and Emilio Reynal, Labor Secretary of MOPOCO, were injured and taken to the hospital after being beaten by the police. Another 25 MOPOCO members were also hurt in the melee when 50 uninformed policemen and 20 in plain clothes, armed with electric truncheons, broke up the plenary meeting of 50 MOPOCO delegates at the home of Julio César Vasconcellos.

26 January 1986

Aníbal Abatte Soley and Edgar Giménez, delegates of Brazil and Argentina, respectively, to the MOPOCO plenary that was canceled, were summoned by the Police Investigation Department. After being interrogated, they were freed the same day, Lovera, Antonio González and Eduardo San Martín were also summoned by the Police Investigation Department and later released. Police guards were posted in the building where Lovera lives to control the entrance. Vasconcellos was informed that MOPOCO was forbidden to hold its plenary anywhere in the country.

28 February 1986

Sindulfo Coronel, member of the Coordinating Committee of the Movimiento Campesino Paraguayo, was arrested without charges at Santa Rosa, Misiones, where he lives. His nephew, Hilarión Coronel, was detained on March 5 or 6 when he inquired about his uncle. Both were held incommunicado until their release on March 9.

5 or 6 March 1986

Justo Lugo Villalba, Chairman of the Asamblea Permanente para Campesinos sin Tierras (Permanent Assembly of Landless Peasants) at Misiones, was detained and held incommunicado until he was freed on March 9.

13 April 1986

At San José de los Arroyos, 84 km east of Asunción, 22 persons were arrested and 30 injured. Troops of the Specialized Police Task Force, the armed forces, and the people's militia from the Partido Colorado broke up a meeting of the Partido Liberal Radical Auténtico (PLRA). All were released on April 15.

Vehicles belonging to other PLRA sympathizers were stopped at km 48 of Route 2 on their way to San José. Some 500 persons left their cars at the roadblock and began to walk. The march was violently restrained by security units. PLRA leader Miguel Abdón Saguier was brutally beaten, dragged into a police van, arrested and held incommunicado at the office of a government representative of the Cordillera Department. The police attacked other marchers with clubs, ships and barbed wire. Newspapers reporters, foreign diplomats and leaders of the Liberal and Radical Parties accompanied the PLRA sympathizers and witnessed the police action.

Another 27 persons believed to be PLRA sympathizers were detained and kept at various provincial government buildings and police barracks in the interior of the country. A short time later, they were released.

25 April 1986

Quintín González Escobar, a member of the Movimiento Popular Colorado (MOPOCO) was arrested in Puerto Falcón when returning to Paraguay from Argentina. He was held incommunicado at the Asunción Investigation Department. Set free on April 30, he was again expelled to Argentina. González told reports that he was brutally tortured during his arrest.

27 April 1986

The police used rubber truncheons, jets of water and tear gas to break up a political meeting of about 1,000 persons who had gathered in front of the home of Domingo Laino, exiled director of the Partido Liberal Radical Auténtico. The police beat and arrested demonstrators and foreign journalists, even including the press attache from the West German Embassy, Mr. Armin Steuer; German television reporters Nikolaus Brender and Peder Wendt; and José Antonio Vulin and Eduardo Johnson, of Argentina. Their equipment was badly damaged. They were all taken to the Investigation Department in Asunción and released later that day.

Two Paraguayans were arrested in the same incident. José Luis Simón, a reporter for El Pueblo--a weekly publication of the Partido Febrerista Revolucionario, with social democratic leanings. Simón, who works for the Comité de Iglesias--a Church organization for human rights--remained under arrest and incommunicado at the Departamento de Investigaciones until his release on April 29.

Vidal Flores, a member of the Partido Liberal Radical--one of two opposition parties officially recognized and represented in Paraguay's Congress--remained incommunicado at the Investigation Department until April 30, when he was released.

1 May 1986

Some 2,000 persons attended a mass organized by the Movimiento Sindical Independiente at the Cristo Rey church in Asunción. The bishop, Monsignor Melando Medina officiated. As they left the church, those attending were surrounded by the police, who blocked the exits to the street. They reportedly attacked the crowd with tear gas, tank cars with colored water and sticks, and most of those present, both men and women, were allegedly beaten. Only those who managed to find refuge in the homes along the street remained uninjured. Many of the victims had to have hospital care for their injuries. Marcelino Corazón Medina, Alberto Alderete and Adriano Yegros were arrested after the mass.

2 May 1986

Dr. Carlos Filizzola (age 26), current President of the Clinical Hospital Medical Association, was arrested and held incommunicado in the Asunción Department of Investigations. On May 9 he was visited by Dr. Cattoni, dean of the National University School of Medicine. The incommunicado status was restored after the visit, by virtue of Article 70 of the Constitution, which regulates the state of siege. On May 13 he was transferred to the Guardia de Seguridad, the maximum security detention center. Filizzola's release on May 23 was apparently due to the termination of the Hospital de Clínicas strike and the intervention of the Archbishop of Asunción, Monsignor Ismael Rolón, on his behalf.

18 May 1986

More than 20 persons were injured, three of them seriously, following a mass at the Roque González de Santa Cruz church in Asunción and prayers for the release of political prisoners and an end to police and quasi-police repression. The police appeared and hit the people with sticks when leaders of the independent Movimiento de Trabajadores Interunion called for an active strike in the cause of Paraguayan democratization. The incident lasted 20 minutes. Curate Américo Ferreira managed to calm the police, who then let the workers depart in peace.

27 May 1986

The Board of the Archdiocese of Lay Persons and the National Lay Council organized a community mass "against violence, for justice and brotherhood." About 2,000 persons attended the mass celebrated by Monsignor Ismael Rolón, Archbishop of Asunción. At the end of the mass,

a group of students, politicians and leaders of religious movements were attacked by the police as they walked along Calle Independencia Nacional.

29 May 1986

During a meeting of the Partido Liberal Radical Auténtico at a private home, 48 persons were detained in the town of Yuagaron in Paraguari. Although 43 of them were released the same day, two doctors and three lawyers were transferred to the Departamento de Investigaciones in Asunción, where they remained incommunicado.

24 June 1986

Paraguayan police used force to keep Radical Liberal Party leader Domingo Laino from entering the country via the Asunción airport. It was Laino's fifth attempt to return to Paraguay following his expulsion in 1982. He was accompanied by Uruguayan deputies Roberto Asiain and Oscar López Balestra; the former United States ambassador to Paraguay, Robert White; and retired United States Admiral John Lee. Laino received multiple bruises and his arms and chest during the attack. Asiain, López and White were also struck. The equipment of ABC, NBC and CBS television correspondents traveling on the same plane with Laino was confiscated.

20 August 1986

The Public Prosecutor demanded the detention and trial of Dr. Miguel Abdón Saguier for sedition against internal security of the state for having allegedly instigated disobedience to established order. The Public Prosecutor's charges against Saguier were based on a newspaper interview supporting statements originally made by Carlos Romero Pereira, a dissident member of the Partido Colorado. Romero said that "people have a legitimate right to rebel against oppression. Nobody can deny a subjugated country the right to resort to force if necessary to overthrow tyrants." The Prosecutor recommended that Saguier be tried for violating Article 3 of law 209. No similar recommendation was made concerning Romero.

28 August 1986

Criminal Court Judge José Ramírez presented the indictment and ordered preventive detention of Dr. Miguel Abdón Saguier. In statements to the press, Saguier said that he had no intention of appearing before the court, since he considered the order of arrest to be arbitrary and a matter of political persecution. Dr. Saguier was said to be hiding from the authorities.

6 September 1986

Police searched the home of PLRA leader Dr. Miguel Abdón Saguier.

7 September 1987

Despite a government ban and the presence of police forces, the Partido Liberal Radical Auténtico held a meeting of 500 young people in the Itagua parish church, 30 km east of Asunción. Dr. Miguel Abdón Saguier, wanted on charges of "sedition," addressed the group. Security forces detained at least 15 party leaders, including its Chairman, Juan Carlos Zaldívar, Secretary of the PLRA Committee at Itagua, Rodolfo González and Martín Sanemann (members of the PLRA youth sector), César López, Eulogio López, Sergio López, Benigno López, Cándido Rodríguez, Justo Rodríguez, Maximiliano Rodríguez and Juan Dorales. They were taken first to the San Lorenzo police station and then to the central station, and released within 48 hours.

11 September 1986

Juan Carlos Galaverna, member of the Partido Colorado and organizer of the Lake Ypacarai Festival, took refuge in the Argentine Embassy in Asunción, stating that he was being hunted by the Paraguayan political police. A high official of the Embassy accompanied him to the border city of Clorinda, where he was given a 90-day visa. Galaverna told the press that he was not leaving Paraguay of his own volition, but was forced to do so.

The police allowed no one to enter or leave the home of Luis Becker, National Deputy and Chairman of the Ypacarai Local Section of the Partido Colorado.

13 September 1986

Scores of persons were detained on highway 2, which links Ypacarai and Asunción, and forced to return to Asunción. Partido Liberal Radical Auténtico leader Dr. Miguel Abdón Saguier was detained at Ypacarai in the midst of a crowd of 3,000 who cheered when he emerged after 15 days in hiding. Despite the presence of some 600 police and an order for his arrest, Saguier attended a mass and the folklore music festival before being arrested. Dr. Saguier was not released until February 11, 1987, five months later. He was accused pursuant to the provisions of Law N° 209.

27 October 1986

After stating during a demonstration that his judge was corrupt, Dr. Juan Massi was accused of violating a "disciplinary norm" and held at the police station for 10 days.

30 October 1986

Gilbert Riveros, Chairman of the Partido Liberal Radical Auténtico Committee, was arrested and held at the Carapegua government facility. After interrogation by an army colonel, he was released on November 5.

17 December 1986

Police from the Trinidad district arrested Julio Rolando Elizeche, Chairman of the Partido Colorado, Electoral District N° 1, and Juan B. Elizeche, Vice President of the Partido Colorado Doctors' Association. They were taken to police headquarters, where they were held for three hours and interrogated about the activities of the "ethical" faction of the Partido Colorado.

30 December 1986

Former Chief of Police Dr. Rubén Darío Fretes Cubillas, Chief of the Partido Colorado's San Lorenzo district was detained and held at police headquarters.

The foregoing summary conveys an idea of the insurmountable difficulties confronting political opposition in Paraguay. The legal instruments at the Government's command, together with the coercive recourse used to enforce the provisions thereof, represent serious impediments to exercise of the political rights recognized in the Paraguayan Constitution and in international human rights instruments that are applicable in Paraguay. The recital presented here produces a clear picture of social tensions that find no adequate means of political expression due to the restrictions imposed by the Government's actions.

This situation led the Paraguayan Episcopal Conference to issue a document on April 20, 1986 calling for a national dialogue, in the face of "the ongoing confrontations and growing disunion noted in sectors of the nation's society, the deterioration of public and private morality, which we have been denouncing for years... and the dangerous sensation of a fragile coexistence that is not based on love, justice and truth..." The call from the episcopate, however, merited no favorable response from the Government.

It should also be noted that the Government of Paraguay has taken some initial steps that--if continued in the same direction--could mean an improvement in the political rights situation. One that warrants mention is the lifting of the state of siege in April of this year, followed by authorization of Domingo Laino's return to the country. He is a resident of Paraguay as of the date of this report. The Commission is aware that the initial measures have yet to be consolidated and expanded: accordingly they mark a promising, albeit precarious, beginning.

For continued progress toward complete validity of human rights in Paraguay, the Commission considers that the Government must now grant the leaders of the opposition and the groups that have assumed attitudes critical to the Government all of the faculties required by the exercise of democracy. This necessarily entails recognition of the political

parties that are a part of today's political life in Paraguay. Failure to recognize them has been an instrument of discrimination that conflicts with the democratic tenor of the Paraguayan Constitution and the international human rights agreements applicable to the country. Along the same line, the proscriptions based on political dogma must be lifted, for as the Commission has already said, "disqualification of certain doctrines is acceptable only if performed within the framework of a democratic system, and the only one authorized to perform it is the electorate."

To attain that progress, it is indispensable to modify the legal instruments that have been used to restrain and ignore the exercise of political rights. The Commission feels in this connection that the restrictive provisions set forth in the Constitution and in laws 294/55 and 209/70 must be rescinded.

Finally, this process must culminate in restoration of the other rights and guarantees that constitute the essence of the republic and democratic system of government and an indissoluble part of the exercise of political rights: the right to freedom of thought, expression and opinion and renewed independence of the judiciary, accompanied by an authentic system of jurisdictional controls that preclude the concentration of state power--now feasible under the present Paraguayan Constitution--in a single group or person.

CONCLUSIONS

The factors presented in this report have led the Commission to form the following conclusions:

1. The Commission considers that excessive predominance of the executive branch over the other two branches of the government--especially the judicial--is granted in the political structure of the Paraguayan government as regulated by the current Constitution. This has meant in practice that the judiciary is deprived of the quintessential independence needed to perform its duties of protecting the rights of the citizens.
2. In the sphere of government political structure as well, the survey in this report has permitted the Commission to realize that the system of proportional representation postulated by the Constitution to fill the positions of senators and deputies, as well as those of the electoral bodies, has been gravely distorted by the regulations contained in the Electoral Statute, Law N° 886/81. Those regulations have enabled a single party--the Partido Colorado--to control the entire legislative and electoral processes, thus depriving the electorate of the requisite institutional controls to guarantee genuine and fair elections.
3. That system of concentrated authority in the executive branch and in the Government party allows the President--who is also the honorary head of the Partido Colorado, a General on active duty, and Commander in Chief of the Armed Forces--in practice to possess an array of faculties equivalent to the sum total of public powers. The constitutional amendment permitting presidential reelection has led to a veritable perpetuation in power of the current President, to the detriment of the basic tenets of the democratic and representative system of government. This is complemented by the lack of both legal and political responsibility on the part of the President for possible illegal acts committed during his mandate, thus endowing a well protected institutional supremacy with personal immunity.
4. Even the rights recognized in the Paraguayan Constitution have been seriously impaired in practice through abuse of the state of siege, which was permanently in force in Paraguay until April 1987. The state of siege has been used for clearly political objectives and as a means of sidetracking the Government's opponents and silencing any persons or groups who criticize it. The state of siege was moreover decreed without the requisite existence of any of the situations established by the Constitution for its proclamation. The Commission notes the fact that martial law has not been reinstated since last April, and hopes that it will not again be imposed.

5. In respect to the right to life, the Commission finds that during the period covered by this report, the number of violations by the Government of Paraguay has declined, and the losses of lives reported can be attributed to a lack of police control rather than a Government political objective. As to the right to physical integrity, the Commission has concluded that Paraguayan civil servants have systematically mistreated, and even tortured, both political detainees and common criminals.

6. The practices of maltreatment and torture must be definitively abolished by restoring the judicial guarantees established in the Constitution which the judiciary has declared to be inapplicable under the state of siege. The Commission finds this concept of Paraguay's judicial power to be clearly incompatible with the international system for protection of human rights, since it leaves individuals at the mercy of the officials who have deprived them of their freedom.

7. In regard to personal liberty, the Commission considers that the lack of legal recourse available to individuals, and the absence of an impartial and independent judiciary has allowed the Paraguayan Government to abuse this right. The Commission finds the situation of Captain Napoleón Ortigoza to be especially distressing. At present in prison, he has been kept incommunicado for so long that he may be said to have been subjected to inhumane treatment. The release of sergeant Escolástico Ovando, on the other hand, merits comment, although the Commission cannot fail to point out that he was deprived of freedom for seven years after serving his sentence.

8. In the opinion of the Commission, the Government of Paraguay has also seriously abused the right to personal freedom of its political opponents, whom it has systematically detained for varying periods of time, combining these measures with overt harassment to prevent the legitimate exercise of their political rights.

9. The Government's opprobrious practice in the area of personal freedom was complemented by an equally reprehensible approach to the right of residence and movement, for the authorities have expelled from the country--or sentenced to internal exile--persons who exercised their right to disagree with it. The Commission finds it positive that the Government has modified that attitude and allowed all of the exiles to return. The Commission hopes that this situation will be completed by granting the returnees all of the faculties enabling them to conduct their personal and political lives without impediment on the part of Government agents.

10. The Commission finds that, in the area of freedom of thought and expression, the Government of Paraguay must drastically and immediately amend its conduct to conform to international standards. The legal system governing mass communications media, in addition to the recourse used by the Government against them, has allowed the right to freedom of thought and expression to be seriously violated in Paraguay.

The closing of the ABC Color newspaper must be rescinded as soon as possible and Radio Ñandutí should again be allowed to broadcast. This is an area of social activity which the Commission finds it vital to protect and strengthen if a truly democratic system is to exist.

11. The Commission's study of trade union rights led to the conclusion that workers must be permitted full exercise of those rights. The Government has the obligation to accept and promote the existence of an independent trade union movement, and must discontinue its practice of controlling that movement. The harassment and repression of leaders of independent groups must also cease.

12. The Commission hopes that the initial steps taken by the Government in the area of political rights may end in radical modification of the deplorable plight that has befallen the exercise of such rights. The discussion in that chapter showed that the Government had used a combination of coercive measures--such as harassment and exile of its opponents and the absence of effective controls that guarantee genuine and fair elections--to reduce the exercise of political rights to a meaningless ritual. This has been compounded by the flouting of the liberties and guarantees that are inherent in a democratic system of government, such as freedom of expression and association.

13. The Commission shall continue to observe steps the Government has taken in lifting the state of siege and allowing all exiles to return. The Commission hopes that these measures will be complemented by others, designed to recognize opposition political parties; end the proscriptions; grant its political opponents faculties enabling them to perform their democratic role; allow broader freedom of expression; and restore the independence of the judiciary and the guarantees that safeguard individual liberty and integrity.

The Commission believes that adoption of these measures will restore the essence and meaning of democratic organization that is embodied in the Paraguayan Constitution and posited by inter-American documents as the system that offers the most effective guarantees for the protection of human rights in the hemisphere.

ANNEX

1. Letter addressed to the Chairwoman of IACHR by Paraguay's Minister of Foreign Relations.

D/M No. 143

Asunción, 2 June 1987

Madam Chairman:

I have the honor of replying to your note of March 30, in which you kindly advised me that the Commission you chair is writing the report on the status of human rights in my country, to which you add "in order that the report may reflect the situation of the country (Paraguay) as accurately and objectively as possible, the Commission is confident that the Paraguayan Government will confirm the prior authorization necessary for the proposed in loco visit to take place at a mutually convenient time in the near future, sufficiently in advance of June 22, 1987 when its next regular meeting is scheduled to begin."

The paragraph made a deep impression on me because of the careful wording of the request for confirmation: it conveys the impression that a capital question of the utmost gravity is at issue, one that could result either in grave damage to Paraguay or the need for a severe measure on the part of the Commission.

I do not doubt that the Commission's interest lies in emphasizing diligent compliance with its mandate; but since the exhortation inevitably has the connotation of negligence, delay or an oversight on the part of the other party that calls for remonstrance--in view of the short deadline specified--I find it necessary to explain certain points to clarify the situation and the position of Paraguay in this instance.

1. The Government of the Republic of Paraguay is signatory to the United Nations Charter and the Universal Declaration of Human Rights, and it has honored those commitments ever since they were assumed at the time the World Organization was founded.
2. As a member of the United Nations, the Government of Paraguay cannot disregard the express provisions of the Charter in paragraph 1 of Article 52, Chapter VIII, "Regional Agreements," which stipulate textually: "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. The word consistent, as well as the purposes and principles of the UN, are understood to refer

exclusively to matters involving the maintenance of international peace and security and susceptible to general action.

3. But the United Nations Charter anticipates other specifics, since as early as Article 1, paragraphs 3 and 4, it includes the following among the purposes of the Organization, i. e., the UN: "3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in PROMOTING AND ENCOURAGING RESPECT FOR HUMAN RIGHTS AND FOR FUNDAMENTAL FREEDOMS FOR ALL without distinction as to race, sex, language, or religion; and 4. To be a CENTRE FOR HARMONIZING the actions of nations in the attainment of these common ends."
4. Furthermore, Article 55 of the Charter includes a provision that is relevant in this connection and that is clarified by transcription of the initial paragraph and its subparagraph c): With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UNITED NATIONS SHALL PROMOTE: c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, AND THE EFFECTIVENESS OF SUCH RIGHTS AND FREEDOMS." The word universal is underscored to highlight the inherent scope of the Organization, so that the promotion it espouses is perfectly consonant with the UNIVERSAL Declaration of Human Rights and with the role as a centre for harmonizing, established in Article 1, paragraph 4 of the Charter.
5. With this understanding, and without prejudice to attributing due importance to the Organization of American States and the Inter-American Commission on Human Rights, the Government of the Republic of Paraguay has made a special effort, particularly in this area, to maintain close relations with the United Nations and with the Commission on Human Rights headquartered in Geneva. This does not interpolate any discrimination or injurious distinction, but obeys the legal regime of international fora prescribed by the passages quoted above from the United Nations Charter. So much so that the same treatment is given to communications from the United Nations Commission on Human Rights and the Inter-American Commission on Human Rights, all of which are punctiliously observed by the Government of the Republic of Paraguay. The same applies to the annual meetings of the two Commissions, which meet in Geneva and Washington, respectively. Moreover the Government has sent special representatives to the meetings held by the Subcommittee on the Prevention of Discrimination and Protection of Minorities to prepare papers and documentation for ensuing sessions when matters of special importance made it advisable to do so. On other occasions, it has been Paraguay's ambassador to the country where the Subcommittee is convened for that type of preparatory work who has attended in order to answer questions concerning pending matters concerning Paraguay.

6. Ever mindful of the regimen established in the United Nations Charter, the Government of the Republic of Paraguay reached an agreement in due course with the United Nations Commission on Human Rights in regard to a visit to Paraguay by an independent expert, who would observe in loco the situation of human rights in the country, with the date of the visit to be set by the Government of Paraguay. After it was agreed by both parties--at the 41st regular meeting of the Commission on Human Rights on March 4, 1985--that Dr. Rafael Rivas Posada would be appointed, it was decided that the visit in question would take place in June of 1986.
7. The Government of the Republic of Paraguay gave instructions for all of these arrangements with the absolute conviction that its actions were completely congruent with the United Nations juridical system and because of the universal nature of that organization, as underscored in the title of the Declaration itself and reaffirmed in Article 55, paragraph c) of the Charter: "universal respect for human rights...." Furthermore, as we have seen in the pertinent transcription, Article 52, paragraph one of the Charter does not preclude "the existence of REGIONAL arrangements or AGENCIES" subject to the provision that those arrangements be designed to "deal with such matters relating to the maintenance of international peace and security as are appropriate for regional action." All of this beyond any doubt has no relation to or connection with human rights, which are moreover specifically labeled as universal, and therefore lie within the purview of the United Nations--or, more precisely, that of the United Nations Commission on Human Rights--thereby entitling the latter to priority, if not exclusive jurisdiction.
8. Failure to accept this interpretation would entail an onerous and unnecessary duplication, and one that would be potentially dangerous, both to the prestige of the United Nations and to the legitimate interests of states and governments, since conflicting reports might result. This has been observed on more than one occasion at lower levels in the case of conclusions drawn on the basis of communications and commentaries which--although dealing with the same specific matters--give rise to different conclusions because they were examined by different fora or in different working committees.
9. The Government of Paraguay nevertheless recognizes that just as there is a Universal Declaration of Human Rights at the UN level, there is also an American Declaration of the Human Rights of Man. By the same token, there are two pacts that served as a basis for the Universal Declaration: the International Covenant on Economic and Social Rights, and the International Covenant on Civil and Political Rights, just as the basis for the American Declaration was the American Convention on Human Rights, known as the San José Convention. The Government also recognizes that all of these international instruments have entered into effect, although Paraguay has ratified only the

Universal Declaration, a contemporary of the United Nations Charter whose specific content is based on equally specific provisions of the Charter. The other instruments, which came later or were addressed in another forum, are also an offshoot of the Universal Declaration; and the American Declaration is simply a regional version thereof within the framework of the Organization of American States.

10. This manifest duality is the source of the concern expressed in paragraph 8 above, and it is especially timely in the context of the note of March 30, 1987 written "in view of the drafting of the corresponding preliminary report," and stating that "in order for that report to reflect the situation in this area (human rights) as accurately and objectively as possible, the Commission is confident that the Paraguayan Government will confirm the prior authorization necessary for the proposed in loco observation visit to take place in the near future at a mutually convenient time, sufficiently in advance of June 22, 1987 when its next regular meeting is scheduled to start." Because of the brevity of the interval between receipt of the note of March 30 and the start of the meeting period--which assumes mobilization of the participants prior to June--it hardly seems logical to speak of a mutually convenient date for the aforesaid "observation visit," which cannot be improvised or implemented without a full explanation of the concrete objectives, specifically the subjects, cases and problems and other questions of interest denounced or reported to the Commission about which the Paraguayan Government may not be apprised, or its reply may not have given complete satisfaction. The note from the Chairwoman of the Inter-American Commission on Human Rights seems rather to embody a challenge. In any event, the chief problem is the duality described above in connection with the major international instruments currently in effect concerning human rights.
11. As it happens, after protracted negotiations with the UN Commission on Human Rights in Geneva, an agreement was reached on appointment of an Independent Expert to observe the situation of human rights in Paraguay. The appointee is the illustrious Colombian jurist, Dr. Rafael Rivas Posada, who has already made an in loco observation visit to Paraguay, covering extensive areas of the country, calling on different institutions and officials, and making contact with all of the existing political parties, even those that have no legal status or consist of splinter groups from the others. He has also been in touch with social and religious movements and with independent personages and others not engaged in political activities. The mission entrusted to Dr. Rivas Posada by the UN Commission on Human Rights was not completed with the first visit; it is still in progress, and other visits to Paraguay on his part are to be expected before he completes his mandate; but his first report may be seen at the Commission's headquarters in Geneva. Besides, whatever the nature of the report, the sum total of the Government's political activities that, directly or indirectly, have succeeded in improving

and strengthening the validity of human rights in Paraguay and in seeking to consolidate the lawful state and democratic opening that has propounded pluralistic participation at the polls since 1962 within the framework of the constitutional and legal precepts which themselves are the product of pluralistic participation, such as the National Constitution of 1967 and the Electoral Statute of 1981, Law 886--all these things are public and universal knowledge. Because the expositive sequence and chronological data of events will reveal the dynamic evolution of human rights in practice, it is of the greatest interest to the Government of the Republic of Paraguay, and part of the legitimate rights of the Paraguayan State, to proffer to Dr. Rivas Posada, in his capacity as Independent Expert of the UN Commission on Human Rights, the opportunity to expand, rectify, correct or adjust his observations with the utmost freedom, and until he acquires sufficiently broad and detailed knowledge of the situation and evolution of human rights in Paraguay, in the light of its institutions, its laws and the development of its authorities, as well as that of its political, economical and social, cultural and religious organizations, which would enable him to draw conclusions that also include an examination of the situation, using the approaches imperatively stated in Article 30 of the Universal Declaration of Human Rights and in Articles XVIII and XXXIII of the American Declaration of the Rights and Duties of Man.

12. For all those reasons, and because it is not a question of hiding anything but of achieving practical progress in this area--which is not directly relevant to the maintenance of international peace and security, nor does it exclude "regional action" pursuant to Article 52 of the United Nations Charter--it must be considered in the light of the resolutions adopted by the UN Commission on Human Rights, the in loco observation visit of the Independent Expert appointed thereby, his first report presented in Geneva, and the foreseeable steps for the accomplishment of his mission, in a matter that although possibly in the nature of "regional action" cannot involve parallel action, nor give rise to the possibility of conflicting opinions; for this would affect the credibility and prestige of international fora and would impair the most legitimate interests of the Republic of Paraguay and the protection of its own image in international thinking. This is one more reason that excludes the flexible and open possibility of "a mutually convenient date in the near future" for the "in loco observation visit" within so short a period as the one between the Note and the date when the next regular meeting of the Inter-American Commission on Human Rights starts. Accordingly, this is not a question of an arbitrary refusal nor an obstruction, but of considerations that when duly shared by the Commission will permit greater success and efficacy in handling a matter of common interest, in which there is no room for pressure or haste--particularly in view of the satisfactory treatment it is being given in the World Forum, which observes the rules from which those of regional application are derived. And by doing so as an organ of the UN, it performs, on

behalf of that organization, the role of "serving as a CENTER THAT HARMONIZES the efforts of the nations to achieve those common objectives," as stated in Article 1, paragraph 4 of the World Organization's Charter, quoted previously.

Please accept the renewed assurances of my highest consideration.

Carlos Augusto Saldivar
Minister of Foreign Affairs

2. IACHR reply to the communication from the Government of Paraguay.

July 1, 1987

Excellency:

I have the honor of replying to Your Excellency's note of June 2, 1987 (D/M N° 143), in which the Government of Paraguay announces its decision not to set a date for the Commission to visit that country. The two reasons cited for this decision are: the close relationship Paraguay currently maintains with the United Nations Commission on Human Rights; and the brevity of the period granted by the Commission for establishment of a mutually convenient date.

In regard to the first reason, the Government of Paraguay states that it "has made a special effort ... to maintain close relations with the United Nations and with the Commission on Human Rights headquartered in Geneva" on the premise that in so doing it "obeys the legal regime of international fora" (page 4, paragraph 5 of the note). The note to which I am replying here further states that, pursuant to the regulations of the United Nations, Paraguay reached an agreement with that agency's Commission for an "independent expert" to visit the country, and that the visit in question took place in June of 1986.

The Government of Paraguay justifies its decision by saying that human rights are described in the United Nations Charter as universal and therefore fall within the purview of that organization, "or, more precisely, that of the United Nations Commission on Human Rights--thereby entitling the latter to priority, if not exclusive jurisdiction" (pages 5 and 6 of the note). It is the Government's opinion that not to acknowledge such priority would constitute "an onerous and unnecessary duplication, one that would be potentially dangerous, both to the prestige of the United Nations and to the legitimate interests of states and governments, since conflicting reports might result... which, even though dealing with the same specific matters, give rise to different conclusions because they were examined in different fora..."

Accordingly, insofar as setting a date for the visit to take place is concerned, "the chief problem is specifically (sic) the duality described above in connection with the major international instruments currently in effect concerning human rights."

Although the extensive arguments adduced by the Government warrant numerous comments of a doctrinary nature, the Commission will confine its comments to the issues that have a direct effect on the activities performed by the IACHR on behalf of OAS member countries.

The Commission is impelled to point out an essential flaw in the arguments adduced by the Paraguayan Government, and that is the Government's belief that the Inter-American Commission cannot, should not, or will not issue an opinion on the situation of human rights in Paraguay so long as one of the United Nations agencies is addressing this issue.

Such an argument is counter to the regional and universal standards concerning human rights, according to which such incompatibility could obtain solely in respect to individual cases--an even then, only in cases involving states that have recognized the authority of the United Nations Committee under circumstances described in the Civil and Political Rights Covenant. Obviously, this is not the case of Paraguay.

The consideration of general situations that call for special reports, such as the one which the Commission is preparing on Paraguay, is a mandate emanating from the OAS Charter and the Commission's statutes. Accordingly, the Commission is not only entitled to express an opinion on this subject: it is obliged to do so. And the Commission has been complying with that obligation in respect to Paraguay for a long time, as Your Excellency is aware.

The Government of Paraguay has never contended the existence of incompatibility or priority in connection with pronouncements by United Nations bodies. Furthermore, this situation has already been resolved. So much so that the Commission has prepared special reports on a number of member states at the same time when a special rapporteur from the United Nations has been working on the same country. The Commission will therefore continue to express opinions about the status of human rights in Paraguay regardless of whether the same matter is being addressed by a United Nations organ so long as the provisions of the Charter remain in force.

The situation described cannot have escaped the attention of Your Excellency. It is surprising, then, that the Government refuses to set a date, adducing the putative "duality" of procedures. It is even more surprising to have that argument invoked in the name of the "responsible nature," "credibility and prestige of international fora." The lack of a basis for the premises presented by the Government of Paraguay compels the Commission to believe that this new refusal is not predicated on reasons, but is simply one more pretext to prevent the Commission from performing its duty.

Pursuant to its obligations under the OAS Charter and in order to have additional criteria as a basis for carrying out its mandate, the Inter-American Commission has repeatedly asked the Government of Paraguay to stipulate a date for an on-site visit to observe the situation of human rights in that country. As Your Excellency undoubtedly knows, next September 12 will mark the tenth year since the Government of Paraguay first made the commitment with the Inter-American Commission to determine a date for that visit. Since that time, the General Assembly and the Commission have repeatedly requested that the Paraguayan Government set the date. In addition to the Commission's specific notes for this purpose, its annual report to the Assembly has described that situation year after year.

Your Excellency's Government is familiar with all these details. The situation is, moreover, public knowledge throughout the hemisphere. That is why it is so difficult to understand why the Government of Paraguay claims at this stage, in three different places in its note (pages 2, 7 and 10) that the deadline given by the Commission for agreement on a mutually accepted date does not allow enough time to prepare for the visit.

The Commission attributes particular importance to the interest evinced by the Government of Paraguay in defending the "responsible nature of international fora." The Inter-American Commission has made unswerving efforts to ensure that its pronouncements are as responsible, objective and impartial as required by the delicate task of promoting and protecting human rights. In its twenty-eight years of endeavors, the Inter-American Commission has confirmed its belief that one of the most important factors that guarantee responsible, objective and impartial pronouncements on its part is loyal and honest cooperation from the governments.

To argue that the delay is too short after ten years of continuous requests is not relevant in the opinion of the Commission. To adduce the preeminence of the universal forum over the regional one in the matter of human rights contravenes the norms of the United Nations, the Organization of American states, and the consistent practice of the human rights agencies of both organizations.

Accept, Excellency, the assurances of my highest consideration.

Gilda M.C.C. de Russomano
Chairman

His Excellency
Carlos August Saldivar
Minister of Foreign Affairs
Asunción, Paraguay

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