

Security in Paraguay:

Analysis and Responses in Comparative Perspective

James L. Cavallaro
Jacob Kopas
Yukyan Lam
Timothy Mayhle
Soledad Villagra de Biedermann

**International Human Rights Clinic
Human Rights Program
Harvard Law School**

*Published with the support of the
Universidad Columbia del Paraguay
Asunción, Paraguay*

April 2008

Cambridge, Massachusetts, United States and Asunción, Paraguay

Authors

James L. Cavallaro (editor)
Jacob Kopas
Yukyan Lam
Timothy Mayhle
Soledad Villagra de Biedermann (editor)

Copy Editor

Spring Miller

Primary Researchers

James L. Cavallaro (coordinator)
Jane Hopwood-Reidel
Jacqueline Kinghan
Jacob Kopas
Yukyan Lam
Stephen McGuinness
Lourdes Peroni
Ron Snipeliski
Soledad Villagra de Biedermann (coordinator in Paraguay)

Assistant Researchers and Technical Editors

Stephen Darrow
Alexia De Vincentis
Sonia Marquez
Matthew Wells
José Klein
Roberto Giacomán
Rachel Murphy

Copyright © 2008 International Human Rights Clinic

ISBN: 0-9796395-0-6

International Human Rights Clinic
Human Rights Program, Harvard Law School
1563 Massachusetts Avenue
Pound Hall 401
Cambridge, MA 02138

617-495-9362
hrp@law.harvard.edu
<http://www.law.harvard.edu/programs/hrp>

TABLE OF CONTENTS

ACRONYMS AND TERMINOLOGY.....	ii
PREFACE TO THE APRIL 2008 HARVARD UNIVERSITY PRESS EDITION.....	iv
PREFACE TO THE SPANISH EDITION IN PARAGUAY.....	v
EXECUTIVE SUMMARY AND RECOMMENDATIONS	viii
ACKNOWLEDGEMENTS	xvi
1 INTRODUCTION	1
1.1 METHODOLOGY.....	1
1.2 REPORT OBJECTIVES.....	2
2 THE CURRENT CONTEXT IN HISTORICAL PERSPECTIVE	5
2.1 INTRODUCTION	5
2.2 BACKGROUND AND RECENT HISTORY	6
2.3 PERCEPTION OF RISING CRIME	16
2.4 PUBLIC REACTION AND BACKLASH AGAINST THE REFORMS	17
2.5 RECENT PUBLIC SECURITY INITIATIVES	28
2.6 THE PRISON SITUATION	36
3 CRITICAL EVALUATION OF CITIZEN SECURITY IN PARAGUAY.....	49
3.1 PERCEIVED INSECURITY VS. ACTUAL INSECURITY	50
3.2 EXPLOITATION OF FEAR.....	67
3.3 BLAMING THE REFORM OF THE CRIMINAL JUSTICE SYSTEM.....	86
3.4 ADVANCES OF THE REFORM.....	89
3.5 POOR IMPLEMENTATION OF THE REFORMS AND CONTINUING INSTITUTIONAL DEFICIENCIES	94
3.6 SOCIO-ECONOMIC FACTORS CONTRIBUTING TO RISING CRIME.....	105
4 EFFECTIVE AND INEFFECTIVE POLICIES: LESSONS FROM ABROAD	119
4.1 POLICING PRACTICES.....	120
4.2 LEGAL AND OTHER STRUCTURAL MEASURES.....	147
4.3 APPROACHES THAT ADDRESS THE PROXIMATE CAUSES OF CRIME	167
5 CONCLUSION AND RECOMMENDATIONS	177
5.1 RECOMMENDATIONS.....	179

Acronyms and Terminology

<i>Acordada</i>	Decree of the Supreme Court
<i>Caballos</i>	Literally, “crazy horses”; referring to groups of assailants that
<i>Locos</i>	run quickly through crowded areas seizing valuables
<i>Calabozo</i>	Small punishment cell
CELS	<i>Centro de Estudios Legales y Sociales</i> (Center for Legal and Social Studies), an Argentine human rights organization
CODEHUPY	<i>Coordinadora de Derechos Humanos del Paraguay</i> (Office for Human Rights in Paraguay)
DESEPAZ	<i>Programa Desarrollo Seguridad y Paz</i> (Program for Development, Security and Peace), a crime prevention initiative in Cali, Colombia
DGEEyC	<i>Dirección General de Estadística, Encuestas, y Censos</i> (General Direction of Statistics, Surveys, and Census)
ECLAC	Economic Commission for Latin America and the Caribbean
<i>Favelas</i>	Impoverished communities in and around Rio de Janeiro, Brazil.
FLACSO	<i>Facultad Latinoamericana de Ciencias Sociales</i> (Latin American Faculty of Social Sciences)
GAJOP	<i>Gabinete de Assessoria Jurídica às Organizações Populares</i> (Office of Legal Assistance for Popular Organizations), an organization in Brazil
GDP	Gross Domestic Product
Gini	Measurement of inequality in the distribution of resources; 0.0
Coefficient	is equivalent to absolute equality; 1.0 represents absolute inequality
IHRC	International Human Rights Clinic of Harvard Law School
IMF	International Monetary Fund
INECIP	The <i>Instituto de Estudios Comparados en Ciencias Penales y Sociales</i> (Institute of Comparative Studies in Criminal and Social Sciences)
JSCA	Justice Studies Center of the Americas
<i>Mano Dura</i>	“Tough on crime” approach
OAS	Organization of American States
PAHO	Pan-American Health Organization
<i>Peajeros</i>	Literally, “toll takers”; those who illegally extort payments for safe passage through neighborhoods

<i>Plan Paraguay</i>	Secure Paraguay Plan
<i>Seguro</i>	
PROVITA	<i>Programa de Apoio e Proteção a Testemunhas, Vítimas e Familiares de Vítimas da Violência</i> (Program of Support and Protection for Witnesses, Victims and Relatives of the Victims of Violence), a witness protection program in Brazil
PUE	<i>Policía Urbana Especializada</i> (Specialized Urban Police)
<i>Stronismo</i>	Referring to the Stroessner dictatorship
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
WOLA	Washington Office on Latin America

Preface to the April 2008 Harvard University Press Edition

This book is the first in a series of publications written and edited by the faculty, staff, and students of the Human Rights Program at Harvard Law School and distributed by Harvard University Press. This publication is the result of the work of the International Human Rights Clinic, a division of the Human Rights Program, which focuses on training future human rights practitioners through critical reflection on and engagement in the promotion and defense of human rights. This book is the first publication both in the Human Rights Program series in general, and in the Practice Series in particular.

The text is the result of two years of research and consultation which has included the publishing of prior versions in English and Spanish. In May 2007, the International Human Rights Clinic printed a limited number of copies of our working version of this book for comment and critique in Paraguay. Over the next several months, we incorporated comments and updated the text. In November 2007, we released a Spanish language version, substantially similar to this text, in Paraguay. At the time of that release, we had occasion to meet individually with each of the five major candidates for the presidency of Paraguay. Each of the candidates received the book and discussed its conclusions and recommendations with our researchers.

The version we now release is meant to replace the prior, limited editions that have preceded it. We very much hope that this book and the ambitious series that it launches contribute to the vital contemporary debates on human rights theory and, in this case, practice.

James L. Cavallaro, Clinical Professor of Law
Executive Director, Human Rights Program
Harvard Law School, Cambridge, Massachusetts, March 2008.

Preface to the Spanish Edition in Paraguay

(Translated from the original Spanish)

“How are we seen from the outside?” This is the question that we always ask of those who visit us here in Paraguay. We pose the question with curiosity and hidden vanity, hoping for a positive reply that praises our national values. Or hoping, at least, for an honest (though not indifferent) response, demonstrating that we have achieved some kind of perverse record of failure.

Paraguay has not been specially selected by the International Human Rights Clinic at Harvard Law School for scrutiny due to unusually high rates of crime or insecurity. Nor has it been chosen to prove, in an odd demonstration of pride, that we are the worst in something, if for no other reason than to escape anonymity. This report does not portray Paraguay as the most secure nor the most insecure country in South America. Instead, it presents the reality of a small country, whose entire population is roughly equal to that of a major city in one of its neighboring countries. The problems examined in this report are common to the region, and are neither more nor less serious in Paraguay than in other areas of Latin America. The widespread, seemingly mundane nature of these issues, however, should not lead us to ignore them.

Prior to embarking on its investigation and research for this project, the International Human Rights Clinic at Harvard Law School, which works on a range of projects throughout Latin America and the world, consulted with me to identify important human rights issues in the country. The issue of citizen security came to mind immediately, given its implications for our society, and especially in light of the perception that insecurity is one of the worst, if not the worst, problem that we face today.

The local participation of the Universidad Columbia del Paraguay in this joint publication is also highly significant, as it highlights that institution’s longstanding dedication to the cause of human rights. The partnership of the Universidad Columbia underscores the duty of Paraguayan universities more generally to participate in national debates on public policy, a duty that must not be delayed.

Within the national debate on public security, fighting crime has frequently been seen as clashing with protecting human rights, as though guaranteeing fundamental rights in general only benefited criminals. This is a false conflict, however, as preserving fundamental human rights for all defends the right to security of everyone, including victims, who can be protected only if the rule of law truly exists.

The defenselessness that victims of crime experience, the generalized sense of impunity before a frequently absent state, and especially the inaccessibility of justice for people of limited means, create a sense of impotence in addressing criminality. In this context, many crimes either go unreported or are reported to no avail. For many Paraguayans, the lack of effective judicial protection is merely one more fundamental right to which they are denied access.

The right to security is a fundamental human right in itself. It is guaranteed by the constitutions of numerous countries and by the international human rights treaties these countries have ratified, Paraguay included. Understood in this way, people should be able to enjoy the right to security. However, this right can be elusive, or perceived as such. If we lose faith that the streets belong to the people, we lose our public spaces, as well.

When we say that the perception of insecurity is in conflict with reality, it might appear as though we were giving free reign to authorities to disregard the problem. This is not the intention of this report, which instead seeks to understand the real, not perceived, causes of insecurity to address more thoroughly security concerns in Paraguay. This report examines both the underlying causes, as well as the external manifestations of insecurity. These include, among others, the difficulty of maintaining consistent public policies in light of the tendency to overhaul security policy with every change in government. Each newly elected administration has proceeded as if it had just emerged from a revolution, rather than from an orderly change of people from the same political party, and sometimes even from the same administration. Without formulating a sustainable plan of action and without taking previous successes into account, the new government starts from scratch. In this way, the state remains dangerously distant from the concerns and problems of the people and fails to support public institutions.

Within this context, this report examines the long-term legislative changes in Paraguay, such as the reforms to the Criminal Code and the Criminal Procedure Code. To be successful, these reforms require building strong institutions and a commitment to follow through with implementing legislation that guarantees the respect for human rights—difficult tasks indeed. As a further complication, this process of reform takes place in a hostile environment in which the preferred means of fighting crime has been to implement hasty and flashy policies, which ultimately serve only to impede the reforms.

In addition, this report addresses the role of the media in presenting the phenomenon of insecurity. By interviewing members of the press themselves, the report takes a new approach, asking these individuals to analyze, in their own voices, the power they wield, their credibility, and their relationship to other institutions.

Finally, a disclaimer: every investigation, including the present one, necessarily presents only a segment of reality. This report takes a snapshot in time over the period of our research, which we initiated in October 2005 and completed in October 2007. In addition, the research is limited in scope, examining solely the problem of *urban* insecurity, primarily in Asunción. Due to these limitations, several significant events regarding insecurity in Paraguay may not be covered in this report, including several cases of kidnapping this year. However, these events are neither determinative nor do they alter the overall conclusions of this report.

This report analyzes the issues of security from an historical perspective, to fight against collective amnesia, and against all that might make us forget that the previous era was worse. Let us imagine, then, that the worst has past and the best is yet to come. Let us not falter because of our perceptions, and instead let us look at ourselves as we really are to regain hope and self-confidence and to continue the progress that we have already made.

Soledad Villagra de Biedermann
United Nations Independent Human Rights Expert
Asunción, November 2007.

Executive Summary and Recommendations

The eighteen years since the fall of Stroessner in Paraguay have been marked by an increasing sense of public insecurity, fueled by media reports of high profile crimes and political exploitation of the issue of violent crime. This rising insecurity has generated a sense among many that newly implemented criminal reforms, and the procedural guarantees they contain, are the cause of increasing crime. This study contends that this conventional wisdom attributing growing insecurity to these reforms is flawed for several reasons. First, crime levels in urban Paraguay, though high, are comparable to, or lower than those throughout the region, suggesting that the perception of insecurity may be exaggerated. Second, the reforms themselves are hardly responsible for increased crime. Available data demonstrate that the efficiency of the criminal justice system has actually *increased* since the restructuring of the criminal codes, even though the reforms have not yet been fully implemented. Furthermore, a series of other factors—including economic stagnation, demographic changes, and the increased use of Paraguay as a transit point for international contraband trafficking—are more probable explanations for increased crime. If Paraguay is to respond to the pervasive sense of citizen insecurity, it must confront and address the range of causes of rising crime, as well as inefficiency in the criminal justice system. This study—based on research in Paraguay and comparative analysis of experiences throughout Latin America and beyond—seeks to examine citizen insecurity and state responses in the country from a comprehensive and nuanced perspective. While the recommendations we provide in this report are by no means exhaustive, we hope that the report will support practitioners, scholars and commentators in their efforts to chart the way forward to building security and strengthening the rule of law in Paraguay. We further hope that the study will provide guidance for thinking about security policy in other contexts as well.

A Legacy of Insecurity

Decades of authoritarian rule and a troubled transition to democracy made it difficult for Paraguay to establish an effective and efficient criminal justice system.

Police, who previously simply carried out executive orders, seldom had to conduct technical, criminal investigations. Overcrowded prisons, long used as holding pens with few detainees ever receiving a trial, created volatile environments and led to high recidivism. Lingering corruption and nepotism plagued institutions throughout the criminal justice system.

The new Criminal Code and Criminal Procedure Code, passed in 1997 and 1998 respectively, represent a significant step toward developing a modern and efficient criminal justice system. The reforms sought to replace the former inquisitorial system with an accusatorial one, promising public and oral hearings, rights guarantees, a speedy trial, and procedural efficiency. However, problems with coordination, institutional resistance to change, and the increasing public perception of insecurity following the transition to democracy have caused a decline in public support for these reforms.

Calls for a return to harsher, more authoritarian practices and policies on crime have since dominated public debate. These counter-reforms, which include reducing the availability of alternative measures to incarceration and increasing prison sentences for certain crimes, have generally been hastily formulated responses to events, magnified by sensationalist media, that have captured public attention. In recent years, criminal justice policy decisions have not been made in a unified or methodical way. Government officials instead have implemented policies without analyzing trends in criminality, quickly pulling support for existing programs in favor of making visible changes that they believe the public will notice. Indeed, our examination of the data available has shown that official governmental statistics are unreliable and alternative sources of information are scarce. In this atmosphere, promising innovations such as the 911 emergency system lose funding to more questionable policies such as the new *Policía Urbana Especializada* (PUE) (Specialized Urban Police).

Meanwhile, other troubling issues, such as the overburdened penitentiary system, lingering institutional corruption, and a disturbing, unrestrained trend toward security privatization, remain largely outside of the government's agenda.

Perception and Reality

The overwhelming majority of Paraguayans believe that crime is increasing rapidly. In a 2003 Latinobarómetro survey, 89% of respondents felt that Paraguay was growing more unsafe each day. However, accurate data regarding actual crime rates are rarely available. Police data are unreliable and most criminal justice institutions lack systematic methods of gathering or analyzing statistics. The most trustworthy statistics are likely homicide reporting rates. Although homicide rates have risen slightly over the past decade, they remain well below the average in Latin America. Crime victimization surveys, another relatively reliable indicator, have likewise shown an increase in criminality levels that still fall below regional trends.

This discrepancy between the perception of insecurity and the reality is likely the result of the central role played by crime, as well as the exploitation of public fears by the media and politicians. The United Nations Development Program has identified seven distinct areas in which citizens perceive insecurity. Despite this, lack of security related to crime has tended to be viewed as the principal and even lone cause of citizen insecurity. Sensationalist reporting in the media, focusing on violent, bloody crimes, has fostered this view, distorting public perception of violence and security. Many politicians have taken advantage of this heightened fear to garner political support by advocating tough-on-crime policies. This, in turn, has further distorted public perception, and has led to ineffective policymaking and continued erosion of support for the procedural guarantees embodied in the new penal codes.

Attacks and criticisms of the new reforms in public debate have been largely misplaced. Although the overhaul of the criminal justice system has been incomplete, many critics assert that the new rights and procedural guarantees of the new codes favor criminals' rights over the rights of other citizens. This argument overlooks the important benefits that the reforms have already yielded, including an increase in judicial efficiency and a reduction in pretrial detention rates. These rates consistently exceeded 90% of the prison population before the implementation of reforms. Unfortunately, despite these advances, lingering problems with corruption, political favoritism, and lack of proper

implementation—all ignored by those seeking hard-line reforms—continue to impede the effectiveness of the reforms.

Our research indicates that, rather than the rights guaranteed by the new reforms, socioeconomic factors such as increasing inequality, the growing population, rural to urban migration trends, and the presence of international criminal syndicates all may have contributed to rising crime rates. This analysis suggests that, to be effective, criminal justice policy should incorporate a broader understanding of the causes of criminality.

Comparative Perspectives

The experiences of other Latin American transitional democracies suggest that certain policing practices that the Paraguayan government may be considering implementing are actually ineffective. For example, initiatives such as simply hiring more police officers, promoting the excessive use of force, or relying on private security forces have not produced the intended effect of lowering crime rates. Even worse, these measures may actually *increase* insecurity.

Legal and other structural policies currently in place are also misdirected, as they are based on misperceptions about the efficacy of incarceration. Case studies of other countries demonstrate that the use of increased prison sentences and pretrial detention to keep perceived criminals off the streets has little effect on crime rates. At the same time, these strategies impose significant costs on already overburdened criminal justice systems.

Other measures have produced positive results in socio-economic contexts similar to that of Paraguay. Policing practices that encourage cooperation with the community, deploy law enforcement personnel in a careful, targeted manner, establish organizational mechanisms to address police corruption and abuse, and promote coordination with prosecutors and other criminal justice institutions all have shown potential for reducing crime.

Effective policing practices are necessary but alone are not sufficient for achieving citizen security. Employing alternative sanctions to imprisonment, in fact, has greater potential for decreasing crime by reducing overcrowding in prisons, making them less volatile environments, and also less likely to foster recidivism. Rehabilitation and reintegration programs can reduce recidivism by

helping individuals to transition into productive, non-criminal lifestyles. Improving judicial efficiency by reducing corruption and developing witness protection programs has also yielded positive results in other countries. These broader institutional reforms are essential, as effective policymaking requires appreciation of the ways in which distinct criminal justice institutions—including the judiciary, Public Ministry and police—can coordinate their approaches to reducing crime.

Finally, criminal justice policy is likely to be more effective if it addresses the proximate causes of crime: the conditions and environments in which criminality thrives and proliferates. Such policies might include targeted programs for at risk youth, improved control of firearms, and secondary prevention measures such as improving street lighting and establishing neighborhood watch programs.

The nature of the current discourse regarding criminality in Paraguay has not facilitated dialogue about effective and viable solutions to existing problems. Rather than objective, empirical analysis of data, policy has been built on distorted and easily manipulated fears of insecurity. This situation must change if Paraguay is to develop an efficient and effective modern criminal justice system.

Recommendations

To the government of Paraguay in general:

- Develop reliable statistic-gathering methods within the National Police, the Public Ministry, the Penitentiary System and the Judiciary;
- Coordinate statistical analysis between and among the various institutions of the criminal justice system to understand how policies in different institutions “align” to affect crime rates;
- Supplement crime reporting data gathered by the National Police with annual crime victimization surveys;
- Ensure full access to data on criminality in an open and transparent manner to facilitate their analysis by nongovernmental institutions and research groups;
- Pursue criminal justice policies based on analysis of actual levels of criminality and the ways that different institutions of the criminal justice system interact to affect crime rates;

- Analyze how different socio-economic factors influence crime rates and address these broader issues in conjunction with criminal justice policy;
- Continue to support the criminal justice reforms and seek their full implementation;
- Develop and fund programs that ensure the effective use of alternative measures to imprisonment;
- Ensure adequate oversight of private policing activity.

For policy regarding the National Police:

- Improve coordination between the National Police and the Public Ministry, including developing joint training programs and clarifying the scope of their responsibilities to avoid confusion and conflicts;
- Create incentives that promote cooperation with human rights prosecutors in investigating police corruption and abuse;
- Provide greater support for the 911 emergency system, which has made important advances in improving the way the police interact with the community;
- Require reasonable working hours and ensure adequate compensation to reduce corruption incentives;
- Implement more effective sanctions for police abuse and corruption;
- Create controls in the recruitment process to ensure that selection of new officers is not based on personal or political connections;
- Address the underlying causes of criminality rather than pursuing policies that focus on removing criminals from the streets;
- Require that police gather detailed data on arrestees, including age, background, and prior convictions, among other characteristics;
- Consider implementing community policing programs that involve cooperation and coordination among the police and various sectors of society.
- Establish within the National Police respect for officers' professionalism and specialized functions, including development of appropriate training modules.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

For policy regarding the Public Ministry:

- Modify the recruitment process for new prosecutors to ensure that these professionals are selected based on merit;
- Create incentives for prosecutors to stay within the Public Ministry by establishing opportunities for career advancement and professional development.

For policy regarding the penitentiary system:

- Address overcrowding in detention centers by promoting the use of alternative sanctions to imprisonment and by restructuring existing centers;
- Focus attention on the rehabilitation and reintegration of former prisoners into society;
- Seek alternatives to incarceration when possible that allow convicted persons to reincorporate themselves into society;
- Improve quality and detail of data collected in detention centers.

To the NGO community:

- Support data-gathering and conduct independent analysis of trends in criminality;
- Develop policing policy jointly with the government and work closely with the National Police to ensure effective implementation of the reforms and training of officers;
- Promote projects that support at risk youth and provide effective alternatives to crime and violence.

To the media:

- Provide a more balanced and accurate portrayal of the occurrence of violent crimes in Paraguay and resist the temptation to boost readership or advertising revenue quickly with exaggerated, sensationalist news coverage.

To the international and donor community:

- Encourage criminal justice initiatives that strengthen the reform process and enhance the rule of law;
- Support programs that enable Paraguayan authorities to gather, maintain and distribute data on all aspects of the criminal justice system;
- Sponsor projects that professionalize the police and prison system, emphasizing accountability and commitment to the rule of law.

Acknowledgements

This report is based on more than twenty four months of research, including four periods of on-site investigation and meetings in Paraguay and a fifth trip to release the report in November 2007. Students enrolled in the International Human Rights Clinic (IHRC) of the Human Rights Program at Harvard Law School researched and drafted this report under the direction of Clinical Professor and Human Rights Program Executive Director James L. Cavallaro and independent human rights expert and Universidad Columbia Professor Soledad Villagra de Biedermann. Jacob Kopas, Yukyan Lam, and Timothy Mayhle wrote the initial text in conjunction with Cavallaro and Villagra de Biedermann and developed and incorporated modifications throughout the editing process.

Recognition is owed to many individuals in Paraguay who provided valuable assistance in this investigation. Author Soledad Villagra de Biedermann played a central role in conceptualizing, researching, and organizing the logistics for this report. We are particularly grateful to Verónica Pallarés, Lourdes Peroni, and Verónica Peroni who coordinated research during the five visits to Paraguay.

We would also like to thank a number of individuals in the Paraguayan government, criminal justice system and civil society for providing us with valuable information for this investigation. We greatly appreciate the help of Benjamín Fernández Bogado, Marcos Köhn Gallardo, Roque Orrego, Senator Ana María Mendoza de Acha, Justice Víctor Manuel Núñez, Hugo Valiente, and Prosecutor Teresa Martínez Acosta. We are also deeply grateful to the detainees and staff of the *Penitenciaría Nacional de Tacumbú*, *Casa del Buen Pastor*, *Penitenciaría Industrial La Esperanza*, and *Centro Integral Educativo de Itauguá* detention centers for their candor and the valuable information they provided.

The IHRC expresses special thanks to Brazilian prosecutor and scholar Raquel Dodge, whose generosity with her time and insights led to significant improvements in this text. We would also like to thank Professor Christopher Stone for providing valuable help in guiding our research.

We similarly would like to thank the students of the Postgraduate Program on Human Rights of the *Universidad Columbia del Paraguay*, who made

comments on the Spanish version of the report. We also thank Ceniju, the Center of Studies of the *Universidad Columbia*, and specifically Lourdes Barboza, for their help in this project.

Finally, the International Human Rights Clinic is particularly grateful to the *Universidad Columbia del Paraguay* for its assistance in publishing and releasing this report.

Introduction

Perceptions of rising crime have cast a lengthening shadow over Paraguay in recent years. In this context, voices calling for hard-line policies to combat seemingly rampant criminality dominate the public security debate. Accordingly, highly visible and politically expedient measures such as increasing criminal sentences, encouraging repressive policing tactics, and revisiting provisions of the country's newly implemented criminal codes have been adopted hastily, with little attention to their effectiveness in responding to criminality or their consequences for fundamental rights. This report, researched and written by a team of faculty, students and consultant associates of the Harvard Law School International Human Rights Clinic, and released jointly with the Universidad Columbia, seeks to gather available data and to add comparative research to the debate on crime and public policy in Paraguay. The report assesses the nature and causes of these problems, as well as the implications of several current and possible strategic responses in international perspective.

1.1 Methodology

This report incorporates fact-finding and secondary research carried out in Paraguay and in Cambridge, Massachusetts over the course of twenty four months. Our research teams conducted three trips to Asunción in October 2005, March 2006, and October 2006. In addition, our team returned to Paraguay in May 2007 to release a preliminary version of the report, to meet with authorities and to receive comments and observations from a range of observers. In November 2007, another Clinic delegation traveled to Paraguay to submit a Spanish language

INTRODUCTION

version of the report to candidates for the presidency of Paraguay. During the first three missions our team conducted over sixty individual interviews with stakeholders and policymakers: numerous government officials, including representatives of the Executive, the Congress, the Supreme Court of Justice, the National Police, and the Public Ministry; members of the print, radio, and television media; legal and criminological experts from nongovernmental organizations and the academy; and representatives of private entities concerned with issues of citizen security. While in Paraguay, we also visited several detention centers and police stations to document firsthand the conditions in those institutions and the concerns of police, prison administrators, guards, and detainees. The facilities we visited between 2005 and 2006 include the Seventh Precinct in Asunción, the 911 Emergency Police Station, the *Penitenciaría Nacional de Tacumbú*, *Centro Integral Educativo de Itauguá*, *Penitenciaría Industrial La Esperanza*, and *Casa del Buen Pastor*. In addition, our report incorporates an analysis of extensive documentary materials, including: Paraguayan legislation and jurisprudence; domestic and international criminology and policy studies; case studies from various jurisdictions, with a focus on Latin America; statistics regarding crime and victimization rates and public opinion; and reports and publications of government, media and nongovernmental organizations.

We note that all the authors are responsible for all translations, unless otherwise indicated.

1.2 Report Objectives

This report serves several purposes. First, it aims to document, evaluate, and compare the perceptions and reality of rising crime and criminality in Paraguay. Beginning with a survey of the current situation in the country, in light of its recent history, the report addresses the relationship between an apparent increase in crime and the country's continuing transition from dictatorship to democracy. The large-scale restructuring of the criminal justice system, the complete revision of the criminal and criminal procedure codes, the change from a closed, inquisitorial

system to open, public accusatorial hearings, as well as a new constitution, all form a vital backdrop to the current debate over public security policy. The Stroessner dictatorship's legacy of corruption, as well as its distortion of the role of the media and of the criminal justice system, are still important factors shaping the public response to criminality in Paraguay. In this historical context and in the face of a perceived increase in crime, reactionary initiatives—including the so-called counter-reform that has sought to scale back several aspects of the post-Stroessner reforms—have largely been ineffective in battling crime.

Meanwhile, an explicit, critical evaluation of perceived versus actual insecurity and prevalence of crime in Paraguay has been lacking. To address this void, this report seeks to gather and analyze public opinion polls assessing perceptions of insecurity and the best available statistics on crime rates. Our examination focuses on urban crime. From this base, we look to the roles of media sensationalism and political pressure in shaping Paraguayan public opinion and policy, and note particularly the need for greatly improved statistical information gathering regarding crime. The report also seeks to identify the real causes of Paraguay's apparent problem of criminality, and to critique and refute some popularly suggested false causes. For example, some actors attribute increasing crime to what they view as the leniency of the new constitution and criminal codes, as well as to the supposed mismatch between the reformed legal regime, seen as an imported imposition, and its domestic context. Much more relevant, data suggest, are challenges related to poor implementation of systemic reforms, persistent institutional deficiencies, and socioeconomic factors related to rising crime.

Additionally, the report explores alternative policies from a comparative perspective, seeking examples of law enforcement techniques that have been both effective in reducing crime and respectful of fundamental human rights. In proposing possible strategies that meet these objectives, the report draws on the collective experience of other transitional societies, primarily ones in Latin America. Measures such as community policing, along with attention to police accountability and data collection and prosecution-led investigations, have met with considerable success in other countries. Legal-structural policies, including increased use of alternatives to incarceration, and focus on effective inmate reintegration programs, have also been beneficial. We also discuss the need for a

INTRODUCTION

more transparent and efficient judicial system in Paraguay. Additionally, the report suggests that if the country is to tackle the root causes of crime, it must address the need for greater control of firearms and for heightened attention to at risk youth.

Finally, we further frame our discussion of advisable strategies with an examination of *ineffective* and often *counterproductive* practices attempted by other countries facing challenges similar to those currently confronting Paraguay. Measures such as condoning the excessive use of force by law enforcement and unrestrained resorting to military or private security forces to perform basic policing have proven misguided. These policies also have severe negative impacts on the fundamental rights of citizens. Repressive anti-crime approaches, like increasing the use and length of incarceration, limiting availability of alternatives, and relying on excessive pretrial detention, are likely to *increase* crime rates. The prison overcrowding that results from such policies can exacerbate criminal influences on those accused of crimes, leading at risk persons to become repeat offenders. Paraguay will likely be both more effective in its fight against crime, and in compliance with its human rights obligations, if policies such as these are rejected, and when practiced, discontinued.

The Current Context in Historical Perspective

2.1 Introduction

If you haven't been a victim of a crime yet, consider yourself lucky.

—Paraguayan newspaper article lead, Oct. 2, 2005.¹

A strong sense of citizen insecurity has seized Paraguay. There is a widespread belief in the country that criminal violence has risen drastically and that crime presents new threats to the safety of Paraguayans. But this phenomenon, along with its possible causes and contributing factors, cannot be understood in isolation. The failure of state institutions to respond to rising insecurity is linked to the historic deficiencies of these bodies. The structural flaws of the criminal justice system addressed in this report are largely the result of decades of authoritarian rule and the failure to invest sufficiently in transparent and professional police, prosecutors and judges. These shortcomings, in turn, are linked to Paraguay's extended dictatorial rule under General Alfredo Stroessner, and the episodes of institutional crisis that have marred the transitional period following his 1989 ouster.² The legacy of authoritarianism continues to inform Paraguayan perceptions of security by shaping societal beliefs and attitudes and undermining the legitimacy and functioning of key public institutions.

¹ *La delincuencia ya golpeó a 7 de cada 10 personas* [Crime Has Now Hit 7 Out of 10 People], LA NACIÓN (Asunción), Oct. 2, 2005.

² Inter-Am. Comm'n on Human Rights, *Annual Report 1998*, OEA/Ser.L/V/II.102, doc. 6, vol. II, ¶ 51 (1999) [hereinafter "*IACHR 1998 Report*"] (describing situations in which the rule of law suffered due to these institutional crises, slowing democratic progress).

2.2 *Background and Recent History*

The Republic of Paraguay, located in central South America, covers a landlocked area of approximately 407,000 square kilometers, bordering on Bolivia to the northwest, Argentina to the southwest and Brazil to the East. Some 95% of Paraguayans —estimated to number between just below six and fewer than seven million people —are of European or European-Amerindian descent; the remaining inhabitants include indigenous populations that are concentrated most heavily in the country's interior. Spanish and Guaraní are Paraguay's two official languages, the latter spoken at some level by at least half of the population. The national literacy rate is greater than 90%. Paraguay's overall development places it 95th among 177 countries on the United Nations' Human Development Index. Levels of development vary across the nation's 17 departments, with the city of Asunción serving as the capital district and principal economic center. Per capita GDP is US\$4,642. Approximately 60% of the population lives below the poverty line.

2.2.1 *Stronismo*

General Alfredo Stroessner assumed power by coup in Paraguay in 1954.³ The nature of governance over the next thirty-five years—known as *stronismo*—was defined by oppressive rule cloaked in a legalistic facade.⁴ In 1967, Stroessner promulgated a new Paraguayan Constitution, with the purpose of ostensibly validating his reelection.⁵ Ten years later he again called a convention to amend the constitution to the same end; this time, permanently.⁶ Stroessner never allowed the participation of a vigorous political opposition, but took care to foster puppet candidates to validate non-competitive elections in which he was the perpetual candidate. This campaign was carried out under a state of siege—which lasted

³ Inter-Am. Comm'n on Human Rights, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L/V/II.110, doc. 52, ch. II, ¶ 12 (2001) [hereinafter "*IACHR Third Report*"].

⁴ ROBERTO PAREDES, *STROESSNER Y EL STRONISMO* 9 (2004) [hereinafter *STRONISMO*].

⁵ *Id.* at 132; CARLOS R. MIRANDA, *THE STROESSNER ERA: AUTHORITARIAN RULE IN PARAGUAY* 77 (1990).

⁶ JOSE M. BLANCH, *EL PRECIO DE LA PAZ* [THE PRICE OF PEACE] 336 (1991).

nearly the entirety of his term—and permitted only official viewpoints.⁷ In elections held every five years, controlled completely by his own administration and party, he consistently received 90% of the vote.⁸

This period brought apparent overall political and economic stability to Paraguay.⁹ Meanwhile, however, the rule of law was being manipulated. Government institutions that should have been independent, like the judiciary and legislature, yielded to Stroessner's one-man rule.¹⁰ Freedom of the press, of expression, and of the individual also suffered. As the Inter-American Commission on Human Rights concluded, "Anyone daring to oppose [the General] on matters of principle or ideals was persecuted, arrested, tortured and even banished or exiled."¹¹ Corruption was rampant and the "state apparatus [became] one more instrument by which the dictator yielded power."¹² Grave abuses of human rights were systematic. *Stronismo* was characterized by forced, even lifelong, exile, arbitrary detention, use of paramilitary forces, political purges and the seizure of political prisoners.¹³ The government harassed and persecuted thousands under the

⁷ *Id.* at 158-159; Liga Internacional de los Derechos del Hombre [International League of the Rights of Man], Communication to the U.N. Secretary-General of May 22, 1980, Los partidos políticos y la discriminación por motivos de filiación política [Political Parties and Discrimination for reasons of Political Affiliation] 88, U.N. Doc E/CN.4/R.66 [hereinafter Communication to the U.N. Secretary-General], reprinted in U.N. Human Rights Commission, *Confidential Documentation Relating to Paraguay Examined by the Human Rights Commission between its 34th and 46th sessions (1978-1990) Under the Procedure Established According to Resolution 1503 (XLVIII) of the Economic and Social Council*, U.N. Doc E/CN.4/PARAGUAY (Dec. 14, 2004) [hereinafter *Confidential Documentation Relating to Paraguay*].

⁸ Communication to the U.N. Secretary-General, *supra* note 7, at 88 ("The pretext that the executive had been elected in free elections for twenty-five years since 1954, is undermined by such refined deceits as the one that led [Stroessner's party] to affirm that they had won over 90% of the electorate.") Confederación Paraguaya de Trabajadores en el Exilio [Paraguayan Confederation of Workers in Exile], Communication No. 85/3/649 to the U.N. Human Rights Commission of Aug. 27, 1984, at 6-7, reprinted in *Confidential Documentation Related to Paraguay*, *supra* note 7, (recounting the disproportionate results of "[o]ne fraudulent 'election' and seven fraudulent 'reelections'"); MIRANDA, *supra* note 5, at 142 ("[E]lections during the Stroessner years had always been pro forma reaffirmations of the limited space given to the opposition and other groups."); BLANCH, *supra* note 6, at 158-159; ROBERTO PAREDES, 2 LOS PRESIDENTES DEL PARAGUAY [The Presidents of Paraguay] 83-84 (2005).

⁹ See PAREDES, *supra* note 8, at 288; MIRANDA, *supra* note 5, at 94-95 & 102-03.

¹⁰ See MIRANDA, *supra* note 5, at 65.

¹¹ IACHR Third Report, *supra* note 3, at ch. II ¶ 12.

¹² *Id.* at ch. II ¶ 42.

¹³ See BERNARDO NERI FARINA, EL ÚLTIMO SUPREMO 157-88 (2003) (detailing extensively such violations).

pretext of defending national security and combating communism.¹⁴ In addition, the Stroessner regime systematically committed acts of violence, including torture, extrajudicial executions, and massacres. “Persecution, torture, imprisonment, disappearances, killings, and exile became commonplace events, absorbed by society as normalcy...”¹⁵ The government documented these official acts in surprising detail in archives that were discovered years later and dubbed the “terror” or “horror” files.¹⁶

The Paraguayan criminal justice system during these years of dictatorship granted police excessive power, which led to severe restrictions on fundamental individual freedoms. In practice, a police determination to arrest a person served as the functional equivalent of a judicial warrant, conviction and sentence. Thousands spent months or years in pretrial detention, many without ever having seen a judicial authority. Through the final years of the Stroessner dictatorship, more than 90% of those in government custody had not yet been tried.¹⁷ These conditions made for the appearance of law enforcement efficiency and effectiveness, but at tremendous cost to citizens’ rights and governmental integrity. According to Paraguayan writer Augusto Roa Bastos, societal fear was instilled as public consciousness:

¹⁴ See MIRANDA, *supra* note 5, at 79 (discussing Stroessner’s promulgation of Laws 294 and 209, perversely dubbed “Defense of Democracy,” and “Defense of the Public Peace and the Freedom of Individuals,” respectively).

¹⁵ COMISIÓN DE DERECHOS HUMANOS DE LA CÁMARA DE SENADORES, EL ANDAR A LOS DERECHOS HUMANOS EN EL PARAGUAY: INFORME 2005-2006 [THE PROGRESS OF HUMAN RIGHTS IN PARAGUAY: REPORT 2005-2006], at 210 (2006) [hereinafter “THE PROGRESS OF HUMAN RIGHTS IN PARAGUAY”]; see also NERI FARINA, *supra* note 13, at 157-88.

¹⁶ VÍCTOR JACINTO FLECHA & CARLOS MARTINI, HISTORIA DE LA TRANSICIÓN [HISTORY OF THE TRANSITION] 254-256 (1994); Press Release, Amnesty Int’l, Búsqueda de verdad y justicia sigue vigente [The Search for Truth and Justice Continues], AI Index AMR 45/002/2006 (Aug. 17, 2006). These archives, along with their history, have been made publicly available online through the database of Paraguay’s Centro de Documentación y Archivo para la Defensa de los Derechos Humanos, <http://www.pj.gov.py/cdya/> (last visited Dec. 27, 2006).

¹⁷ INECIP, LEY NO 1.286 CÓDIGO PROCESAL PENAL CON LA EXPOSICIÓN DE MOTIVOS DEL ANTEPROYECTO Y FUNDAMENTOS DEL PROYECTO [ACT NO 1,286 CRIMINAL PROCEDURE CODE WITH THE EXPOSITION OF MOTIVES OF AND JUSTIFICATIONS OF THE BILL] 12 (2001) [hereinafter INECIP CRIMINAL PROCEDURE CODE] (citing 1981 figures of the Tacumbú National Penitentiary of 94.25% preventative detainees versus 5.75% convicted prisoners, and a similar distribution of 92.12% non-convicted individuals versus 7.88% sentenced nationwide in 1990, just after the fall of the dictatorship).

Fear was the invisible public consciousness that was communicated in secret among the entire population not under the spell of the totalitarian regime. The silent repressive violence that the government exercised cannot be computed from the statistics of the National Police in our Latin America, but the suffering of the Paraguayan public under the military dictatorship was immense.¹⁸

The major threats to public security during the Stroessner era came not from common street crime, but from authoritarian and repressive police forces and government.

2.2.2 Paraguay Post-Stroessner

Stronismo came to an abrupt end on February 3, 1989, when another general, Andrés Rodríguez, overthrew Stroessner in a military coup. Soon thereafter, following hastily-arranged elections that many considered “free, but not clean,”¹⁹ Rodríguez became Paraguay’s next president. He assumed the presidency expressing a commitment to reestablishing the rule of law, “restoring public liberties, dismantling the repressive apparatus of the State, and prosecuting several human rights violators.”²⁰ One notable accomplishment of Rodríguez’s term was the drafting of the new constitution in 1992, a document that established democratic government with separation of powers, and strengthened protection of individual rights.²¹

Even so, the nation endured a series of political power struggles throughout the years following the adoption of the 1992 constitution. In 1993, after winning

¹⁸ Augusto Roa Bastos, *La libertad responsable* [Responsible Liberty], in LOS DUENDES DE LA REBELDÍA: CRÓNICA DE LAS JORNADAS POR LA DEMOCRACIA EN PARAGUAY [THE IMPS OF REBELLION: CHRONICLES OF THE STRUGGLE FOR DEMOCRACY IN PARAGUAY], (Gloria Giménez Guanes ed., 1987). This compilation of articles speaks extensively of the societal fear during the dictatorship, including descriptions of those who feared to even ask favors of the dictator.

¹⁹ See FLECHA & MARTINI, *supra* note 16, at 72; see also MIRANDA, *supra* note 5, at 144.

²⁰ IACHR Third Report, *supra* note 3, ch. II ¶ 13.

²¹ FLECHA & MARTINI, *supra* note 16, at 216-217; Jorge Seall-Sasiain, *El garantismo en la Constitución ‘formal’ y ‘material’ del Paraguay: conquistas, déficit y efectos no queridos* [Guarantees in the “Formal” and “Material” Constitution of Paraguay: Conquests, Deficit and Unwanted Effects], in DEFENSA DE LA CONSTITUCIÓN, GARANTISMO Y CONTROLES [Defense of the Constitution, Guarantees and Controls] 509, 511-14 (Victor Bazán & Germán José Bidart Campos eds., 2003).

election amid fraud accusations leveled by members of his own party,²² Juan Carlos Wasmosy became Paraguay's first civilian President in nearly four decades. Three years later, Wasmosy repelled a coup attempt by then Army Chief General Lino Oviedo. Shortly after being elected President in 1998, Raúl Cubas (Oviedo's ex-running mate) proceeded to release Oviedo, who had been disqualified from the campaign and sentenced to ten years' imprisonment for rebellion and insubordination following the thwarted coup.²³ The president clashed with the judiciary over the issue, which also created tension within the executive branch. Cubas and his Vice-President, Luis María Argaña, differed starkly with regard to how to deal with Oviedo. In 1999, Argaña was assassinated. His killing was apparently the work of the former Army Chief.²⁴ The assassination "led to an explosion in the crisis that had been developing in Paraguay" over the Oviedo situation, "caus[ing] great public shock nationally and internationally."²⁵ Protesters took to the streets en masse to exert public pressure on Cubas, as the Congress launched impeachment proceedings against the president for abuse of power.²⁶ Over the course of a few violently dramatic days in March of 1999, there was a police crackdown, followed by an incident in which snipers—protected by police who were mainly Oviedo partisans²⁷—fired on demonstrators amassed by the congressional building. On March 28, Cubas chose to resign rather than await the Senate's impeachment decision.

Senate President Luis González Macchi took Cubas' presidential seat and sought unsuccessfully to create a coalition government involving all three major political parties. González Macchi himself finished his abbreviated term after withstanding a 2000 coup attempt, multiple charges of corruption and mismanagement, as well as a Senate impeachment challenge of his own.²⁸ The tenure of current President Nicanor Duarte Frutos, who was elected in April 2003,

²² FLECHA & MARTINI, *supra* note 16 at 258-88; *see also* PAREDES, *supra* note 8, at 147 (noting that a fellow Colorado party member and rival, Luis María Argaña, described Wasmosy as a "fraudulent candidate").

²³ *IACHR 1998 Report*, *supra* note 2, ¶¶ 15-16.

²⁴ Press Release, Amnesty Int'l, Paraguay: The New Government Must End Impunity, AI Index No. AMR 45/02/99 (Mar. 31, 1999).

²⁵ *IACHR Third Report*, *supra* note 3, ch. II ¶ 16.

²⁶ Press Release, Amnesty Int'l, Paraguay: The New Government Must End Impunity, *supra* note 24.

²⁷ *IACHR 1998 Report*, *supra* note 2, ¶¶ 38-40.

²⁸ *IACHR Third Report*, *supra* note 3, ¶ 16.

has also been marked by political turmoil. During his first year in office, Duarte asked the Senate to dismiss six Supreme Court justices for various reasons, including suspicion of corruption.²⁹ Asserting that he had arrived “to change history,”³⁰ Duarte launched this effort declaring boldly that, “I am going to crush the Court.”³¹ Soon thereafter, three Court justices resigned and three others were removed from office. Rights groups have questioned the departures of those justices, citing these events as evidence that the Paraguayan judiciary still lacks complete independence.³² A study documenting the average tenure of Supreme Court Justices in twelve Latin American nations between the years 1960 and 1995 found that Paraguayan justices had the lowest average tenure—well under two years—among the countries studied.³³ Supreme Court Justice Víctor Manuel Núñez described the institution’s continuing susceptibility to political pressure to our researchers: “We are in the hands of the representatives to a certain extent.”³⁴ Despite their supposed lifetime tenure, Núñez emphasized that “judges are named and judged by the politicians here.”³⁵ Writer Helio Vera, who is a columnist as well as an advisor to the Public Ministry, also told our researchers that the Supreme Court’s composition was “based on political selections.”³⁶ A potential

²⁹ PAREDES, *supra* note 8, at 156-58.

³⁰ *Id.* at 155.

³¹ Hugo Ruiz Olázar, *Renuncian dos ministros de la Corte Suprema en Paraguay* [Two Justices of the Supreme Court of Paraguay Resign], CLARÍN, Oct. 28, 2003, available at <http://www.clarin.com/diario/2003/10/28/i-02201.htm>.

³² See, e.g., Juan Martens & Roque Orrego, *Derecho a las garantías judiciales y al debido proceso: desilusiones y retrocesos por ineficacia de operadores de justicia en el sistema penal* [Right to Judicial Guarantees and Due Process: Disillusions and Setbacks for Inefficiency of Officials of Justice in the Penal System], in DERECHOS HUMANOS EN PARAGUAY 2005 [HUMAN RIGHTS IN PARAGUAY 2005], at 115, 121 (CODEHUPY ed., 2005) (speaking of the proceedings through which three ministers of the Court were removed: “There were questions as to the process that transpired.”).

³³ INTER-AM. DEV. BANK, THE POLITICS OF POLICIES: ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA 86 (2006), available at <http://www.iadb.org/res/ipres/2006>.

³⁴ Interview with Víctor Manuel Núñez, Justice, Supreme Court of Paraguay, in Asunción, Para. (Oct. 23, 2006) (describing also a situation where a Senator conditioned treatment of the judiciary budget on freeing of an associate whose case was before the Court); Constitución de la República del Paraguay arts. 252 & 261, June 20, 1992; Ley No. 609/95, June 23, 1995, Ley que Organiza la Corte Suprema de Justicia [Act that Organizes the Supreme Court of Justice] art. 19; Código de Organización Judicial [Judicial Organization Code] art. 190, Ley No. 879/81, Dec. 2, 1981.

³⁵ Interview with Víctor Manuel Núñez, *supra* note 34.

³⁶ Interview with Helio Vera, in Asunción, Para. (Oct. 24, 2006); see also Interview with Teresa Martínez Acosta, Prosecutor, in Asunción, Para. (Oct. 27, 2006) (describing the body charged with judicial appointment, the *Consejo de Magistratura* (Judicial Council), as “absolutely political.”).

further threat to judicial independence was Duarte's effort to amend the Constitution to permit reelection of the president, which is prohibited by the 1992 text.³⁷

Paraguay's recent history is therefore one of legislative progress, limited by the continuing struggle against a bitter legacy of persistent unrest and governmental wrongdoing. Entrenched authoritarianism, cronyism, and corruption³⁸ continue to have a profound impact on the nation today. A 2002 assertion by the then-president of the Colorado party illustrates the continued prevalence of corruption in Paraguayan politics. The official stated that his party "would be emptied were its leaders forced to resign per suspected corruption. 'Our rules do not contemplate that. And we must respect that, otherwise we'll all be gone. No one will be left in the institutions.'"³⁹ This statement also reveals the dominance of the Colorado party, which was the party of Stroessner and Rodríguez, and which has retained the Paraguayan presidency in every election since the transition began.⁴⁰ These troubled political circumstances form the backdrop against which debate over reform and counter-reform in the justice system has taken place.

2.2.3 Reform of the Criminal Codes

In 1997 and 1998, Paraguay adopted an entirely new Criminal Code and Criminal Procedure Code, providing for streamlined processes and increased protections for those accused of crimes.⁴¹ These new safeguards included

³⁷ See Robert Santander, *El presidente recibe un duro golpe con la dilación del proyecto* [The President Receives a Harsh Blow with the Delay of the Project], ÚLTIMA HORA (Asunción), Dec. 14, 2006.

³⁸ This corruption has its origins in the Stroessner dictatorship. See Liga Internacional de Derechos del Hombre [International League of the Rights of Man], Report Presented to the U.N. Human Rights Commission 20, U.N. Doc E/CN.4/R.44/Add.6 (Sept. 1976) [hereinafter International League Report], reprinted in *Confidential Documentation Related to Paraguay*, *supra* note 7 (describing how the Stroessner regime was involved in various forms of contraband trafficking, in particular trafficking of narcotics, and observing that "corruption and contraband are fundamental to the structure of the Stroessner dictatorship. They infested the regime from the top down."); see also sec. 3.5.4 *infra*.

³⁹ Comité de Iglesias para Ayudas de Emergencia, SITUACIÓN DE LOS DERECHOS HUMANOS EN EL PARAGUAY 2003 [HUMAN RIGHTS SITUATION IN PARAGUAY 2003], at 29-30 (2003).

⁴⁰ See generally PAREDES, *supra* note 8.

⁴¹ Código Penal [Criminal Code], Ley No. 1.160/97, Nov. 26, 1997; Código Penal Procesal [Criminal Procedure Code], Ley No. 1.286/98, July 8, 1998.

“reduction in the scope of criminal law, incorporation of alternative sanctions to imprisonment, elimination of sanction for some punishable acts (based on the harm caused or the personal circumstances of the responsible individual) and new criteria for mitigating punishment.”⁴² Ley No. 1.286/98, meanwhile, defined “as core procedural principles:

- Endowing the Public Ministry with investigative functions and direction of the police in investigative matters, as well as the responsibility of bringing charges and gathering evidence;
- introduction of mechanisms ensuring effective exercise of the right to a material and technical defense;
- incorporation of the oral hearing as a central procedural feature;
- introduction of mechanisms controlling the duration of proceedings, establishing a system of control regarding fulfillment of time limitations, with personal and procedural sanctions for failure to comply;
- introduction of alternative resolution mechanisms to ordinary process, such as the principle of opportunity, conditional suspension of process, conciliation, and abbreviated proceedings;
- exceptionality, proportionality, and time limitations on the duration of precautionary measures;
- establishment of special procedures according to the nature of the controversy (hearing for private action criminal offenses), the nature of the sanction (hearing for the application of alternative measures), and the characteristics of the population implicated in the controversy (procedure for criminal offenses relating to indigenous peoples).⁴³

In the words of one observer:

The spirit of the new legislation [was]: oral and public criminal process, guided by the principles of active oversight, centralization, swiftness, and procedural efficiency. All of this signals the

⁴² Elizabeth Flores Negri, Hernán Mayor & Jorge Rolón Luna, *La crisis del sistema penitenciario paraguayo no es nueva* [The Crisis in the Paraguayan Penitentiary System is Not New], in DERECHOS HUMANOS EN PARAGUAY 2003 [Human Rights in Paraguay 2003], at 49, 50 (CODEHUPY ed., 2003).

⁴³ MARÍA VICTORIA RIVAS, JSCA [JUSTICE STUDIES CENTER OF THE AMERICAS], PROYECTO DE SEGUIMIENTO DE LOS PROCESOS DE REFORMA JUDICIAL EN AMÉRICA LATINA, INFORME DE PARAGUAY [FOLLOW-UP PROJECT TO THE JUDICIAL REFORM PROCESSES IN LATIN AMERICA, REPORT ON PARAGUAY] 3 (2001), available at http://www.cejamericas.org/doc/proyectos/informe_paraguay.pdf.

supplanting of the old inquisitorial, predominantly written system, by an accusatory procedural regime, of oral and public hearings, that aims to meet all standards . . . set by international human rights law.⁴⁴

In one sense, these were rather radical changes. But in another, the reforms essentially represented a continuation of “the trend of modernization and renovation of the entire juridical order of the Republic[,] in accordance with the democratic principles of the 1992 Constitution, which has provided for a purposeful program favoring the advancement of the Rule of Law in a constitutional, social democracy.”⁴⁵ In the broader context, this shift in system and the process of code reform paralleled contemporary efforts throughout Latin America, as countries including Honduras, Guatemala, El Salvador, Peru, Ecuador, Colombia, Nicaragua, Venezuela, Costa Rica, and Chile implemented similar legal changes.⁴⁶ The *Instituto de Estudios Comparados en Ciencias Penales y Sociales* (INECIP) (Institute of Comparative Criminal and Social Sciences Studies) was a particular leader of the Paraguay reform project, publishing an extensive explanation of the reasoning and motivations behind it.⁴⁷ “We had a project,” María Victoria Rivas of INECIP told our researchers, “liberty is the rule, and prison is the exception.”⁴⁸ In the past several years, however, a perceived increase in criminality and accompanying citizen insecurity have motivated many Paraguayans to question—and even demand substantial rollback—of these reforms.

⁴⁴ PABLO BAREIRO PORTILLO, 1 CÓDIGO PROCESAL PENAL COMENTADO [CRIMINAL PROCEDURE CODE ANNOTATED], at v (2002).

⁴⁵ *Id.* at I.

⁴⁶ U.S. Agency for Int’l Dev., Latin America and the Caribbean, Criminal Justice and Legal Reform, http://www.usaid.gov/locations/latin_america_caribbean/democracy/rule/dg_rule4.html (last visited Apr. 2, 2007); INECIP CRIMINAL PROCEDURE CODE, *supra* note 17, at 6.

⁴⁷ INECIP CRIMINAL PROCEDURE CODE, *supra* note 17, at 4; Interview with Marcos Köhn, President, INECIP, in Asunción, Para. (Oct. 23, 2006) (citing also the assistance of German nongovernmental organization *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ), and of USAID, in the reform process).

⁴⁸ Interview with María Victoria Rivas, INECIP, in Asunción, Para. (Oct. 20, 2006).

2.2.4 Restructuring of the National Police and the Public Ministry

The criminal code reforms included a substantial restructuring of the respective institutional roles played by the National Police and the Public Ministry. Under the new structure, prosecutors assumed responsibility for criminal investigations, while the police became their auxiliary investigative arm.⁴⁹ This dynamic has created tension between these institutions whose close cooperation is central to the effective administration of justice throughout the country. The police, who are otherwise functionally autonomous despite their structural subordination to the Ministry of the Interior,⁵⁰ are resistant to the authority of generally very young—and often politically appointed—prosecutors. For example, Commissioner Vera Planás, a police veteran who directs the Department of Identifications, explained to our researchers that: “There are times when there is tension. A prosecutor has been named only recently, and I have twenty-eight years of experience. There is a conflict when he tries to direct my investigation. The prosecutors give orders and the police do not want to follow.”⁵¹

Despite the formal existence of public competition for entry into the Public Ministry,⁵² individuals familiar with the selection process described it to our researchers as highly political. This politicization, they suggest, nurtures corruptibility and a lack of professionalism in the institution. Roque Orrego, of Paraguay’s INECIP, believes “it is dangerous” to give greater control to

⁴⁹ See Código Penal Procesal [Criminal Procedure Code] art. 52, Ley No. 1.286/98, July 8, 1998 (“It shall correspond to the Public Ministry, by means of the use of public prosecutors, designated officials and their auxiliary agents, to direct the investigation of criminal acts and promote public criminal prosecutions [The Public Ministry] will have under its charge the functional direction and control of the officials and departments of the National Police, as soon as they are assigned to the investigation of determined criminal acts.”). Cooperation with the investigations led by the Public Ministry is obligatory for the police. *Id.* art. 59 (“The officials and agents of the National Police assigned to the investigation shall comply with the directives and instructions of the Public Ministry . . .”).

⁵⁰ Decreto No. 21.917, Aug. 11, 2003, Por el cual se establece la estructura organica y funcional del Ministerio del Interior [Decree by which The Organic Structure of the Ministry of the Interior is Established]; Interview with Félix Silva Monges, Vice-Minister of the Interior, in Asunción, Para. (Oct. 20, 2006).

⁵¹ Interview with Vera Planás, Director, Department of Identification of the National Police, in Asunción, Para. (Oct. 20, 2006).

⁵² Ley No. 1.562/00, July, 11 2000, Ley Orgánica del Ministerio Público [Organic Law of the Public Ministry] art. 90.

prosecutors, because they “can easily be managed by corrupt powers.”⁵³ Helio Vera, advisor to the Public Ministry, expressed similar concerns, noting that prosecutors—like judges—are appointed by the Judicial Council. Vera told our researchers that the members of the Bar Association, who make up much of that Council, “sell their votes to local governors in exchange for favors. . . . Merits and ability have never been the basis” for selecting prosecutors.⁵⁴

A member of the Public Ministry, in turn, described the difficulties of working with the police to our researchers: “The police never really were prepared or trained in investigations . . . [and] do not want to submit themselves in a hierarchically inferior position to the direction of a civil institution There has been significant resistance and it has been difficult adapting . . . [and making] institutional connections.”⁵⁵ In terms of her office’s own weaknesses, this source acknowledged that many of her colleagues are indeed politicized and inexperienced,⁵⁶ but was quick to note as well that the training provided to graduates now joining the institution has improved dramatically. Beginning work in the Public Ministry is “in essence . . . another law school,” with classes in certain specialized types of investigations and cases.⁵⁷ “There is still much left to be done . . . [but] people feel like the [Ministry] is now an authority that will listen to them and support them.”⁵⁸

2.3 *Perception of Rising Crime*

Public opinion surveys, as well as interviews conducted by our researchers, indicate that many Paraguayans believe that criminality in the country is reaching near-crisis proportions. Ignacio Martínez, Journalism Director of *Última Hora*, told us that, “[t]he perception is that you can be two blocks away from the legislative

⁵³ Interview with Roque Orrego, INECIP, in Asunción, Para. (Oct. 25, 2006).

⁵⁴ Interview with Helio Vera, *supra* note 36; *see also* Interview with Ana María Mendoza de Acha, Senator, in Asunción, Para. (Oct. 27, 2006) (“Politicization of the prosecutors is what leads to corruption.”).

⁵⁵ Interview with Teresa Martínez Acosta, *supra* note 36.

⁵⁶ *Id.* (noting that “the selection [made by the Council] is based on political considerations and not ability of the applicant. . . . The prosecutors in general tend to be very young, and with little or no experience.”).

⁵⁷ *Id.*

⁵⁸ *Id.*

palace and still be robbed. This shows we're doing really poorly.”⁵⁹ The editorial vice-president for *ABC Color*, Armando Rivarola, shared a similar perspective with our researchers: “The perception is always worse than reality, but there is some truth in the perception. The rise in criminality is easily observable. There is no security now. My parents never chaperoned me around, but I have to chaperone my child now.”⁶⁰ Children’s rights promoter Heve Otero likewise lamented to our researchers that “[w]e can no longer sleep with a door open.”⁶¹ A recent *La Nación* poll regarding citizen experiences with criminality reveals the extent of victimization. According to that study, 66.82% of those surveyed said they had been victim of a crime; 37.07% within the last twelve months.⁶² Some 31.05% had suffered robbery, and another 11.85% attempted robbery.⁶³ In conjunction with several recent high-profile criminal cases, the growing public sense of insecurity has served as fodder for the media as well as supporters of the prior criminal justice system. The result is public outcry and political backlash that has already resulted in the rollback of some criminal justice reforms.

2.4 Public Reaction and Backlash against the Reforms

2.4.1 Resistance to Change

Politically influential stakeholders with deep ties to the prior system—most of whom kept their positions even after Stroessner fell—have constituted one source of strong resistance to the new codes.⁶⁴ Marcos Köhn of INECIP suggested to our researchers that, though largely able to maintain their power along with these posts, these officials are worried about the new codes because they include

⁵⁹ Interview with Ignacio Martínez, Journalism Director, *Diario Última Hora*, in Asunción, Para. (Mar. 13, 2006).

⁶⁰ Interview with Armando Rivarola, Editing Sub-Chief, *Diario ABC Color*, in Asunción, Para., (Mar. 14, 2006).

⁶¹ Interview with Heve Otero, Secretary-General, *Coordinadora por los Derechos de la Infancia y la Adolescencia*, in Asunción, Para. (Oct. 24, 2006); see also Interview with Vera Planás, *supra* note 51 (commenting how “there are many people lamenting the increase of insecurity, saying how they used to sleep with the windows and the front door open.”).

⁶² *Crime Has Now Hit 7 Out of 10 People*, *supra* note 1.

⁶³ *Id.*

⁶⁴ (Humberto Rubín, director of *Radio Ñanduti*, told our researchers that “when Stroessner fell, he was the only one that left. Everyone else under his regime stayed.”). Interview in Asunción, Para. (Mar. 13, 2006).

provisions that render high-ranking figures susceptible to prosecution for the first time.⁶⁵ Teresa Martínez Acosta of the Public Ministry concurs: The Ministry “has enough independence to be able to carry through investigations of politicians to the point of prosecuting them. . . . As a response, many politicians now want to remove the investigatory power from [our office].”⁶⁶ Many critics of the new system also dislike the loss of strategic advantage inherent in such a change. As one public defender in Asunción explained to us:

It is difficult for people who worked for years in the other system to open their minds. The new codes break with the old experts and leaders, the aristocracy of the old order. In other words, the old experts are not experts anymore . . . The old guard began to resist the change. They begin to devalue and criticize the new code[s]. Their economic interests are at stake. They lose ground with the new codes. They realized they have to hire young lawyers who have been schooled in the new code[s].⁶⁷

The phenomenon of fresh-faced attorneys assuming newly empowered positions has, as noted above, caused friction with the police.⁶⁸ But the new dynamic has also been met with hesitation and skepticism by other actors. As Public Defender Cecilia Pérez explained to us, “Some [law] professors had to open their minds. [They] teach one thing, but students who are working know that what they teach isn’t applicable.”⁶⁹ The issue has also proven fodder for critics in the media. One of Paraguay’s most prominent journalists, for instance, commented to our researchers, “There is a problem because the prosecutors are these twenty-three-year-old little boys and girls that have all this power over you. All the prosecutors, almost, are young women and men.”⁷⁰

⁶⁵ Interview with Marcos Köhn, *supra* note 47.

⁶⁶ Interview with Teresa Martínez Acosta, *supra* note 36.

⁶⁷ Interview with Cecilia Pérez, Public Defender, in Asunción, Para. (Mar. 12, 2006).

⁶⁸ See “Restructuring of the National Police and the Prosecutor’s Office,” sec. 2.2.4 *supra*.

⁶⁹ Interview with Cecilia Pérez, *supra* note 67.

⁷⁰ Interview with Humberto Rubin, *supra* note 64.

2.4.2 High-Profile Cases of Social Impact

Several high-profile cases that received significant political and media attention in the past several years have also contributed to growing public insecurity and outrage over criminality. The notoriety of the victims and/or the shocking nature of the crimes themselves served to render these stories powerful vehicles for those anxious to highlight perceived rampant criminality and challenge supposedly impotent criminal codes. Among the cases that have had the most significant social impact during the period studied are those of:

- an individual under house arrest who defied curfew and killed a police officer in the early hours of the morning;⁷¹
- the granting of alternative measures by a San Lorenzo judge to a robbery suspect who had over a dozen prior criminal incidents on his record;⁷²
- the brutal assassination of a Korean family;⁷³
- a series of violent crimes in public places, including the killings of several young people;⁷⁴
- armed robberies on Asunción public transit buses resulting in serious injury, and in one case, the shooting death, of victims;⁷⁵ and
- kidnappings, including those of well-known individuals, businesspeople, public figures, and their family members—as well as rumored official involvement in torturing of suspects in one such case.⁷⁶

⁷¹ Interview with Jorge Seall-Sasiain, Professor of Constitutional Law, in Asunción, Para. (Oct. 28 2005).

⁷² Interview with Cecilia Pérez, *supra* note 67.

⁷³ Interview with Armando Rivarola, *supra* note 60 (describing this incident as especially “striking”).

⁷⁴ COMITÉ DE IGLESIAS PARA AYUDAS DE EMERGENCIA, SITUACIÓN DE LOS DERECHOS HUMANOS EN EL PARAGUAY 2001 [HUMAN RIGHTS SITUATION IN PARAGUAY 2001], at 56 (2001).

⁷⁵ *Otro violento asalto se registró en un bus en el centro de Asunción* [Another violent robbery on a bus in central Asunción], LA NACIÓN (Asunción), Oct. 18, 2007 (noting with apparent surprise the bus driver’s assertion that he had never before been robbed); *Caen dos sospechosos del asesinato de un pasajero de la línea 34* [Two suspects captured in the murder of Line 34 passenger], LA NACIÓN (Asunción), Oct. 17, 2007 (this account emphasizing the suspects’ prior criminal histories, citing investigators’ frustrations at the “bureaucracy of the justice system” which impeded their search for further evidence, and quoting the victim’s mother as lamenting her and other citizens’ helplessness—asking, “How long will honest, hardworking people continue to be victimized by criminals who kill without mercy and are soon right back out on the streets?”)

⁷⁶ COMITÉ DE IGLESIAS PARA AYUDAS DE EMERGENCIA, SITUACIÓN DE LOS DERECHOS HUMANOS EN EL PARAGUAY 2002 [HUMAN RIGHTS SITUATION IN PARAGUAY 2002], at 65 (2002); Interview with Ignacio Martínez, *supra* note 59.

Kidnappings as a class of crime have generated particular attention. One particularly noteworthy incident involved the October 2007 case of Belén María Auxiliadora Argaña Fretes, the young daughter of a prominent family whose captors entered the home's second story to abduct her at knifepoint.⁷⁷ The decision of then-Minister of the Interior Guillermo Delmás Frescura to enlist his personal contacts in negotiating the girl's release rather than pursue the matter through official law enforcement channels provoked widespread criticism, and led to his ouster.⁷⁸ Yet the most powerful example of high-profile kidnappings has been the seizing and eventual murder of Cecilia Cubas, daughter of former president Raúl Cubas, in 2005.⁷⁹ The public reaction to this particular case was so visceral that it amplified calls for a return to the death penalty, which is banned under the 1992 Constitution, was stripped from the reformed criminal codes, and stands in direct conflict with Paraguay's ratification of both U.N. and O.A.S. protocols against the sanction.⁸⁰ The Paraguayan Congress approved legislation that amended the code provisions for kidnapping to enhance sentences. Kidnapping convictions may now carry up to thirty years' imprisonment⁸¹—five years more than the longest term previously allowable under the new Criminal Procedure Code.⁸² Many Paraguayans have demanded such increases in the severity of sentences as a

⁷⁷ See *Fiscal Antisecuestro se queja de la familia Argaña, que no colabora* [Anti-Kidnapping Prosecutor complains that Argaña family is not cooperating], LA NACIÓN (Asunción), Oct. 16, 2007. The media's response to this incident evinces skepticism about Paraguayan authorities' ability effectively to address these incidents: "Investigators have yet to provide any specific information about the identity of those responsible, stating only that they were related to a new ring of kidnappers and that the possibility foreigners were involved could not be ruled out." Meanwhile, a case of clear police success in reuniting a baby kidnapped nine months earlier with its mother was relegated to a brief article not at all prominently displayed. *Beba secuestrada apareció en Luque* [Kidnapped baby appeared in Luque], LA NACIÓN (Asunción), Oct. 18, 2007.

⁷⁸ *Libio Florentín, nuevo ministro del Interior* [Libio Florentín, new minister of the Interior], LA NACIÓN (Asunción), Oct. 15, 2007.

⁷⁹ See *infra* Text Box, "The Cecilia Cubas Case."

⁸⁰ Press Release, Amnesty Int'l, Paraguay: Human rights should not be disregarded in the name of security, AI Index No. AMR 45/001/2005 (Feb. 23, 2005); Ley No. 2.131/03, July 22, 2003, Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, destinado a abolir la pena de muerte [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty]; Ley No. 1.557/00, June 6, 2000, Protocolo a la Convención Americana sobre Derechos Humanos relativo a la abolición de la pena de muerte [Protocol to the American Convention on Human Rights to Abolish the Death Penalty].

⁸¹ Ley No. 2.849/05, Dec. 26, 2005, Ley Especial Antisecuestro [Special Anti-Kidnapping Act].

⁸² Código Penal [Criminal Code] art. 38, Ley 1.160/97, Nov. 26, 1997.

response to crime.⁸³ Still others have voiced a more extreme sentiment: that conditions in the country were better under authoritarian rule, to which it now ought to return.

2.4.3 Calls for a Return to Authoritarian Rule

Insecurity and criminality have for some time been the most prominent issues in Paraguayan political and media discourse. Crime appears increasingly to be affecting all strata of Paraguayan society, rich and poor. Though it receives little attention compared to high-profile cases like those detailed above, several of those we interviewed cited the prevalent phenomenon of *peajeros*, or “toll collectors,” who extort entrance fees from those in the poorest neighborhoods under threat of bodily harm. There is a widely held sense that such new crimes and disturbances,⁸⁴ as well as more violent crime, have emerged in the years since the fall of Stroessner’s dictatorship. Leading journalist Humberto Rubín told our research team, “We’re talking about violence in an integral way. . . . There are more violent crimes. Now we have young kids mugging people in the street.”⁸⁵

Within this context, many have begun to question the benefits of democracy. A recent *Latinobarómetro* poll reveals that only 41% of Paraguayans surveyed believe democratic government is preferable to any other type—the lowest percentage among the eighteen countries studied.⁸⁶ The same poll shows that 30% of those asked believe that an authoritarian government can in some circumstances be preferable to a democratic one.⁸⁷ These statistics seem in part to indicate confidence in the ability of authoritarian regimes to keep the public safer from common crime.⁸⁸ Vice-Minister Félix Silva Monges, in an October 2006 interview with our research team, explained the half-truth of this perception: “During the heavy-handed government,” he told us, “there was a bit of fear of the government,

⁸³ See *infra* sec. 3.2.2.

⁸⁴ Interview with Fidel Isasa, Commissioner, National Police, in Asunción, Para. (Mar. 14, 2006) (citing fraud-related crime, street protests, and a rising number of car robberies).

⁸⁵ Interview with Humberto Rubín, *supra* note 64.

⁸⁶ *The Democracy Dividend; The Latinobarómetro Poll*, ECONOMIST, Dec. 7, 2006, chart 1.

⁸⁷ *Id.*

⁸⁸ Interview with Humberto Rubín, *supra* note 64; Interview with Marcos Köhn and Roque Orrego, INECIP, in Asunción, Para. (Oct. 24, 2005).

not only among those in the opposition, but among criminals as well.”⁸⁹ The following exchange, relayed to our researchers by a leading comparative scholar of Paraguayan law, is a telling anecdotal example of some Paraguayans’ perspectives on authoritarianism and security: “[The local seamstress] frequently tells me that she wants the Stroessner era back. She could walk around in the street. I ask the lady, ‘Do you want the type of insecurity associated with state oppression?’ She says, ‘Of course!’ Her perceptions are black and white.”⁹⁰

Academics and media sources explained to our researchers that the criminal justice system in general, and data regarding criminality in particular, were severely distorted under the Stroessner regime.⁹¹ Through pressure and intimidation, the government also interfered extensively during that era with the media’s treatment of sensitive issues, including coverage of criminality. Aldo Zuccolillo, director of *ABC Color*, described this interference vividly to our researchers: “In the dictatorship, every day, we were living in fear. The reporters in ABC would carry a handbag with their belongings, because at any moment, the police could come and throw them in jail. . . . In 1984, Stroessner shut down the paper. [It] was closed for five years.”⁹²

Ironically, the openness that accompanied democratization has to some extent fed the fervor for a return to authoritarian rule. Humberto Rubín, Director of *Radio Ñanduti*, explains this paradox: “Now, every incident of crime is talked about. . . . Everything is public. You know exactly the information about crime. Now you know that insecurity is absolute.”⁹³ In Paraguay, as in the other newly democratic societies of Latin America, the former Soviet Union, and elsewhere,

⁸⁹ Interview with Félix Silva Monges, in Asunción, Para. (Oct. 20, 2006).

⁹⁰ Interview with Wolfgang Schöne, President, Centro de Ciencias Penales y Política Criminal [Center for Criminal Sciences and Policy], in Asunción, Para. (Mar. 14, 2006).

⁹¹ Interview with Ignacio Martínez, *supra* note 59 (discussing government censure of reporting on criminality during the Stroessner regime, including the limiting of information and closing down of media outlets); Interview with Benjamín Fernández Bogado, General Director, Radio Libre, in Asunción, Para. (Mar. 15, 2006) (“People always compare how things are with how things were during the dictatorship, saying that the level of criminality back then was safe. We don’t know the real level of criminality during the dictatorship.”); Interview with Humberto Rubín, *supra* note 64 (regarding criminal statistics from the Stroessner era: “You’re not going to find these numbers anywhere . . . There are no such facts in the dictatorship world.”).

⁹² Interview with Aldo Zuccolillo, Director, Diario ABC Color, in Asunción, Para. (Mar. 14, 2006).

⁹³ Interview with Humberto Rubín, *supra* note 64. (Rubín further added that “the populist governments in Latin America are converting the population in this kind of society.”).

crime has thus moved “[f]rom being a taboo subject, reported sparingly in a light favourable to authorities and always under the watchful eye of official censors, . . . to the front page.”⁹⁴ Facing news of seemingly rampant crime, many citizens feel that the situation under the dictatorship was, at the very least, calmer.⁹⁵ Driven by these popular sentiments, the legislature has recently introduced a series of counter-reforms that effectively scale back several of the protections that had been established under the new criminal codes.

2.4.4 The *Acordada*, and Modifications of the Criminal Procedure Code

Promulgated in October of 2004, Law No. 2.493/04 modified Article 245 of the 1998 Criminal Procedure Code by providing in part that, “during the criminal process, alternative measures may not be applied, nor may an order of pretrial detention be modified with a substitutive measure, when the offense at issue is a criminal act that endangers another’s life or physical integrity.”⁹⁶ This provision has contributed to higher levels of incarceration by limiting the availability of alternative measures, thereby increasing the strain on detention centers already suffering from overcrowding.⁹⁷

This legislative restriction on judges’ granting of alternative measures to criminal defendants followed an *Acordada* (decree), issued the same year by the Paraguayan Supreme Court of Justice.⁹⁸ The Court there had provided that “all criminal judges in the Republic must review the prior criminal record of the accused in deciding whether to deny or revoke precautionary measures.”⁹⁹ Those familiar with the Paraguayan justice system told our researchers that in practice such data rarely are available outside of Asunción, which means that the provision effectively eliminates the availability of alternative measures for those beyond the

⁹⁴ INT’L COUNCIL ON HUMAN RIGHTS POLICY, CRIME, PUBLIC ORDER AND HUMAN RIGHTS 49-50 (2003).

⁹⁵ See interviews *supra* note 88; Interview with Armando Rivarola, *supra* note 60.

⁹⁶ Ley No. 2.493/04, Oct. 20, 2004, Que Modifica el Artículo 245 de la Ley No. 1.286/98 “Código Procesal Penal” [Act that Modifies Article 245 of Act No. 1,286/98 “Criminal Procedure Code”] art. 1.

⁹⁷ See *infra* “The Prison Situation,” sec. 2.6.

⁹⁸ Acordada No. 319, July 16, 2004, Que Reglamenta la Concesión o Revocación de Medidas Cautelares [Decree that Regulates the Concession or Revocation of Precautionary Measures].

⁹⁹ *Id.* art. 1.

capital. The judicial action sought to respond to public outrage. During two interviews with our research team, then-President of the Supreme Court Justice Víctor Manuel Núñez noted that the *Acordada* was a reaction to widespread perceptions (generated by a few high-profile cases) of an “emergency in penal law,” to which “we felt that the Court needed to give a response.”¹⁰⁰ He also told us that a Court study conducted in 2002 found the percentage of those who committed crimes while released on bail to be very low—under 1%.¹⁰¹ Justice Núñez explained to our researchers that the *Acordada* was therefore, in his view, unnecessary, and the Court would not have issued it but for societal pressure.¹⁰² Additionally, Justice Núñez told us that the modification to Article 245 that followed was largely driven by a campaign built on “bad information” by the Interior Ministry against alternative measures.¹⁰³ Other observers told us, however, that even prior to the *Acordada*, members of the judiciary were generally hesitant to apply alternative measures.¹⁰⁴ Recent cases have challenged the constitutionality of the modification of Article 245, highlighting the tensions that its restrictions on alternative measures create with the presumption of innocence and express exceptionality of pretrial detention.¹⁰⁵

Another recent counter-reform is the modification of Article 136 of the Criminal Procedure Code. Substantively, the law extended the time limitation on proceedings in a given case from three years to four, after which the state may no longer prosecute.¹⁰⁶ An objective of this legislative change was to give the state

¹⁰⁰ Interview with Víctor Manuel Núñez, Justice, Supreme Court of Paraguay, in Asunción, Para. (Mar. 15, 2006).

¹⁰¹ Interview with Víctor Manuel Núñez, *supra* note 34.

¹⁰² Interview with Víctor Manuel Núñez, *supra* note 100.

¹⁰³ Interview with Víctor Manuel Núñez, *supra* note 34.

¹⁰⁴ Interview with María de la Paz Martínez and Raquel Sosa, Public Defenders, in Asunción, Para. (Oct. 24, 2005) (attributing this lack of judicial flexibility to pressures from society, the media, and “above,” as well as to fear of the *Jurado de Enjuiciamiento de Magistrados* (Judicial Oversight Council); Interview with Hugo Valiente, Centro de Documentación y Estudios [Center for Documentation and Studies], in Asunción, Para. (Mar. 16, 2006).

¹⁰⁵ Constitution of the Republic of Paraguay, art. 19, June 20, 1992; Interview with Cecilia Pérez, *supra* note 67 (noting that a case challenging the constitutionality of the *Acordada* is currently pending before the Supreme Court); Interview with Víctor Manuel Núñez, *supra* note 100 (distinguishing the *Acordada* from the modification of Article 245, because the former served simply to guide judges regarding existing standards, rather than establishing “explicit prohibitions”).

¹⁰⁶ Ley No. 2.341/03, Dec. 31, 2003, Que Modifica el Artículo 136 de la Ley No. 1.286/98 “Código Procesal Penal” [Act that Modifies Article 136 of Law No. 1,286/98 “Criminal Procedure Code”] art. 1.

further time to prosecute crimes. Despite its formal prescription that all criminal prosecutions must be completed in a timely manner, the law's primary beneficiaries may have been wealthy and well-connected individuals facing prosecution for economic crimes.¹⁰⁷ As one leading newspaper observed in an editorial, "No one accused of a crime who has the economic capacity to provide for a strong defense, much less one who also carries political weight, is ever convicted. [The wealthy defendant] simply awaits the running of the statute of limitations."¹⁰⁸ Indeed, as Paraguayan rights groups have observed, "Neither judges nor the courts sanction attorneys who scheme to avoid having their cases go to trial, thereby assuring their extinction."¹⁰⁹ The law therefore distracts from other systemic weaknesses, including corruption, improper influence, and the resulting potential for impunity.¹¹⁰ A better approach to address the legitimate concerns regarding extended legal proceedings, without fostering impunity, would be to establish limits on pretrial detention while preserving sufficiently the length of the time period within which the state may prosecute an offender. The current iteration of this legislation benefits only a narrow, privileged category of defendants, while most of those accused of crimes continue to endure lengthier proceedings and accompanying confinement in pretrial detention.¹¹¹

¹⁰⁷ Editorial, *Código Procesal Penal es ley para la impunidad de los poderosos* [Criminal Procedure Code is a Law for the Impunity of the Powerful], ABC COLOR (Asunción), Nov. 10, 2006 ("This mechanism has become a question of wits, and of non-fulfillment in the functions of judicial magistrates, generally to the benefit—one suspects often not freely given—of an accused with political and economic power.").

¹⁰⁸ *Id.*

¹⁰⁹ COMITÉ DE IGLESIAS PARA AYUDAS DE EMERGENCIA, SITUACIÓN DE LOS DERECHOS HUMANOS EN EL PARAGUAY 2005 [HUMAN RIGHTS SITUATION IN PARAGUAY 2005], at 27 (2005) [hereinafter HUMAN RIGHT SITUATION IN PARAGUAY 2005]; see also Martens & Orrego, *supra* note 32, at 119 ("The government preferred this populist measure rather than requiring an accounting by those in the judicial system, tasked with agile and proper administration of trials or, when appropriate, the sanctioning of attorneys acting in bad faith.").

¹¹⁰ See Martens & Orrego, *supra* note 32, at 119-20. In an interview with our researchers, Roque Orrego of INECIP explained how "it's easy to change the law and make the law harder than to go in and actually impeach the officials. Where is the criminal policy? A farce in which the politicians blame the law and only change the law. They change the law, but nothing happens."). Interview with Roque Orrego, *supra* note 53.

¹¹¹ See VIOLETA LILIANA GONZÁLEZ VALDEZ, LA JUSTICIA PENAL JUVENIL EN EL PARAGUAY: REVISIÓN CRÍTICA DE SU SITUACIÓN ACTUAL [JUVENILE CRIMINAL JUSTICE IN PARAGUAY: CRITICAL EVALUATION OF THE CURRENT SITUATION] 4 (2006) (discussing how the modification of Article 136 is especially threatening to youths, in providing for terms of incarceration that "constitute, for an adolescent, nearly the

Recent Setbacks — New Bill to Reform the Criminal Code

At the time of publication of this report, the Paraguayan Congress neared passing a reform that would alter 57 of the articles of the Penal Code.¹¹² Analysts expected the new reforms, already passed in the Senate, to be approved soon in the House of Representatives. Many of the changes would create harsher penalties, possibly exacerbating overcrowding in the penitentiary system. The bill proposes increased periods of incarceration for a range of offenses, as well as a new maximum sentence of 30, rather than 25 years,¹¹³ applicable in certain cases of intentional homicide.¹¹⁴ Other maximum sentences that would increase if the bill passes include the following offenses:

Table 1 – Maximum Sentences in Years in Current Penal Code and Reform Bill

Article	Crime	Current Code	Proposed Reform
105	Homicide	25	30
157	Damage to property	3	5
142	Trespassing on private property	2	5
125	Internacional trafficking in persons	10	12
129b	Trafficking in persons	6	12
184a	Violation of intellectual property rights	3	5
229	Domestic violence	0	2
131	Sexual abuse of institutionalized persons	3	5
132	Exhibitionist acts	0	1
134	Mistreatment of children and adolescents subject to guardianship	2	3
135	Sexual child abuse	10	15
312	Exaction	10	5

(continued on page 27)

entire span of his school years, during which the stigma of uninterrupted association with the prison system can carry harmful consequences for his development.”).

¹¹² Proyecto de ley que modifica varias disposiciones de la ley N° 1.160/97, Código Penal [Bill that modifies several dispositions of the Law No 1.160/97, Criminal Code], House of the Senate of Paraguay, Aug. 9, 2007 [hereinafter Reform Bill].

¹¹³ *Id.* art. 38.

¹¹⁴ *Id.* art. 105(2).

(continued from page 26)

In addition to increasing maximum sentences, the new bill would alter article 51, which governs the granting of parole. The new article would require the prisoner to solicit parole, rather than providing automatic review, as existing law mandates.¹¹⁵ “These reforms, particularly with the rules for parole, will lead to an increase in the penitentiary population,” predicted Marcos Köhn, “this is certain.”¹¹⁶

Another potentially problematic provision is one that would increase the maximum sentence for trespassing. Under the proposed new article, the offense of trespass with the intention to live on the property occupied may be punished by a term of incarceration of up to five years.¹¹⁷ Experts believe that this would effectively criminalize—and perhaps stifle—mobilization by *campesino* and landless movements in the interior of the country, who use property occupation as a form of protest to contest rural land policy.¹¹⁸ In addition, one of the few crimes in which the maximum actually will *decrease* is that of exaction, or the theft or illegal collection of taxes by government officials.

A bill to create a similar reform to the Criminal Procedure Code is currently being review in a commission in the Senate, and will likely be debated some time in 2008.

Attorney Hugo Valiente told our researchers that with the modifications of Articles 245 and 136, “[y]ou lose the principle of the exceptionality of prison and the principle of a reasonable duration for the proceedings.”¹¹⁹ Considering conditions in the nation’s prisons, analyzed below, this loss comes at grave cost to society, and especially to less powerful defendants who find themselves accused of crimes.

¹¹⁵ Interview with Marcos Köhn, President, INECIP, in Asunción, Para. (Oct. 22, 2007).

¹¹⁶ *Id.*

¹¹⁷ Reform Bill, *supra* note 112, art. 142(2).

¹¹⁸ See Oscar Ayala Amarilla & Maria Julia Cabello, *Entre la realidad y los avances de la justicia internacional* [Between reality and the advances of international justice], in DERECHOS HUMANOS EN PARAGUAY 2006 [HUMAN RIGHTS IN PARAGUAY 2006], at 358, 367 (CODEHUPY ed., 2006).

¹¹⁹ Interview with Hugo Valiente, *supra* note 104.

2.5 Recent Public Security Initiatives: The 911 System, Plan Paraguay Seguro, Policía Urbana Especializada, and Private Security Efforts

In addition to the legislative modifications addressed above, the Paraguayan government has introduced several security-related initiatives aimed at addressing the frustration and unrest of the country's residents. These efforts include establishing the 911 emergency system and the *Policía Urbana Especializada* (PUE). These measures have met with some success, but also considerable resistance and controversy.

2.5.1 The 911 Emergency System

Launched in December 2003, the 911 emergency system is a network of operators and patrols whose primary aim has been to improve the means of reporting crimes-in-progress and other urgent situations. As the station's director Viviano Machado explained to our researchers, Paraguayan citizens' ability to communicate with police typically is hindered by severe logistical limitations. "One of the police precincts will have upwards of 60,000 people in their jurisdiction," he told us, "yet they'll only have two telephone lines to operate with. It would be just impossible to call in."¹²⁰ Machado cited a vastly improved first-time connection rate of 85%, though the new system—at the time of our conversation—was not functioning perfectly. An internal audit of the system's operation to that point emphasized imperfect data entry, lack of geographical familiarity, and difficulty in dealing with volume during peak periods as further areas requiring improvement.¹²¹ In addition, several external challenges have thus far arisen in the system's work. Machado notes the success that 911 patrols have had in eliminating certain types of crime—including the so-called *caballos locos* ("crazy horses"), who swiftly snatch purses, jewelry, and other valuables on the street.¹²² However, some friction has been created with the police regarding

¹²⁰ Interview with Viviano Machado, Commissioner, 911 emergency system, in Asunción, Para. (Oct. 23, 2006).

¹²¹ PowerPoint Presentation, *Emergencia 911 Policial: Seguridad en Acción* [911 Police Emergency: Security in Action] (Aug. 22, 2003) (on file with the IHRC).

¹²² Interview with Viviano Machado, *supra* note 120.

domestic violence situations, which they often prefer not to address. As an anonymous source within the police informed us: “The 911 patrols will grab a guy[,] then bring him to the station, and they will get angry and ask, ‘Why did you bring him here?’”¹²³ In an October 2006 interview, however, a representative of Police Precinct No. 7 suggested that the system generally had been well received by the police, who found it manageable and helpful to their work.¹²⁴

Institutional challenges have by far been the greatest hindrance to the 911 system’s effectiveness. Several sources suggested to us that with the arrival of a new Minister of the Interior, the program lost substantial backing in terms of both funding and governmental focus. Sources who wished to remain anonymous explained to our researchers that the 911 system has no distinct budget apart from that assigned generally to the police, and must instead seek the resources needed desperately to meet surging citizen demand on an ad hoc basis, through highly politicized and drawn-out bureaucratic channels.¹²⁵ Political will to support the program’s needs has been severely lacking since the new Minister diverted energies toward new security efforts such as the PUE. As the Minister has placed primary emphasis on new policies over which newly installed officials feel they can more personally assert ownership, the 911 system on which the Paraguayan public increasingly relies has been neglected. “In this Interior Minister’s administration, other projects have been given preference while one that worked and in which the public trusted has been cast aside.”¹²⁶

2.5.2 The *Policía Urbana Especializada* and *Plan Paraguay Seguro*

On February 15, 2007, the President of Paraguay officially authorized 295 recently graduated officers of the PUE to begin patrolling. Initially, the PUE was to operate in a limited area of 231 city blocks in the center of Asunción, and within a limited scope of duties, restricted to intervention in and prevention of *in flagrante*

¹²³ Interview, in Asunción, Para. (Oct. 2006).

¹²⁴ Interview with Commissioner General Virgilio Barboza Brítez, Director General of Order and Security of the National Police, and Pablo Torres González, Commissioner of the Seventh Precinct, in Asunción, Para. (Oct. 27, 2006).

¹²⁵ Interview, in Asunción, Para. (Feb. 2007).

¹²⁶ *Id.*

criminal acts.¹²⁷ But this specialized law enforcement squad favored over the 911 system and mandated as part of the government's recent *Plan Paraguay Seguro* (Secure Paraguay Plan) had, at this writing, failed to fulfill lofty initial expectations.¹²⁸ In a 2005 interview with *La Nación*, Interior Minister Rogelio Benítez expressed great confidence that the new force would have a notable impact in combating urban crime. "People will notice a difference with the *Policía Urbana*," Benítez asserted. The overly broad role of the traditional police, "by definition and methodology, will not be replicated with the *Policía Urbana*."¹²⁹ He added that due to waning citizen confidence in the police, the rollout of this new force could be the most important change in the country in decades.¹³⁰ Vice-Minister Félix Silva Monges was similarly positive about the project in speaking with our researchers, describing the PUE selection process as more rigorous, and its training as more extensive and specialized than that received by the National Police.¹³¹ Several others with whom we spoke, however, expressed skepticism regarding the PUE specifically, and the *Plan Paraguay Seguro* as a whole.

The United Nations Development Program (UNDP) was involved in the early development phases of the PUE and Paraguay's larger security plan. Representatives of the UNDP, however, told us that both of those projects today look very different from what they originally had proposed. The *Plan*, Carmen Echaury of the UNDP told us, "isn't really a plan. It's a list of things, like a shopping list. There's no clear objective."¹³² She attributes this to the Paraguayan government's desire to move quickly toward implementation, stunting a diagnostic

¹²⁷ According to Commissioner Federico Acuña Araújo, Chief of the Central Analysis Department of the Command and Control of the National Police, the PUE will not engage in the guarding of public or private institutions or events, the custody of suspects, administrative functions, or criminal investigations. *Policía Urbana custodia el centro de la ciudad de Asunción desde ayer* [Policía Urbana Guard the Center of the City of Asunción Beginning Yesterday], *La Nación* (Asunción), Feb. 16, 2007.

¹²⁸ Exactly two days after the inauguration of the PUE, the young institution had its first public embarrassment: two criminals robbed the occupants of a car within the PUE's patrolling zone, taking G. 21 million (approx. US\$4,200). *Primer revés de la Policía Urbana* [First Setback for the Policía Urbana], ABC COLOR (Asunción), Feb. 18, 2007; *Roban G. 21 millones y una camioneta al asaltar en la calle a dos ingenieros* [Two Engineers Robbed of 21 Million Guaranís and a Truck in a Street Robbery], ABC COLOR (Asunción), Feb. 18, 2007.

¹²⁹ *Necesitamos más presencia en las calles* [We Need More Presence in the Streets], *LA NACIÓN* (Asunción), Oct. 2, 2005.

¹³⁰ *Id.*

¹³¹ Interview with Félix Silva Monges, *supra* note 50.

¹³² Interview with Carmen Echaury, U.N. Dev. Program, in Asunción, Para. (Oct. 26, 2006).

study that was intended to shape the plan's proposals. Senator Ana María Mendoza de Acha explained to our research team that this haste was driven in good measure by the death of Cecilia Cubas. "[A]t that moment, there was no plan. . . . They didn't have one and so they just spit one out[,] aware that [it] did not respond to any kind of previous analysis. That's the *Plan Paraguay Seguro*."¹³³ While the UNDP put together an initial policy package at the government's request, changes inserted by Paraguayan authorities resulted in a significantly different version.¹³⁴ One important difference was that, under the original idea, the PUE service eventually was to displace the traditional police.¹³⁵ Today in Paraguay there are instead two police bodies, which not only lack coordination, but are in tension and even competition with one another.

Not surprisingly, Paraguay's traditional police have perhaps been the most skeptical of the PUE. Senator Mendoza de Acha describes police resistance to the *Plan Paraguay Seguro* as staunch and immediate: "The day after the plan was released, the police said that they could not carry through with [it]."¹³⁶ INECIP president Marcos Köhn today observes "a lot of discontent among the police. The new forces have new vehicles, a lot of investment. Others continue with very low salaries. They are told just to earn their salary."¹³⁷ Police representatives who preferred not to be identified told our researchers they believe the PUE to be an error, and questioned the new forces' training. Whether there will continue to be two separate police directors remains unclear,¹³⁸ but it is quite evident that confusion persists as to many aspects of the new force's organization, including its relationship with the traditional police.

¹³³ Interview with Ana María Mendoza de Acha, *supra* note 54.

¹³⁴ Interview with Carmen Echauri, *supra* note 132.

¹³⁵ *Id.*

¹³⁶ Interview with Ana María Mendoza de Acha, *supra* note 54.

¹³⁷ Interview with Marcos Köhn, *supra* note 47.

¹³⁸ Interview with Virgilio Barboza Brítez and Pablo E. Torres González, *supra* note 124.

The National Plan for Crime Prevention of the Public Ministry: Abandoned Policies and Lack of Continuity.

A recurring problem in Paraguay has been the lack of continuity in public policy making, as incoming administrations and directors have abandoned existing policies primarily to promote new plans under the new administration's name. This tendency discourages the development of the serious, long-term solutions that are necessary for solving problems of citizen security. One recent example of this phenomenon involves the implementation of the National Plan for Crime Prevention and Citizen Security (*Plan Nacional de Prevención del Delito y Seguridad Ciudadana*), designed in 2001 by the Public Ministry, and subsequently abandoned by the current Attorney General.

The National Plan for Crime Prevention and Citizen Security sought to formulate policies to reduce the incidence of common street crime (theft, assaults, etc.), diminish feelings of insecurity, and promote active participation of civil society in the prevention of crime.¹³⁹ The main operational focuses of the Plan echo many of the strategies employed in the successful case studies highlighted in this report. These strategies include emphasizing community policing methods, addressing social factors that contribute to delinquency, and addressing environmental or situational factors that facilitate criminal activity.¹⁴⁰ In addition, the Plan also called for greater inter-institutional coordination to “optimize the employment of public resources by avoiding the overlapping of activities of distinct institutions [of the criminal justice system] and by seeking to augment their reach by increasing their effectiveness and efficiency in delivering urban security.”¹⁴¹ Between 2003 and 2005, the Public Ministry implemented the Plan in coordination with the National Police, the Ministry of the Interior, local governments and neighborhood groups in 13 municipalities and nearly 50 neighborhoods in Asunción alone.

(continued on page 33)

¹³⁹ Public Ministry, *Plan Nacional de Prevención del Delito y Seguridad Ciudadana* [National Plan for Crime Prevention and Citizen Security], in *SEGURIDAD CIUDADANA* 145, 159 (2004).

¹⁴⁰ *Id.* at 149.

¹⁴¹ *Id.*

(continued from page 32)

Although the brief period in which authorities sought to implement the Plan was not sufficient for a thorough assessment, initial efforts were encouraging. In two years, the program organized dozens of training sessions on security with local citizens, fostered improvements in neighborhood lighting and mapping of security risks, and led to a reduction in auto theft in one zone of operation of nearly 50%.¹⁴² The former technical coordinator of the Plan, Luz María Sckell, told our investigators how local coordination groups revealed that citizens participating in the Plan “at least perceived a definite increase in security . . . they felt like the owners and the ones responsible for the Plan.”¹⁴³

Despite these promising achievements, however, shortly after taking office in late 2005, the incoming Attorney General cancelled the Plan and dissolved the Criminal Policy and Criminology Desk, the department charged with the Plan’s implementation. The reason cited for canceling the Plan was that crime prevention policy was not in the ambit of the Public Ministry, but rather the Ministry of the Interior.¹⁴⁴ “There is very little continuity in public policy making in terms of crime prevention and citizen security,” José Caballero Quiñónez, former general coordinator of the project explained to our investigators. “[Authorities] formulate policies just to abandon them later.”¹⁴⁵ Recurring instability within the top policy making positions of the government—for example, there have been no fewer than six Ministers of the Interior in the current Administration—can exacerbate further this lack of continuity, rendering long-term policy formulation difficult at best.

¹⁴² Public Ministry, Informe Técnico Criminológico del Paraguay [*Technical Criminological Report on Paraguay*], Report presented before the *Reunión Preliminar sobre Seguridad Ciudadana*, Brasilia, Brasil, July 2005, at 117-118 (manuscript on file with ICHR). Although the 50% reduction in auto theft is a significant achievement, the small size of the area involved suggests that the auto theft may have been merely displaced to another area, and not completely eliminated.

¹⁴³ Interview with Luz María Sckell, Technical Consultant, Public Ministry, in Asunción, Para. (Oct. 25, 2007).

¹⁴⁴ *Id.*; Interview with José Caballero Quiñónez, Human Rights Consultant, Public Ministry, Asunción, Para. (Oct. 23, 2007).

¹⁴⁵ Interview with José Caballero Quiñónez, *supra* note 144.

2.5.3 Private Security

The phenomenon of privatization in security is a complex one in Paraguay today. The issue arises prominently in the contexts of prison administration and neighborhood security programs.

Our researchers noted the presence of private security firm personnel during a visit to *Penitenciaría Industrial La Esperanza*, and spoke elsewhere with a government official regarding a larger initiative to experiment with privatized administration of various penal facilities throughout the country. Collaborating with Brazilian experts, officials retain overall control of the prisons but leave most day-to-day operations to private contractors.¹⁴⁶ We were introduced to another popular application of private security in a meeting with Luis Fretes, the director of a company called PROTEK, which operates a form of neighborhood patrol program in Asunción and Paraguay's interior.¹⁴⁷ The company has concentrated much of its social responsibility efforts on the non-profit "Secure Nation Foundation."¹⁴⁸ PROTEK's work also stands in contrast to that of most other private security firms with its focus on technical emergency response systems, rather than on private security personnel. The guards that the company does employ are paid about US\$200 per month to be on patrol twelve hours a day.¹⁴⁹ PROTEK's guards are authorized to carry weapons,¹⁵⁰ but Fretes expressed relief that, "thank God, there have never been any casualties. The thief always takes off . . . so there have never been any confrontations."¹⁵¹

Fretes describes private firms like PROTEK as meeting a security deficit that official forces cannot fill. With a population of over six million in Paraguay and

¹⁴⁶ Interview with Derlis Alcides Céspedes Aguilera, Minister of Justice and Labor, in Asunción, Para. (Oct. 20, 2006).

¹⁴⁷ Interview with Luis Fretes, PROTEK S.A., in Asunción, Para. (Oct. 20, 2006).

¹⁴⁸ PowerPoint Presentation, PROTEK, Seguridad vecinal: recuperemos nuestras calles y plazas [Neighborhood Security: Let's Take Back Our Streets and Squares] (on file with the IHRC). This work is more fully described *infra* sec. 4.1.2.1, exploring best policing practices.

¹⁴⁹ Interview with Luis Fretes, *supra* note 147.

¹⁵⁰ Decreto 3.625/04, Oct. 28, 2004, Por el Cual se Reglamenta la Ley No. 1.910 del 19 de Junio de 2002, "De Armas de Fuego, Municiones y Explosivos" [Decree which Regulates Act No. 1.910 of June 19, 2002, "Firearms, Munitions and Explosives Act"] arts. 112-115.

¹⁵¹ Interview with Luis Fretes, *supra* note 147.

only some 15,000 officers¹⁵² (4,000 of which Fretes discounts as simply filling “administrative roles”), the country’s overall police presence and ratio of officers to citizens “is absolutely insufficient.”¹⁵³ Privatization of security is part of a larger trend throughout Latin America. A 2003 industry survey of the region found growth in the private security sector to have been significant and consistent over the course of several years, coinciding with growing crises relating to public security forces.¹⁵⁴ The study asserts that there were over 1.5 million private guards officially registered in Latin America, but projected that the total could be as many as four million, taking into account guards who are employed informally. The authors went on to note that the sector grows at “6 or 8% per year. To put this market in perspective, consider that there are at this moment some 690,000 registered guards in all of Europe.”¹⁵⁵ Attributing the industry’s strength in large part to public programs’ failures to meet public demands, the author found that “there is no doubt that this trend in society’s demand for security will persist and grow ever more profound.”¹⁵⁶ Marcos Köhn of INECIP shared with our researchers his concern that the large number of private security forces today in Paraguay—triple the number of public police—creates a stark accountability problem.¹⁵⁷ “It’s perfectly fine that a private company has private guards, but when normal everyday people start using private security to serve a public function, then you have a problem. . . . The state has a monopoly on public security, and that’s being passed off to private companies. This is dangerous.”¹⁵⁸

¹⁵² Interview with Vera Planás, *supra* note 51.

¹⁵³ Interview with Luis Fretes, *supra* note 147.

¹⁵⁴ Edgardo Frigo, *Hacia un modelo latinoamericano de seguridad privada: los nuevos desafíos en la region* [Towards a Latin American Model of Private Security: The New Challenges in the Region], Presentation at the Primer Congreso Latinoamericano de Seguridad [First Latin American Congress on Security] in Bogotá (Sept. 24 to 26, 2003), *available at* <http://www.monografias.com/trabajos15/segur-privada/segur-privada.shtml#LATINOAM>. Commentators beyond the security industry also have noted this trend. *See, e.g.*, Beatriz M. Ramacciotti, *Democracy and Multidimensional Security: The rising need for citizen security in Latin America*, Presentation at Georgetown University (Mar. 15, 2005), *available at* http://pdba.georgetown.edu/Security/referencematerials_ramacciotti.pdf (“[T]he failure of the state, its public order and justice system to respond adequately and provide some protection for basic security needs is creating a booming private security business for those that can afford to purchase security.”).

¹⁵⁵ Frigo, *supra* note 154.

¹⁵⁶ *Id.*

¹⁵⁷ Interview with Marcos Köhn, *supra* note 47.

¹⁵⁸ *Id.*; *see also* Interview with Carmen Echaury, *supra* note 132 (describing private security as a source of *insecurity*, because it is unregulated).

2.6 *The Prison Situation*

2.6.1 Prison Conditions, Generally

Much has changed for the better in Paraguay's penitentiary system since the days of *stronismo*. Most notably, pretrial detention has been reduced from the rates of over 90% seen during the dictatorship.¹⁵⁹ Ongoing construction has increased the capacity and improved the infrastructure of various detention centers.¹⁶⁰ Prison farms and other rehabilitation centers that permit detainee work opportunities have been introduced with evident success.¹⁶¹ However, conditions in many of the country's prisons are dire. Official statistics and reports, our team's own visits to the Tacumbú National Penitentiary, the Itauguá Integrated Educational Center, the La Esperanza Industrial Penitentiary, and the *Casa del Buen Pastor* (House of the Good Shepherd) Women's Detention Center, as well as discussions with those involved in the system—inmates, guards, administrators, judges—reveal both successes and remaining challenges in Paraguay's penal system.

Overcrowding stands out as a particularly serious, widespread, and ever-worsening problem in Paraguay's prisons. The most striking example is Tacumbú, a penitentiary with capacity for approximately 1,200 prisoners but which regularly houses nearly 3,000 detainees.¹⁶² Anildo Caballero, director of the prison,

¹⁵⁹ See *supra* note 17. Since the reforms to the criminal justice system, the rate of prisoners awaiting trial has decreased to around 73% to 75%. See Table 7 *infra*.

¹⁶⁰ Interview with Derlis Alcides Céspedes Aguilera, *supra* note 146; COMISIÓN INTERINSTITUCIONAL DE VISITAS PENITENCIARIAS, EVALUACIÓN DEL SISTEMA PENITENCIARIO ABRIL/MAYO DE 2006 [EVALUATION OF THE PENITENTIARY SYSTEM APRIL/MAY 2006], at 38 (2006) [hereinafter EVALUATION OF THE PENITENTIARY SYSTEM], available at <http://www.senado.gov.py/archivos/varios/EVALUACION%20ultima%2022.08.06.pdf>; see also COMISIÓN DE DERECHOS HUMANOS DE LA HONORABLE CÁMARA DE SENADORES, INFORME DE LA COMISIÓN INTERINSTITUCIONAL DE VISITAS PENITENCIARIAS [REPORT OF THE INTER-INSTITUTIONAL COMMISSION ON PENITENTIARY VISITS] (2005) [hereinafter INTER-INSTITUTIONAL COMMISSION REPORT].

¹⁶¹ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 38.

¹⁶² According to the *Inter-Institutional Commission Report*, Tacumbú has the capacity to house nearly 1,200 detainees, and housed 3,068 detainees during its 2005 visit. INTER-INSTITUTIONAL COMMISSION REPORT, *supra* note 160, at 5. During our visit in March 2006, the population of detainees was 3,154. The current occupation rate of the prison, according to Ministry of Justice and Labor statistics, is 2,927. MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARIAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC).

explained the mathematically straightforward challenge that his facility faces in an October 2005 interview with *La Nación*. “For every ten or fifteen inmates freed per month,” said Caballero, “twenty or more enter, a figure that gives an idea of how the number of prisoners is growing, completely contrary to the fragile capacity of the prison infrastructure to accommodate them all.”¹⁶³ The U.N. Special Rapporteur on Torture recently voiced concern with overcrowding in several prisons throughout Paraguay.¹⁶⁴ The growing inmate population over the last several years has made this a growing national problem.¹⁶⁵

Another serious problem is the failure of prison authorities’ to separate pretrial detainees from inmates who have already been convicted.¹⁶⁶ Sources familiar with prisons in Paraguay told our researchers that this sort of integration fosters criminality by exposing those accused of committing crimes to the direct influence of recidivists.¹⁶⁷ In addition, the overcrowding created through the excessive resort to detention has negative implications for the immediate safety and living conditions of everyone in these facilities. Prisons, particularly the most overcrowded, are “human depositor[ies], where the inmates live like crowded

¹⁶³ *Por cada 10 que salen de Tacumbú entran 20* [For Every 10 that Leave Tacumbú 20 Enter], LA NACIÓN (Asunción) (Oct. 7, 2005). This assessment coincides with the figure a legal assistant shared with our researchers during a visit to Tacumbú on March 15, 2006 of an ongoing rise in prisoner numbers of 250 per semester.

¹⁶⁴ Press Release, U.N. Special Rapporteur on Torture Ends Mission to Paraguay (Nov. 29, 2006) [hereinafter U.N. Rapporteur Press Release].

¹⁶⁵ See EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 40 (citing Tacumbú, Pedro Juan Caballero, and Ciudad del Este as “pressing” examples of overcrowding); Interview with Senator Bader Rachid Lichi, Senator Marcelo Duarte and Representative Edmundo Rolón, National Commission on the Reform of the Penal System, in Asunción, Para. (Mar. 15, 2006); PowerPoint Presentation, Office of the Human Rights Ombudsman, Proyecto Observatorio del Sistema de Justicia Penal [The Criminal Justice System Observatory Project], Dec. 2006 [hereinafter Observatory Project] (seven of twelve adult penal facilities studied filled above capacity; overall excess amounting to 2,619 prisoners), available at http://www.defensoriadelpueblo.gov.py/ultimas_noticias/dp-as/fotos/Proyecto.pps; see also Flores Negri, Mayor & Rolón Luna, *supra* note 42, at 53 (noting the near doubling of the Paraguayan prison population between 1995 and 2003, from 2,756 to 5,063). As cited *infra* Table 7, this global figure had grown to over 6,500 detainees in 2005.

¹⁶⁶ See U.N. Rapporteur Press Release, *supra* note 164; EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 41; Yeny Villalba, *Situación penitenciaria: los avances son todavía imperceptibles* [Penitentiary Situation: The Advances Are Still Imperceptible], in HUMAN RIGHTS IN PARAGUAY 2005, *supra* note 32, at 81, 86-88; HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 50.

¹⁶⁷ Interview with Roberto Carlos Franco, Director, Comisión Nacional para la Seguridad Ciudadana [CONASEG], in Asunción, Para. (Oct. 25, 2005) (“Criminals can still conduct crime while in prison, and indeed, prison can educate people further in criminal activity.”).

animals, a situation that multiplies unrest and edginess, which are themselves factors that generate violence.”¹⁶⁸ Clashes between and among inmates and guards are frequent, and often fatal.¹⁶⁹ Given the prevalence of these dangers, some prisoners regularly band together for protection,¹⁷⁰ while others seek the security of solitary confinement.¹⁷¹

Beyond the risks associated with incidents of conflict, our research team observed firsthand in a March 2006 visit to Tacumbú that basic necessities ranging from sleeping quarters to eating utensils and health care are often lacking. Hundreds of people, for instance, have no cell space and must sleep in hallways or outside, exposed to the elements. Others lack beds and share a single bathroom with 200 or more people. Prisoners must use paper plates or broken and dirty vessels to consume food and water.¹⁷² Observers visiting other facilities in Paraguay have noted similar deficiencies. Following a late 2006 mission to Paraguay, the U.N. Special Rapporteur on Torture concluded that “[o]ld prisons are in a deplorable state regarding the accommodation facilities, hygiene, and provision of clothing, food, mattresses and other essential items.”¹⁷³ He also noted that “a wing in the prison of Ciudad del Este, which is known as the ‘black hole’...[was] [p]articularly concern[ing].... Poor detainees are kept there in extremely overcrowded conditions without light, ventilation, [or] basic hygiene. . . .”¹⁷⁴ In its 2006 Evaluation of the Penitentiary System, the Inter-

¹⁶⁸ COMITÉ DE IGLESIAS PARA AYUDAS DE EMERGENCIA, *SITUACIÓN DE LOS DERECHOS HUMANOS EN EL PARAGUAY 2004* [HUMAN RIGHTS SITUATION IN PARAGUAY 2004], at 183 (2002) [hereinafter HUMAN RIGHTS SITUATION IN PARAGUAY 2004] (describing Tacumbú National Penitentiary).

¹⁶⁹ See Jorge Rolón Luna, *Situación carcelaria: crítica e insostenible*, in *DERECHOS HUMANOS EN PARAGUAY 2004* [HUMAN RIGHTS IN PARAGUAY 2004], at 65, 68 (CODEHUPY ed., 2004) (documenting 36 violent inmate deaths and 156 cases of injury between August of 2003 and September of 2004); see also Interview with Bader Rachid Lichi, Marcelo Duarte and Edmundo Rolón, *supra* note 165 (“There are major problems with prison security . . . because of [having] so many people in prison.”).

¹⁷⁰ See Interview with Michael Oloingsigh, *Centro Integral Educativo de Itauguá*, in Asunción, Para. (Oct. 21, 2006) (relating the story of detainees rearranging their beds so as to be in the same room—for safety—and posing the rhetorical question, “How do we rehabilitate people when they are preoccupied just with surviving?”).

¹⁷¹ See EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 7-8 & 26 (explaining that such was the case in Emboscada—when it was open—and in Ciudad del Este Regional Penitentiary, where “there are detainees that prefer being in the punishment cells to [the risk of] being killed by their peers.”).

¹⁷² Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

¹⁷³ U.N. Rapporteur Press Release, *supra* note 164.

¹⁷⁴ *Id.*

Institutional Commission on Penitentiary Visits found that prisoners in Pedro Juan Caballero Regional Penitentiary sleep “without beds, only some with mattresses,” and that “they do not have dining or restroom facilities.”¹⁷⁵ The Asunción Office of the Human Rights Ombudsman concluded from its own study of several Paraguayan facilities that their infrastructure is “insufficient[,] obsolete, and inadequate for human accommodation.”¹⁷⁶

The Pedro Juan Caballero Regional Penitentiary and other institutions in the Paraguayan prison system lack not only basic infrastructure, but also competent medical staff.¹⁷⁷ “There are no doctors,” the Inter-Institutional Commission observed upon its visit to Ciudad del Este Regional Penitentiary.¹⁷⁸ The Commission’s investigation of Emboscada Correctional Center likewise revealed that the facility—which was later shut down by the government—“did not have *any* doctors.”¹⁷⁹ San Pedro Regional Penitentiary suffers from an “utter lack of medical supplies [and] of medications.”¹⁸⁰ An extensive black market has grown up within Paraguay’s prisons, centering on the provision of these sorts of basic facilities and services that have been rendered rare and costly luxuries, in part, by overcrowding.

Corruption is notoriously pervasive in Paraguay as a whole, and is “endemic in the prison system.”¹⁸¹ Numerous prisoners told our researchers, in great detail, of having to pay guards for access to family visits,¹⁸² medical attention,¹⁸³ medicine,¹⁸⁴ food,¹⁸⁵ and beds.¹⁸⁶ Findings of the Human Rights Ombudsman

¹⁷⁵ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 31-32.

¹⁷⁶ Observatory Project, *supra* note 165 (noting also that the allotted budget “fails to cover basic health, hygienic and nutritional necessities”).

¹⁷⁷ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 32 (“The center has no doctor as of the date of evaluation.”).

¹⁷⁸ *Id.* at 27.

¹⁷⁹ *Id.* at 8 (emphasis in original).

¹⁸⁰ *Id.* at 36.

¹⁸¹ U.N. Rapporteur Press Release, *supra* note 164.

¹⁸² Visit to Tacumbú National Penitentiary, Mar. 15, 2006. The same price of Gs.20,000—around US\$4—was cited during separate interviews with several inmates.

¹⁸³ One must pay in order to move up the long list of those waiting for care. Several inmates have died from disease. *Id.*

¹⁸⁴ Prisoners asserted that the medicines guards sell to them have been intercepted from deliveries to the facility. *Id.*

¹⁸⁵ *Id.*; see also Liz Varela, *Cárceles inhumanas, aptas para delinquir* [*Inhumane Prisons, Apt for Crime*], in DERECHOS HUMANOS EN PARAGUAY 2002 [HUMAN RIGHTS IN PARAGUAY 2002] at 95, 102 & 105

confirm that officials “are directly responsible for trafficking drugs, alcohol, and prostitution on prison grounds.”¹⁸⁷ Another apparently common form of corruption involves guards threatening inmates with physical harm and confinement in punishment *calabozos* (cells), unless inmates pay them a set amount of money.¹⁸⁸ These *calabozos* are dark, measuring approximately 15 feet by 6 feet, with a pipe, faucet and ground toilet as the only facilities. As observed at the time of our visit to Tacumbú, each *calabozo* contained up to eight prisoners. Several of those held in these conditions told our researchers that they had committed no disciplinary infraction and instead were held there for up to 30 days at a time (or until they paid a Gs. 30,000 bribe, approximately US\$5-6, for release), often without access to other prison areas.¹⁸⁹

Another serious related problem concerns the poor conditions for guards assigned to detention centers. “[The job] offers no relevant benefits that would make it an attractive position, apart from the ‘extras’ in the prisons.”¹⁹⁰ Guard salaries are very low—approximately US\$230 per month.¹⁹¹ Additionally, guards with whom we spoke informed us that at times, the government has owed them several months’ back pay. Salary levels appear particularly low in light of the uniquely demanding and dangerous nature of the guards’ occupation.¹⁹² In terms of

(CODEHUPY ed., 2002) (“Products are sold at high prices, and inmates find themselves obliged to pay in order to prepare their daily meals, considering that the prison food is neither appetizing nor sufficient to feed everyone. . . . There are some 400 people [in Tacumbú] who regularly go without the prison meals. All that’s served is insufficient. . . .”).

¹⁸⁶ Prisoners cite a price of up to Gs.300,000, or approximately US\$60. Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

¹⁸⁷ Observatory Project, *supra* note 165.

¹⁸⁸ During our team’s visit to Tacumbú, detainees commonly cited Gs.2,000 (US\$0.40) as the cost of such “daily control,” with one to two weeks in the *calabozo* the punishment for non-payment. Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

¹⁸⁹ *Id.*

¹⁹⁰ Observatory Project, *supra* note 165.

¹⁹¹ Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

¹⁹² The security-staffing scheme at Tacumbú functions as follows: Groups of guards work 24-hour shifts followed by two days of rest. During the first twelve hours of each shift (which start at 7 a.m.), as many as forty guards will be on duty. At 7 p.m. the guards divide into two groups, one of which remains on duty. That group has a maximum of twenty people, who stay on duty until a little after midnight. The other half meanwhile get about five hours of rest. That latter group then comes back from 12:30 a.m. until 5:30 a.m., at which point both groups work in conjunction until an entirely new group arrives at 7 a.m. Guards also complained that the same overcrowding conditions creating danger for inmates threaten *their* safety as well. *Id.*

raw numbers, the current national ratio of approximately eighty inmates to each guard is far from the 15-1 ratio that the Inter-Institutional Commission on Penitentiary Visits cites as the highest tenable level.¹⁹³ The U.N. Special Rapporteur on Torture noted in 2006 that the situation in Tacumbú is similarly worrisome: “[D]etainees are protected by no more than forty prison guards, although the head of security stressed that at least 120 guards would be required.”¹⁹⁴ During the Special Rapporteur’s visit, the prison director in Ciudad del Este expressed a particular fear “that the lack of prison guards might lead to a mass escape.”¹⁹⁵ Short of equipment and support from colleagues, the guards also lack adequate training.¹⁹⁶ Many are older, former military personnel who have worked in these facilities since the days when prisons were military-run.¹⁹⁷ Others are alleged to have arrived at their positions through personal contacts or political influence.¹⁹⁸ Still, during our Tacumbú visit, guards—just like prisoners—were very eager to share their experiences and voice their concerns. The guards’ discontent was another symptom of a system that appears *as a whole* to be on the brink of collapse, though it is still largely ignored by the rest of society.

As in many countries facing violent crime and citizen insecurity, a sense that those in detention centers have been abandoned by society pervades Paraguay’s prison system. One Tacumbú inmate lamented that, “There is no difference between a zoo and this place, but animals have mothers and I am alone.”¹⁹⁹ NGO staff who work in prisons told our researchers that, “Paraguayan society only cares that the suspect is in jail,” regardless of the conditions of detention.²⁰⁰ Numerous sources interviewed by our researchers, including prisoners, public defenders, NGO representatives, and elected officials echoed the sentiment that Paraguayan

¹⁹³ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 43 (“There are in the Republic 600 Prison Guards, 180 privately contracted and 420 publicly appointed. We therefore have 1 [guard] for every 80 prisoners, as compared to the indicated maximum of 1 for every 15 prisoners.”).

¹⁹⁴ U.N. Rapporteur Press Release, *supra* note 164.

¹⁹⁵ *Id.*

¹⁹⁶ Observatory Project, *supra* note 165 (“There is no system for selection, training, and evaluation of penitentiary personnel.”).

¹⁹⁷ Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

¹⁹⁸ Interview with Hugo Valiente, *supra* note 104.

¹⁹⁹ Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

²⁰⁰ Interview with Bader Rachid Lichi, Marcelo Duarte and Edmundo Rolón, *supra* note 165; *see also* Observatory Project, *supra* note 165 (“The community offers ex-convicts no real possibility of reinsertion.”).

penal institutions fail to fulfill their rehabilitative functions.²⁰¹ “[O]ne can see that prisons, rather than rehabilitating inmates, actually promote criminality.”²⁰² Private rehabilitation programs run by religious organizations may constitute a limited exception to this rule, as do the few newly reformed centers for youthful offenders.²⁰³

One positive counterexample in terms of adult facilities is *Penitenciaría Industrial La Esperanza*, where our researchers spoke with directors and several detainees during the same October 2006 trip. Esperanza houses only convicted prisoners, who are offered a variety of possibilities for employment during the completion of their sentences. These include work at the facility’s laundry, bakery, and kitchen, as well as factories producing sports balls, candy, and books. Family visits are also possible on any day, and detainees repeatedly contrasted the prison’s lack of violence, as well as lack of official abuse and corruption, with conditions in other facilities. Esperanza’s capacity is relatively small, however,²⁰⁴ and its population is predominantly evangelical Christian—though detainees and officials denied that religious affiliation is a criterion for placement there.²⁰⁵

²⁰¹ Interview with María de la Paz Martínez and Raquel Sosa, *supra* note 104 (“In the prisons there is no real possibility of rehabilitation to re-enter society. There are no programs for rehabilitation set up in prisons.”); Interview with Ana María Mendoza de Acha, Senator, in Asunción, Paraguay (Oct. 25, 2005) (“Prisoners are . . . unable to be rehabilitated and integrated back into society.”); Elizabeth Flores, *Situación carcelaria [Prison Situation]*, in DERECHOS HUMANOS EN PARAGUAY 2001 [HUMAN RIGHTS IN PARAGUAY 2001], at 111, 113 (CODEHUPY ed., 2001) (“[Tacumbú] lacks those attributes necessary to constitute a facility in compliance with the Law of Penitentiary Organization, much less to serve the ends of reeducation and social reinsertion called for by the National Constitution.”); HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 51 (“The work of rehabilitating inmates . . . scantily is carried out.”). Our investigation team also witnessed this situation firsthand, talking to one intern in Tacumbú who noted that some say there is a school somewhere in the prison, but that he has never met anyone who actually goes. Visit to Tacumbú National Penitentiary, Mar. 15, 2006.

²⁰² HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 52.

²⁰³ Interview with Public Defenders María de la Paz Martínez and Raquel Sosa, *supra* note 104 (noting that such programs administered by evangelical ministers reach only approximately 500-600 prisoners total); *See also infra* “The Situation of Juveniles in Detention,” sec. 4.6.3.

²⁰⁴ The facility is near its capacity of 288 detainees. Interview with Félix Dupont, Pastor, *Penitenciaría Industrial La Esperanza*, in Asunción, Para. (Oct. 24, 2006). The current population in Esperanza is 262 detainees. MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARIAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC).

²⁰⁵ Various prisoners put this facility’s percentage of evangelicals at 70 to 90%, but asserted consistently that conversion is not required. This was confirmed in our interview with Minister of Justice and Labor Derlis Alcides Céspedes Aguilera, *supra* note 146 (“They enter [Esperanza] with no requirement that they go to church or anything of the sort.”).

With a rate of recidivism that one judge with whom we spoke estimated at 40%,²⁰⁶ Paraguay should be seeking to emulate successful detention programs like that at Esperanza, rather than continuing to ignore a lack of sufficient opportunities for inmate readaptation. Under the reformed 1997 Criminal Code, promotion of inmate readaptation is cited explicitly alongside protection of society as a primary aim of imprisonment.²⁰⁷ But as Miguel Gómez of the Paraguayan Supreme Court's Human Rights Office confessed to our researchers, "[The penal system] does not give the released prisoners help in getting a job after release. They're given nothing. There is no effective system for reinsertion into society in any penitentiary."²⁰⁸ Senator Ana María Mendoza de Acha, who leads the Inter-Institutional Commission on Penitentiary Visits, concurs: "We are not interested in reinserting the person [in society]."²⁰⁹ Until this changes, "[t]he inmate will continue to pose a threat to the community, since detention centers . . . far from reeducating the individual, feed the proliferation of criminals."²¹⁰

2.6.2 The Situation of Women in Detention

Women in Paraguayan detention facilities suffer from many of the problems that affect their male counterparts. Prisoners at the *Casa del Buen Pastor* (House of the Good Shepherd) Women's Detention Center—where our researchers visited in October 2006—complained of filthy living quarters, infestation, and of having received rotten food in the past.²¹¹ They also described guard-run corruption

²⁰⁶ Interview with Carlos Escobar, Judge, in Asunción, Para. (Oct. 27, 2005). Pastor Félix Dupont, in an interview with our team cited a statistic of 1,105 recidivists in Tacumbú, and asserted as to the typical Paraguayan ex-convict: "When prisoners leave, they never leave the same. They might as well be dead." *Supra* note 204; see also *El 69% de los ciudadanos piensa que la inseguridad irá creciendo* [69% of Citizens Think that Insecurity Will Continue Increasing], LA NACIÓN (Asunción), Oct. 7, 2005 (Director of Penal Institutions, Artemio Vera, stating that "70% of those today held in Tacumbú are repeat offenders.").

²⁰⁷ Código Penal [Criminal Code] art. 39(1), Ley 1.160/97, Nov. 26, 1997 ("The object of the application of prison punishment is to promote the readaptation of the condemned and the protection of society.").

²⁰⁸ Interview with Miguel Gómez Torres, Human Rights office of the Supreme Court, in Asunción, Para. (Oct. 25, 2006); see also Observatory Project, *supra* note 165 ("State support for the liberated individual is nonexistent.").

²⁰⁹ Interview with Ana María Mendoza de Acha, *supra* note 54.

²¹⁰ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 44.

²¹¹ Visit to Casa del Buen Pastor Correctional Facility, Oct. 27, 2006.

schemes like those that we heard about in men's prisons, and informed our team of the presence of drugs within the detention center. These conditions proved to be persistent despite assurances given earlier in the year by prison Director Marta Báez Viola to the Inter-Institutional Commission on Penitentiary Visits that "she was making changes that she hoped would prove beneficial to the future progress of the institution."²¹² The Commission noted at that time some other pressing concerns, particularly accusations that prison officials were overseeing the prostitution of women inmates who went to visit their partners at Tacumbú, stating that: "[the female detainees] are forced to prostitute themselves by prison officials, and this is not controlled."²¹³ Other significant problems included the continuing use of male guards inside the facility—despite being prohibited by law²¹⁴—and the lack of funding to feed nearly thirty children of prisoners living inside the facility with their mothers.²¹⁵ These families must therefore rely on private individual or organizational donors to help supply basic necessities. Public provision of effective legal services is also lacking, as many lawyers are utterly unaware of who their clients are and vice-versa.²¹⁶

The Juana María de Lara Women's Correctional Facility, a smaller prison that the Inter-Institutional Commission also visited in 2006, provides a positive counter-example of conditions for women prisoners. The Commission found cells, restrooms and kitchen facilities to be in good condition.²¹⁷ At the time of the visit, the prison offered medical services, as well as a range of educational, recreational and paid work activities for inmates.²¹⁸ The prisoner-to-guard ratio was below 2:1.²¹⁹ These practices and conditions should be emulated elsewhere.

²¹² EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 3.

²¹³ THE PROGRESS OF HUMAN RIGHTS IN PARAGUAY, *supra* note 15, at 90 (2006) (relating a description by lawyer Cecilia Beckelmann, First Prosecutor for Penal Execution Unit No.1, of the operation).

²¹⁴ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 5. We also observed male guards operating inside prison grounds on our visit to Casa del Buen Pastor, Oct. 27, 2006.

²¹⁵ EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160, at 3.

²¹⁶ *Id.* at 4.

²¹⁷ *Id.* at 29.

²¹⁸ *Id.* at 29-30.

²¹⁹ *Id.*

2.6.3 The Situation of Juveniles in Detention

The conditions in Paraguay's juvenile detention facilities today appear less violently abusive than those in adult prisons.²²⁰ Our research team's October 2006 visit to the *Centro Integral Educativo de Itauguá* was encouraging in this sense. We observed there a rehabilitation plan focused on pedagogy, productive detainee labor, and individual training. A facility director with whom we spoke described this approach as being guided in large part by international principles regarding treatment of youths.²²¹ At the time of our visit, an on-site bakery and gardening program provided opportunities for constructive detainee activity. There were also strong educational programs, which enjoyed high attendance rates. Detainee participation was close to universal, up from less than 25% in 2002. Prison staff, too, have been the focus of educational efforts—all must complete successfully a “Prison School” training program. Guards did not carry weapons. Our interviews with youth detainees indicated that prison staff generally treated them humanely, in contrast to patterns of abuse that had characterized this prison in the past and that continue at other facilities today.²²² As one young man told us, “Itauguá is a paradise compared to Tacumbú.”²²³ Though certainly not perfect, the facility does appear quite different, in a positive way, from others throughout the country.²²⁴ Two key legal developments may help explain this disparity. First, after nine minors died in a fire that erupted while they were protesting their deplorable living

²²⁰ Interview with Fátima Britos Ricciardi, Human Rights Prosecutor, Public Ministry, in Asunción, Para. (Oct. 28, 2005) (contrasting the lack of reports of torture in facilities for minors with complaints about abuse in Tacumbú).

²²¹ Interview with Mercedes Isidoro Ruíz Díaz, Director of Training Programs, *Centro Integral Educativo de Itauguá*, in Asunción, Para. (Oct. 21, 2006).

²²² One detainee at the center explained to our investigators:

Conditions have improved a lot. There is better treatment. The food is better, you get all three meals. Before, it was a disaster. People were sleeping on the floor. There was a lot of mistreatment, physically and psychologically. Before, when there was a fight, the educators would put all involved on the floor and hit them all. Leave them naked in the cold, too. [IHRC: Now if there's a fight, what happens?] A penalty like suspension of visits or of food. Before, it was a beating. Interview with Intern at *Centro Integral Educativo de Itauguá*, in Asunción, Para. (Oct. 21, 2006).

²²³ *Id.*

²²⁴ During our team's visit to the center, many detainees made consistent reference to occasions of physical abuse, drug use, and guard corruption. *Id.* See also the very positive review of the facility by the Inter-Institutional Commission on Penitentiary Visits, in *EVALUATION OF THE PENITENTIARY SYSTEM*, *supra* note 160, at 13-14.

conditions, an Inter-American Commission on Human Rights case led to the closing of the Panchito López detention center. There was a subsequent Inter-American Court of Human Rights judgment against the Paraguayan government.²²⁵ This case generated powerful international pressure to put an end to these abuses.²²⁶ The international litigation has also fostered criticism of the general resort to criminal detention of juveniles.²²⁷ The notion that children should only be sent to prison as an absolute last option informs a specialized juvenile code in Paraguay, which provides that for minors to be placed in pretrial detention, all less severe measures must have been exhausted.²²⁸ However, children's rights promoters told our researchers that several critical flaws remain in the application of this special code. There are too few specialized courts for youthful offenders. The institution of the *Defensoría de la Niñez y Adolescencia* (Children and Adolescents Ombudsman), which was established by the code, does not yet function well due to budget limitations.²²⁹ In addition, there is a lack of training for police, prosecutors and public defenders in children's rights.²³⁰ The principle of special treatment for minors is also something of which the Paraguayan society at large has yet to be convinced. "Most people think," Professor Wolfgang Schöne told us, "[that] 'the juveniles in the detention centers must be there for a reason;

²²⁵ Instituto de Reeducción del Menor v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004).

²²⁶ Interview with Mercedes Isidoro Ruíz Díaz, *supra* note 221 (crediting the case with encouraging a greater commitment of government resources to the minor detention system); Interview with Victor Manuel Núñez, *supra* note 34 (citing the same effect); Interview with Heve Otero, *supra* note 61 ("Itaiguá [was] a response to Panchito López.").

²²⁷ See, e.g., Heve Otero, *A un año de vigencia del nuevo código [At One Year of the New Code Being in Effect]*, in HUMAN RIGHTS IN PARAGUAY 2002, *supra* note 185, at 399 (citing problems in the centers at that time akin to those encountered in adult facilities: lack of resources, lack of educational programs, torture, solitary confinement cells, physical abuse); Interview with Michael Oloingsigh, *supra* note 170 ("The best place for rehabilitation is in the community, not in jail, not even in *here*.").

²²⁸ Código de la Niñez y la Adolescencia [Childhood and Juvenile Code] art. 169, Ley No. 1.680/01, May 30, 2001 ("The criminal act committed by an adolescent will be punished with correctional measures or with a deprivation of liberty only when the application of socio-educative measures is insufficient."); see also Ley No. 57/90, Sept. 20, 1990, Que Aprueba y Ratifica la Convención de las Naciones Unidas sobre los Derechos del Niño [Act that Approves and Ratifies the U.N. Convention on the Rights of the Child] art. 37(b) ("Detention, imprisonment or jailing of a child should be utilized only as a measure of last recourse, and only for the briefest period necessary.").

²²⁹ Interview with Heve Otero, *supra* note 61.

²³⁰ Interview with Heve Otero, *supra* note 61; see also Luis Claudio Celma, *Otro año lleno de promesas, postergaciones y amenazas [Another Year Full of Promises, Delays and Threats]*, in HUMAN RIGHTS IN PARAGUAY 2005, *supra* note 32, at 439, 463.

they must have done something. What does it matter to me? It is not my problem.”²³¹ Miguel Gómez Torres, who worked in the Supreme Court’s Human Rights Office, made this same point in even starker terms: “[We asked what we] should do with the [young detainees] if they were not allowed in the community. The response: ‘Take them to someplace like the Chaco, where there are no people, only desert.’ [But] how are we going to care for them? The answer: ‘There’s nothing to care for; they’re just criminals.’”²³²

²³¹ Interview with Wolfgang Schöne, *supra* note 90.

²³² Interview with Miguel Gómez Torres, *supra* note 208.

Critical Evaluation of Citizen Security in Paraguay

Criminality and public insecurity are frequent problems in societies undergoing transitions to democratic systems of governance; these concerns have been especially salient in Latin America.²³³ As a prominent legal scholar has noted, “from the very start in Latin America, we discovered that the ‘transition to democracy’ was not a simple switch to popular elections under a party system, but rather a profound modification of the most basic rules of the political game.”²³⁴ These fundamental changes in the structure of the state can easily lead to situations of increased insecurity and surges in criminality. However, it is important to recognize that these issues often involve a large number of causal factors that are difficult to disaggregate, making the analysis of crime rates and the success of criminal justice policies problematic.

This inherent difficulty may be further complicated when the perceived intensity of insecurity surpasses actual, measurable levels. This perception, of course, is vulnerable to manipulation and exaggeration from a range of societal actors, including media sources and opportunistic politicians. Popular calls for reform may often ignore complex issues such as poverty, demographic changes and corruption. In this context, reform measures may be adopted hastily and without rigorous analysis of overall efficacy, much less their potential negative consequences on human rights.

²³³ See generally John Bailey & Lucía Dammert, *Public Security and Police Reform in the Americas*, in PUBLIC SECURITY AND POLICE REFORM IN THE AMERICAS 1 (John Bailey & Lucía Dammert eds., 2006).

²³⁴ Alberto M. Binder, *La justicia penal en la transición a la democracia en América Latina* [Criminal Justice in the Democratic Transition in Latin America], 1994 ANUARIO DE DERECHO PENAL [1994 CRIMINAL LAW YEARBOOK] 75, 80 (1994).

In this chapter, we consider the growing public perception of insecurity in Paraguay during the last decade. We start by examining the possible disparity between this general conception of insecurity and actual crime rates. Although public safety is a significant concern in Paraguay, the perception of insecurity may outweigh the actual risk to security. Within this general framework, we highlight the role that the media and politicians may play in exaggerating this perception.

We then examine more closely one possible cause to which many within the criminal justice community attribute this increased level of insecurity—the belief that the new Criminal Code and the Criminal Procedure Code are soft on crime and unfit for Paraguay. Our research considers the extent of implementation of these criminal reforms, demonstrating significant gaps in the implementation process. We suggest that these problems in implementation, rather than the reforms themselves, may be responsible for many failures in the new system. Finally, the chapter surveys possible alternative causes for the rise in crime to expose the underlying social and economic factors that are most likely the root causes of this disturbing trend.

3.1 Perceived Insecurity vs. Actual Insecurity

In any modern society, public perception, media attention and political discourse are as central to implementing and moving public policy as are rigid statistical analyses and academic studies. Perception of increasing levels of insecurity may even be more influential in shaping public discourse than are the actual rates of crime or safety, especially when reliable statistical data are unavailable. As scholars John Bailey and Lucía Dammert have observed, “[w]hen governments cannot produce credible, timely, and accessible data on trends in crime and policing, the public responds to political rhetoric or mass media coverage—often inaccurate, if not inflammatory.”²³⁵ This is a dangerous tendency, as these distortions in public perception can diminish respect for fundamental human rights and lead to policy and legal reforms that fail to address underlying causal factors.

²³⁵ John Bailey & Lucía Dammert, *Assessing Responses to Public Insecurity in the Americas*, in PUBLIC SECURITY AND POLICE REFORM IN THE AMERICAS, *supra* note 233, at 245, 249

The problem is particularly severe in light of the key role that criminal violence and its perception play in the overall level of perceived insecurity. As Dammert and Mary Fran T. Malone have noted:

The UNDP describes seven dimensions of human security that are threatened by the current model of development: economic, alimentary, health, environmental, personal, societal, and political. Crime becomes a convenient scapegoat for citizens because they can channel all their insecurities into fear of crime, which is more tangible than these other economic, political, and social insecurities.²³⁶

Because crime becomes, in effect, the central issue, distortions in its measurement are particularly salient in the public perception of insecurity.

3.1.1 The Perception of Insecurity in Paraguay

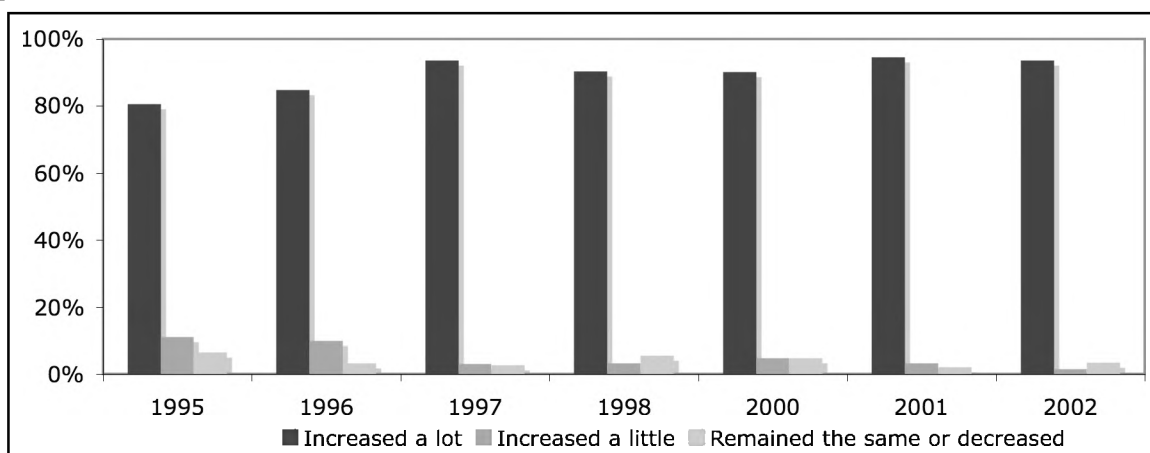
In Paraguay today, public safety is one of the most prominent issues on the national agenda both politically and in the media. Recent poll data have revealed that in 2006 crime and public security rated second among important issues to Paraguayans.²³⁷ This concern is closely related to the fear that general insecurity in the country has been increasing. A 2003 survey discovered, for example, that 89% of respondents felt that Paraguay was growing more unsafe everyday.²³⁸

This perception of rising insecurity that Paraguayans experience most likely has a direct relation with their perception that crime is rising in the country. According to Latinobarómetro data, the overwhelming public perception in Paraguay for the last decade has been that crime has increased constantly, as Figure 1 demonstrates:

²³⁶ Lucia Dammert & Mary Fran T. Malone, *Does it Take a Village? Policing Strategies and Fears of Crime in Latin America*, 48 LATIN AMER. POL. & SOC'Y 27, 30 (2006) (footnotes omitted).

²³⁷ Fourteen percent of respondents to the survey reported that delinquency and public safety were their number one concern. CORPORACIÓN LATINOBARÓMETRO, INFORME LATINOBARÓMETRO 2006, at 41 (2006). The number one concern of most respondents was unemployment (32%). *Id.*

²³⁸ Corporación Latinobarómetro, Latinobarómetro Survey (2007), available at <http://www.latinobarometro.org>. The question was phrased as: "Generally speaking, would you say that living in Paraguay is getting safer or more unsafe? Would you say it's very safe, safe, unsafe or very unsafe?"

*Figure 1 – Has Crime Increased or Decreased?*²³⁹

For all the years surveyed, over 80% of respondents felt that crime had increased significantly in the past five years. Well over 90% felt that crime increased at least a little. The results of this survey are unequivocal—the dominant perception among Paraguayans for many years has been that crime rates are rapidly increasing. The data also show a slight increase in the perception of rapidly worsening crime rates in the years of 1997 (increase from 84.9% to 93.7%) and 2001 (increase from 90.3% to 94.6%).

The general public is equally pessimistic about the government's handling of public security concerns as well as on the possibility that the situation will improve in the near future. According to a survey of the *Consorcio Iberoamericano de Investigaciones de Mercado y Asesoramiento* (Iberian-American Consortium of Marketing and Consulting Research), barely 2% of Paraguayans living in the Greater Asunción area have a positive opinion of presidential policies on security issues.²⁴⁰ People expressed similar views regarding the effectiveness of the police. In another survey, over 69% of respondents either disagreed or strongly disagreed with the statement that the police are efficient in the fight against crime.²⁴¹ More

²³⁹ *Id.* The question was framed as: “Do you think crime has increased a lot or a little, or has decreased a lot or a little or has remained the same in the last 5 years?” *Id.*

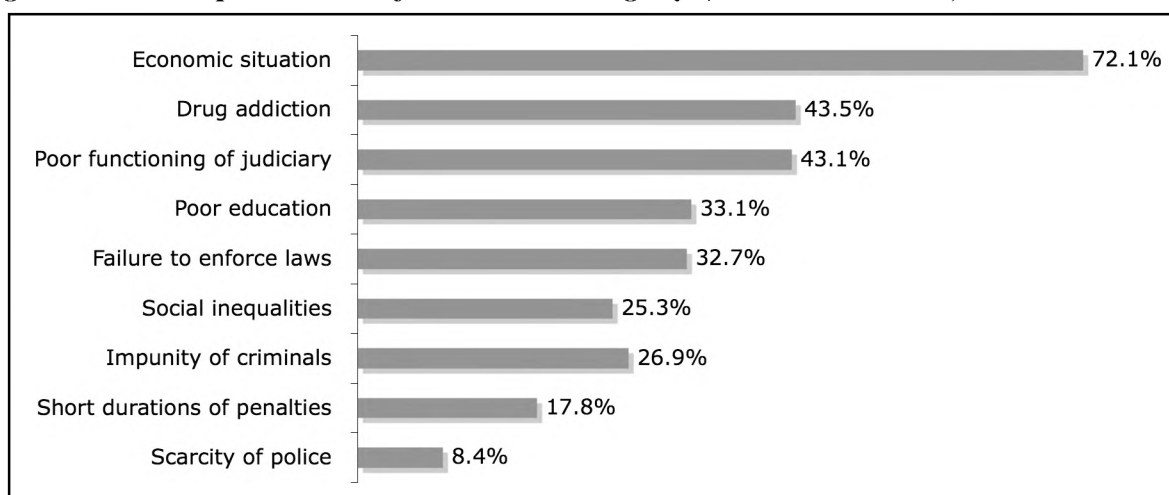
²⁴⁰ CONSORCIO IBEROAMERICANO DE INVESTIGACIONES DE MERCADOS Y ASESORAMIENTO [CIMA] [IBERIAN-AMERICAN CONSORTIUM ON MARKETING AND CONSULTING RESEARCH], BARÓMETRO IBEROAMERICANO DE GOBERNABILIDAD [IBERIAN-AMERICAN GOVERNANCE BAROMETER] 9 (2005).

²⁴¹ Latinobarómetro Survey, *supra* note 238. Data from 2000 survey. The question was formulated as: “Following with the crime problem, do you think that the police are sufficiently efficient in the fight against crime in Paraguay? Do you strongly agree, agree, disagree, or strongly disagree with this view?”.

recent data also suggest that most Paraguayans do not believe the situation will improve in the near future. When polled as to whether Paraguay was winning the war against crime, over 77% of respondents felt that it was not.²⁴²

It is also important to note the causal factors to which the public attributes this increasing insecurity. In a 2004 survey, Latinobarómetro presented participants with a list of possibilities, and asked them to select the principal cause or causes of crime in Paraguay. The results are presented below:

*Figure 2 – Principal Causes of Crime in Paraguay (Latinobarómetro).*²⁴³

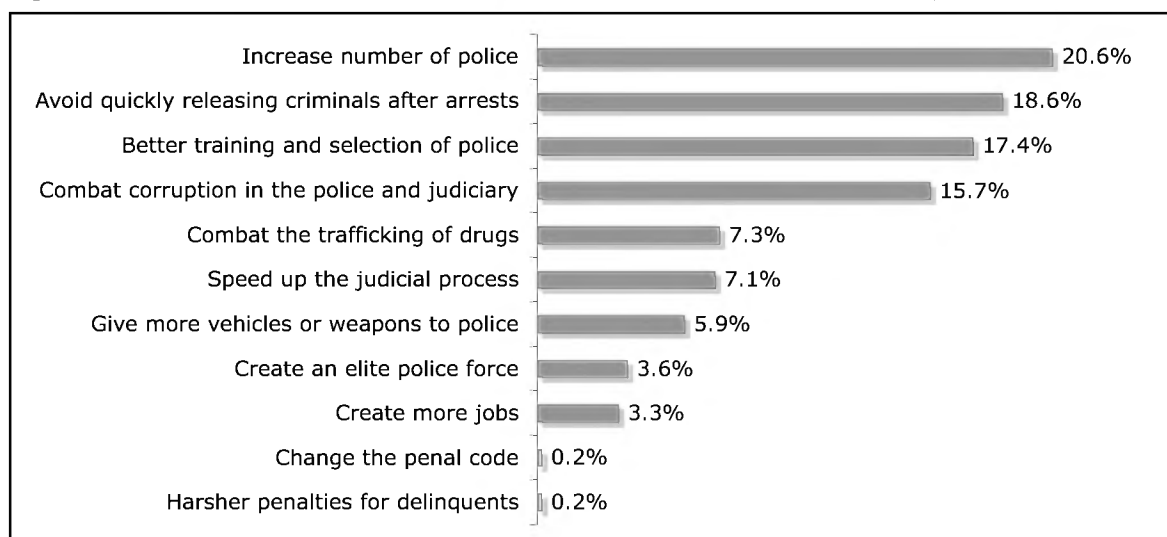


The Paraguayan newspaper *La Nación* conducted a similar survey in 2005. Results from this survey also show that most people still regard unemployment and poverty as the most fundamental causes of criminality. Nearly 60% of respondents in the survey cited lack of employment or poverty as the number one reason for increasing crime rates.²⁴⁴ Interestingly, when surveyors asked respondents what was necessary to address the problem of increasing insecurity, their answers varied:

²⁴² *Id.* Data from 2003 and 2004 surveys. The question asked was: “People have very different opinions. Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree?: We are winning in the war against crime and delinquency.”

²⁴³ *Id.* The question was presented as: “Of the following, which do you think are the principal causes of crime in Paraguay today?”

²⁴⁴ *El 60% de la gente piensa que el desempleo genera delincuencia* [60% of People Think that Unemployment Creates Crime], LA NACIÓN (Asunción), Oct. 7, 2005, at 2. The survey phrased the question as: “What do you consider to be the cause of the number of crimes that occur?” Respondents cited police inefficiency (16.7%) in second place, followed closely by drug addiction in third (15.4%). *Id.*

*Figure 3 – What Should Be Done to Decrease Crime? (La Nación).*²⁴⁵

Comparing these results from the two surveys suggests that many Paraguayans attribute problems with security to laws deemed weak and criminal justice policies believed to be too lenient. At first, both surveys seem to demonstrate a relatively low concern for directly reforming criminal law. Fewer than 1% of participants in the *La Nación* survey cited changing the Criminal Code or creating harsher penalties for delinquents as measures that should be taken to decrease crime. Respondents to the Latinobarómetro survey listed reduced sentencing as the second to least important factor contributing to crime. However, results still show significant concern over the functioning of the justice system. This is evident in survey respondents' expressed fears of impunity and the rapid release of suspects—both of which may stem from concerns with the use of alternative measures and the expanded rights guarantees in the new criminal codes. Quickly releasing prisoners (18.6%) was a prominent concern in the *La Nación* results. Similarly, concerns with the poor functioning of the judiciary (43.1%) and the failure to enforce laws (32.7%) both scored relatively high in the Latinobarómetro data. This could indicate that the political discourse surrounding the counter-reform to the new criminal codes has affected public perception of insecurity.²⁴⁶

²⁴⁵ *Id.* This question was phrased: “What measures should be taken to decrease crime?”.

²⁴⁶ Another notable result is the focus on policing policies when surveyed about specific measures the government should take. Nearly half of the responses to the *La Nación* survey suggested increasing the

3.1.2 Indicators Demonstrating Actual Levels of Crime

Obtaining accurate measures for crime rates can be problematic in any country. In the context of transitional societies, in which there exist few established systems for collecting and processing data, this can be especially difficult.²⁴⁷ During the Stroessner era in Paraguay, the police failed to maintain comprehensive statistical data.²⁴⁸ Unfortunately, even today, many Paraguayan criminal justice agencies lack coordinated, statistically reliable methods of keeping data.²⁴⁹ Many of the experts and practitioners whom we interviewed criticized the available data from the National Police, Public Ministry and judiciary as limited, inaccurate and unreliable.²⁵⁰ A 2004 study on crime data in Asunción has noted that there simply “does not exist a system of information regarding crime in the country.”²⁵¹ This section presents the best available data from these sources including national rates for murder and reporting of crimes. However, to gain a more complete view of the (in)security situation in Paraguay, we compare this data with the few victimization surveys that are available.

number of officers, improving police training or improving their equipment. This suggests that, of all criminal justice institutions, police are the institution with which most people have the closest contact. *Id.*

²⁴⁷ This is a common problem shared by many countries in Latin America. See IRMA ARRIAGADA & LORENA GODOY, *SEGURIDAD CIUDADANA Y VIOLENCIA EN AMÉRICA LATINA: DIAGNÓSTICO Y POLÍTICAS EN LOS AÑOS NOVENTA* [CITIZEN SECURITY AND VIOLENCE IN LATIN AMERICA: DIAGNOSTIC AND POLICIES OF THE NINETIES], SERIE POLÍTICAS SOCIALES NO. 32, at 15 (Economic Comm’n for Latin Am. and the Caribbean [ECLAC] ed., 1999) (“Most countries do not have one national institution that collects, systematizes, and consolidates this type of statistics.”).

²⁴⁸ Interview with Félix Silva Monges, *supra* note 50.

²⁴⁹ The Office of the Prosecutor has recently implemented a new statistical gathering system that promises to solve significantly that institution’s problems in this area. Interview with Teresa Martínez Acosta, *supra* note 36. Other institutions, such as the recently formed Sistema 911 emergency response system and the Internal Affairs of the National Police, still do not have any formalized way of recording data. Interview with Néstor Báez Sosa, Commissioner of Internal Affairs, National Police, in Asunción, Para. (Oct. 24, 2006).

²⁵⁰ *E.g.*, Interview with Carmen Echauri, *supra* note 132; Interview with Marcos Köhn, *supra* note 47; Interview with Teresa Martínez Acosta, *supra* note 36; Interview with Helio Vera, *supra* note 36.

²⁵¹ María Cecilia Gortari, *Estadísticas sobre criminalidad y violencia en Asunción, Proyecto Piloto de Coordinación Institucional para la elaboración de un plan de acción de prevención de la violencia y seguridad ciudadana en Asunción* [Statistics on Criminality and Violence in Asunción, Institutional Coordination Pilot Project for the Elaboration of a Plan of Action for the Prevention of Violence and Citizen Security in Asunción] 1 (Nov. 1, 2004) (unpublished report, on file with the IHRC).

Homicide rates are often employed as a proxy for levels of violence when analyzing trends in criminality. This can be a convenient indicator, as homicide reports tend not to suffer from underreporting to the same extent as other serious crimes.²⁵² According to the Pan-American Health Organization (PAHO), intentional homicide rates have been gradually increasing in Paraguay over the last decade:

Table 2 – PAHO Estimated Homicide Rate in Paraguay (per 100,000 pop.).²⁵³

Year	1995	1996	1997	1998	1999	2000	2001	2002
Homicide Rate	15.6	16.4	17.3	17.5	17.7	17.9	18.1	18.4

Although the rising rates still fall well below the rate for all of Latin America, which averaged 25.3 homicides per year per 100,000 people from 2000 to 2004,²⁵⁴ they are still quite high. Although not as dramatic an increase as public perception would seem to suggest, the surge noted by the PAHO does tend to demonstrate that crime has been increasing. A comparison with the homicide rate derived from reporting statistics of the National Police (including attempted homicide) shows somewhat similar figures, although with a significant decline in recent years:

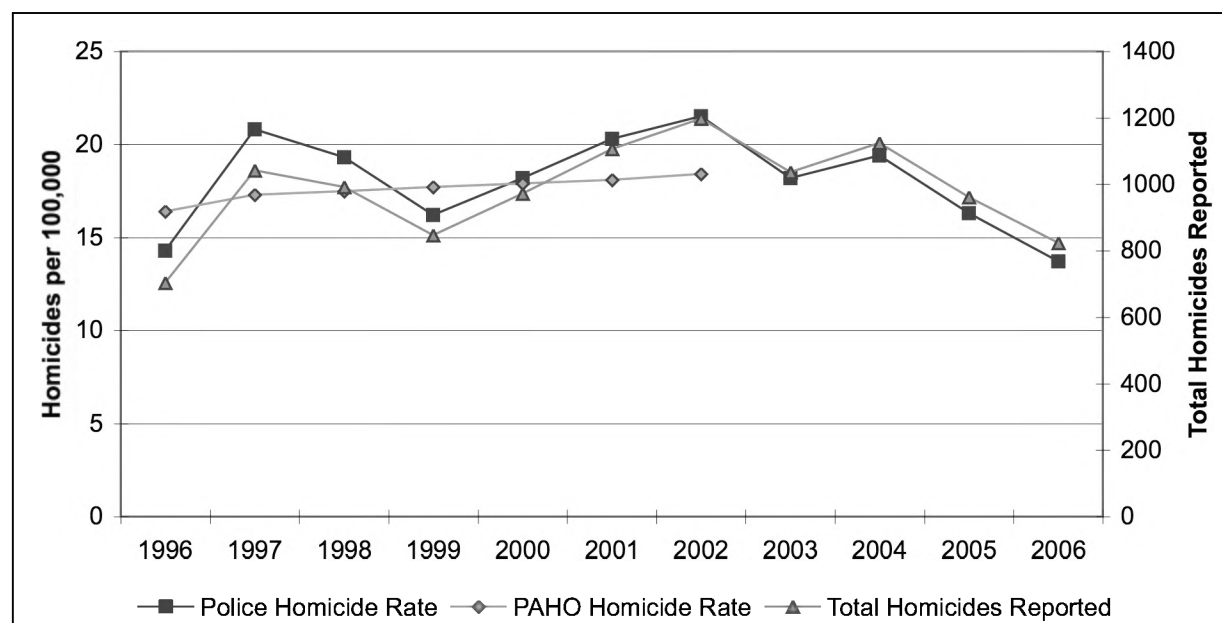
²⁵² See Mark Shaw, Jan van Dijk & Wolfgang Rhomberg, *Determining Trends in Global Crime and Justice: An Overview of Results from the United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems*, 3 FORUM ON CRIME & SOCIETY 35, 43-44 (2003) (noting that despite lower quality crime data in middle-income and lower-income countries, more serious, violent crimes have a higher rate of reporting).

²⁵³ Pan-American Health Organization [PAHO], Health Analysis and Information Systems Area, Regional Core Health Data Initiative, Technical Health Information System (2005), available at <http://www.paho.org/english/dd/ais/coredata.htm>.

²⁵⁴ *Id.*

*Table 3 – Comparative Homicide Rates in Paraguay (per 100,000 pop.).*²⁵⁵

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Police Rate ²⁵⁶	14.3	20.8	19.3	16.2	18.2	20.3	21.5	18.2	19.4	16.3	13.7
PAHO Rate	16.4	17.3	17.5	17.7	17.9	18.1	18.4	N/A	N/A	N/A	N/A
Total Homicides Reported ²⁵⁷	703	1042	991	846	973	1107	1198	1036	1125	961	823

Figure 4 – Comparative Homicide Rates in Paraguay

Relying solely on homicide rates, however, can result in a skewed picture of criminality. Such an analysis leaves out non-fatal types of violence and crime, which could be a significant problem given that (1) the majority of crimes in Latin American tend to be property crimes, and (2) there may be considerable divergence between rates of homicide and those of other crime. In an analysis of victimization data from various sources, Juan Luis Lodoño and Rodrigo Guerrero have estimated

²⁵⁵ Data from years 1996 to 1999 from DEP'T OF STATISTICS, NAT'L POLICE OF PARAGUAY, ANUARIO ESTADÍSTICO 1999 [Statistical Yearbook 1999], at 93 (1999) [hereinafter STATISTICAL YEARBOOK 1999]; 2000 data from DEP'T OF STATISTICS, NAT'L POLICE OF PARAGUAY, ANUARIO ESTADÍSTICO 1999 [hereinafter STATISTICAL YEARBOOK 2000], at 23 (2000); Data from 2001 to 2006 obtained from Dep't of Statistics, Nat'l Police of Paraguay (on file with the IHRC).

²⁵⁶ Population data obtained from Dirección General de Estadísticas, Encuestas, y Censos [DGEEyC] [General Direction of Statistics, Surveys and Census], Proyección de la Población Nacional por Sexo y Edad, 1950-2050 [Projection of National Population by Sex and Age 1950-2050] (2007) (on file with IHRC).

²⁵⁷ Including attempted homicides.

that roughly one out of every three families in Latin America has been the victim of burglary or robbery.²⁵⁸ This general observation is consistent with the Public Ministry's interpretation of police crime statistics, which classifies the bulk of crimes in the 1990s as "street crime or predatory crime," primarily crimes against property (theft or burglary) and crimes against personal integrity (assault and battery).²⁵⁹ A comparison to police data on reporting of other crimes could show whether this trend in homicide reporting is indicative of crime rates in general.

However, weak reporting trends for non-fatal crimes in general and serious problems with Paraguayan police statistics in particular undermine rigorous analysis based on data on these types of crimes. First, in developing countries, as one scholar has noted, "[i]t is well known that many crimes are neither discovered by the police, nor reported by the citizens."²⁶⁰ These statistics are commonly referred to as "dark figures," and many of the criminal justice professionals we interviewed criticized police data for not including these numbers. Dark figures can make up a considerable percentage of crimes—up to 30-40% by some estimates.²⁶¹ A study of data taken from the 1996 U.N. Crime Victimization Survey shows that in Asunción, victims reported only 41.9% of burglaries to the police, and only 39.6% of robberies.²⁶² The 2005 crime victimization survey of *La Nación* revealed a slightly higher non-reporting rate of 64.1% for all crimes

²⁵⁸ Juan Luis Londoño & Rodrigo Guerrero, *Violencia en América Latina: epidemiología y costos* [Violence in Latin America: Epidemiology and Costs], in ASALTO AL DESARROLLO [ASSAULT ON DEVELOPMENT] 11, 24 (Inter-Am. Dev. Bank ed., 2000); see also Alessandra Heinemann & Dorte Verner, *Crime and Violence in Development: A Literature Review of Latin America and the Caribbean*, (World Bank, Policy Research Working Paper No. 4041, 2006) (concluding from a survey of literature on crime in Latin America that the majority of crimes are property crimes).

²⁵⁹ ATTORNEY GENERAL'S OFFICE, PUBLIC MINISTRY, PLAN NACIONAL DE PREVENCIÓN DEL DELITO Y SEGURIDAD CIUDADANA [NATIONAL PLAN FOR CRIME PREVENTION AND CITIZEN SECURITY] 5 (2002); see also Gortari, *supra* note 251, at 19 (noting that "[a]s much at the national level as in Asunción, the majority of criminal acts registered correspond to robbery and burglary.").

²⁶⁰ ANNA ALVAZZI DEL FRATE, U.N. INTERREGIONAL CRIME & JUSTICE RESEARCH INST., VICTIMS OF CRIME IN THE DEVELOPING WORLD 6 (1998).

²⁶¹ *Id.* at 6-7. Many of those we interviewed confirmed the existence of dark figures in police reporting statistics in Paraguay. Interview with Helio Vera, *supra* note 36 (suggesting that there is significant underreporting of property crimes); Interview with Luis Fretes, *supra* note 147 (suspecting that robberies, particularly those taking place on buses, represent a dark figure); Interview with Teresa Martínez Acosta, *supra* note 36 (blaming such hidden statistics, and specifically cases without named accused, for discrepancies between the registries of Office of the Prosecutor and the Court).

²⁶² ALVAZZI DEL FRATE, *supra* note 260, at 90.

surveyed.²⁶³ This tendency to underreport could be directly related to the severity of the crime, and other external factors such as the existence of theft insurance. For example, the U.N. survey showed a reporting rate of 97.5% for auto theft.²⁶⁴ Another explanation for such high levels of underreporting might be a general lack of confidence in the police and the criminal justice system. In the 2005 *La Nación* survey, over 65% of respondents indicated that they did not report the crime in question because they believed reporting to police to be a “waste of time.”²⁶⁵ Another 23% indicated that they did not trust the police or the justice system.²⁶⁶ Latinobarómetro data support this finding. In a 2004 survey, over 67% of Paraguayans surveyed responded that they had little or no confidence in the police.²⁶⁷

Another factor that likely contributes to underreporting is the categorization of some crimes as private criminal actions.²⁶⁸ For these crimes, the victim must initiate the complaint for police to investigate, and only private attorneys—not public prosecutors—can prosecute the case.²⁶⁹ Police reporting statistics do not include private criminal actions.²⁷⁰ Even if they did, statistics would still underrepresent crime rates, since the cost of hiring a private attorney creates a strong disincentive for many Paraguayans of limited financial means.²⁷¹

²⁶³ *El 66% de las víctimas cree que la denuncia es una pérdida de tiempo* [66% of Victims Feel that Reporting a Crime is a Waste of Time], LA NACIÓN (Asunción), Oct. 4, 2005, at 2.

²⁶⁴ ALVAZZI DEL FRATE, *supra* note 260. Even so, these dark figures for petty theft are still very significant as they increase the overall sense of insecurity felt. *Id.* at 8.

²⁶⁵ *66% of Victims Feel that Reporting a Crime is a Waste of Time*, *supra* note 263.

²⁶⁶ *Id.*

²⁶⁷ Latinobarómetro Survey, *supra* note 238. The question was framed as: “Please look at this card and tell me how much confidence you have in each of the following groups, institutions or persons mentioned on the list: a lot, some, a little or no confidence? Police.”

²⁶⁸ Código Penal Procesal [Criminal Procedure Code] art. 17, Ley No. 1.286/98, July 8, 1998 (listing such offenses as physical abuse, injury, culpable injury, and menacing).

²⁶⁹ *Id.* (“These cases shall proceed only by complaint of the victim or his legal representative, and in accordance with the special proceedings provided for in this code.”).

²⁷⁰ Interview with Félix Silva Monges, *supra* note 50.

²⁷¹ This is worrisome as it effectively denies justice for certain crimes due to the victim’s inability to afford legal representation. As attorney Myrna Arrúa de Sosa explains, “for the victim of private action offenses, male or female, who lacks economic resources to pay private attorneys’ fees, his or her participation in the process is *effectively denied*, and access to justice along with it.” MYRNA ARRÚA DE SOSA, OBSTÁCULOS PARA EL ACCESO A LA JUSTICIA DE LA MUJER VÍCTIMA DE VIOLENCIA EN EL PARAGUAY [OBSTACLES TO ACCESS TO JUSTICE FOR THE FEMALE VICTIM OF VIOLENCE IN PARAGUAY] 86 (2005) (emphasis original).

In addition to difficulties caused by underreporting of crimes to police, there is strong reason to believe that the non-fatal crime data from the National Police of Paraguay are particularly unreliable. Nearly all of the sources familiar with these issues whom we interviewed shared this sentiment, including officials from the National Police,²⁷² the Public Ministry,²⁷³ and specialists who work on criminal justice issues in Paraguay. Amnesty International staff found it difficult to complete a study regarding firearm violence because they simply could not get the data they needed. As representatives told our researchers: “There are no numbers. This is a huge failure here in Paraguay.”²⁷⁴ Carmen Echaury of the UNDP described her organization’s efforts to aggregate data gathered separately from the Public Ministry, police, and medical emergency system because information systems and public registries are “fragmented, dispersed, or incomplete. They are not harmonized.”²⁷⁵ Another risk researchers face relates to possible data manipulation, a concern heightened by the lack of rigor in record keeping. Professor Helio Vera, who has served on the Working Group for the Reform of the Criminal Code of the Public Ministry, noted the potential for conscious manipulation of crime data for political purposes.²⁷⁶

A quick examination of police statistics on crime reporting shows a sudden and inexplicable 23% decrease in reported thefts and a 35% decrease in reported crimes overall between 2002 and 2003, as shown in Table 4 below:

²⁷² Interview, in Asunción, Para. (Oct. 2006).

²⁷³ Interview with Teresa Martínez Acosta, *supra* note 36.

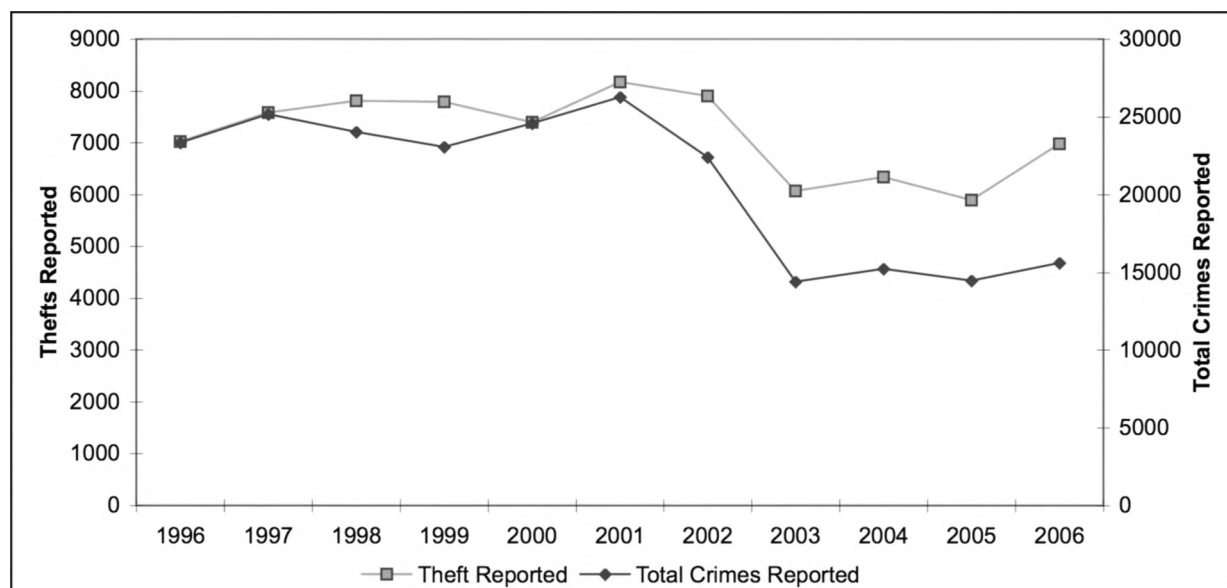
²⁷⁴ Interview with María José Garcete and Andrés Vázquez, Amnesty Int’l, in Asunción, Para. (Oct. 27, 2006).

²⁷⁵ Interview with Carmen Echaury, *supra* note 132; *see also* Gortari, *supra* note 251, at 1 (noting how each institution of the criminal justice system “collects and prepares its own information, each applying its own particular criteria.”).

²⁷⁶ Interview with Helio Vera, *supra* note 36.

Table 4 – Theft and Total Crimes Reported to National Police.²⁷⁷

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Theft Reported ²⁷⁸	7,023	7,582	7,813	7,791	7,395	8,173	7,898	6,064	6,336	5,891	6,981	5,999 ²⁷⁹
Total Crimes Reported	23,342	25,168	24,042	23,061	24,565	26,264	22,406	14,390	15,238	14,451	15,604	N/A

Figure 5 – Theft and Total Crimes Reported to National Police.

As the above figure demonstrates, the National Police statistics report a sudden, radical decline in thefts after 2002. Based on other sources, such as relatively reliable figures on homicides that demonstrate an *increase* over the same period, however, these police figures are probably inaccurate. This error is likely the result of the change in categorization of crimes with the new Criminal Code. The year in which the National Police Department of Statistics conformed their definitions to

²⁷⁷ Data from years 1996 to 1999 from STATISTICAL YEARBOOK 1999, *supra* note 255, at 93; 2000 data from STATISTICAL YEARBOOK 2000, *supra* note 255, at 23; Data from 2001 to 2005 obtained from Dep't of Statistics, Nat'l Police of Paraguay (on file with the IHRC).

²⁷⁸ Theft here includes reports of theft (*robo*), aggravated theft (*robo agravado*), robbery (*asalto*), and auto theft (*robo de vehículos*), including attempted crimes, from the years 1996-2002. See STATISTICAL YEARBOOK 1999, *supra* note 255, at 93; STATISTICAL YEARBOOK 2000, *supra* note 255, at 23. From 2003-2005, the classification changed, and this statistic includes the new definitions of burglary (*hurto*) and aggravated burglary (*hurto agravado*), which previous to 2003 were subsumed under theft in police statistics. Dep't of Statistics, Nat'l Police of Paraguay (on file with the IHRC).

²⁷⁹ Data from 2007 includes only the months of January through September 2007. A rough estimation extrapolating from the data available would place the total likely reports of theft for 2007 near 8,000.

those of the new code—2003—was also the same year that the reporting of crimes decreased dramatically.²⁸⁰ Thus, the registered decline is most likely due to a change in the scope of crimes included within the relevant definition, rather than any reduction in the overall rate of theft.

Although there exist many uncertainties regarding these data, it is important to note the recent increase in theft in 2006. This may indicate a trend toward increasing property crimes despite the decrease in homicide rates in recent years, as shown in Table 3. If these data are accurate, they would demonstrate a recent increase in *certain forms* of insecurity despite decreases or stability in other forms, further highlighting the need for a more precise understanding of security trends in formulating public policy.

3.1.3 Crime Victimization Surveys

An alternative source of data on levels of criminality are crime victimization surveys. The U.N.'s *Manual for the Development of a System of Criminal Justice Statistics* notes several advantages that this type of survey can provide for criminal justice agencies:

- (1) Results from victimization surveys can show crimes that have not been reported to the police because such surveys collect information directly from victims of crime about reported and unreported crimes. [. . .]
- (2) Crime rates derived from victimization surveys are not sensitive to changes in legal definitions or operational policies and procedures in the same way that police statistics can be. [. . .]
- (3) In victimization surveys samples are drawn from the general population and data are collected from both victims and non-victims over a given time period. [. . .]
- (4) Victimization surveys permit an investigation of the consequences of victimization and how victims cope with these consequences. [. . .]

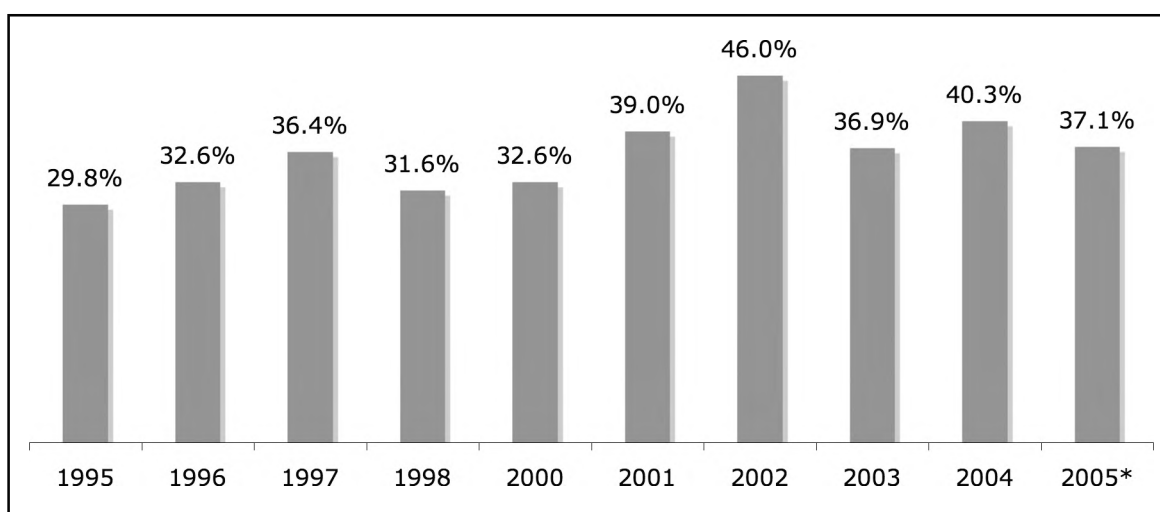
²⁸⁰ The police lagged behind the Public Ministry in updating their record keeping methods to match the crimes defined in the new code, and this caused a notable problem in coordinating statistics between the institutions. ATTORNEY GENERAL'S OFFICE, PUBLIC MINISTRY, INFORME TÉCNICO CRIMINOLÓGICO DEL MINISTERIO PÚBLICO [TECHNICAL CRIMINOLOGY REPORT OF THE PUBLIC MINISTRY] 107 (2005).

- (5) Victimization surveys are particularly useful in helping administrators of criminal justice and policymakers monitor people's perceptions, concerns and fears about crime and criminal justice.²⁸¹

A recent study noting the paucity of reliable statistics on crime in Paraguay has also concluded that crime victimization surveys are necessary “to generate a more complete panorama regarding the situation.”²⁸²

Latinobarómetro has conducted a crime victimization survey over the past decade, showing a general trend of gradually increasing crime rates in Paraguay, as the figure below demonstrates:

Figure 6 – Crime Victimization Rates of Households.²⁸³



These data show the percentage of respondents surveyed who indicated that they or a member of their household had been a victim of crime during the previous twelve months. The trend in these data resembles the pattern in the homicide rates from police statistics in Figure 4. While demonstrating a similar steady upward trend over the period, the survey data evidence sharp increases in 1997 and 2002,

²⁸¹ U.N. DEP'T OF ECON. & SOC. AFFAIRS, MANUAL FOR THE DEVELOPMENT OF A SYSTEM OF CRIMINAL JUSTICE STATISTICS 37, U.N. Doc ST/ESA/STAT/SER.F/89 (2003).

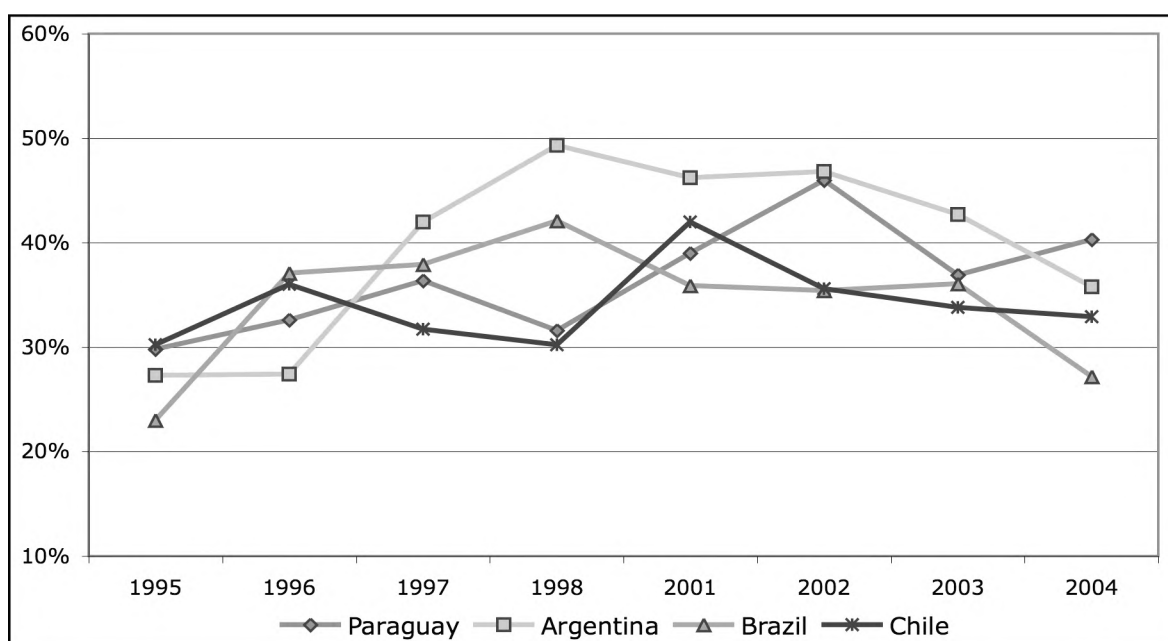
²⁸² Gortari, *supra* note 251, at 32.

²⁸³ Latinobarómetro Survey, *supra* note 238. The question was posed as: “Have you, or someone in your family, been assaulted, attacked, or been the victim of a crime in the last 12 months?” The final year in the chart corresponding to 2005 is not from a Latinobarómetro survey, but rather the *La Nación* crime victimization survey. *Crime Has Now Hit 7 Out of 10 People*, *supra* note 1.

consistent with police homicide rates. The consistency of these data with homicide statistics of the National Police supports the credibility of the homicide figures, and vice versa.

A comparison with survey results from neighboring countries in South America shows that this gradual increase in victimization rates over time tracks similar rises experienced in other countries:

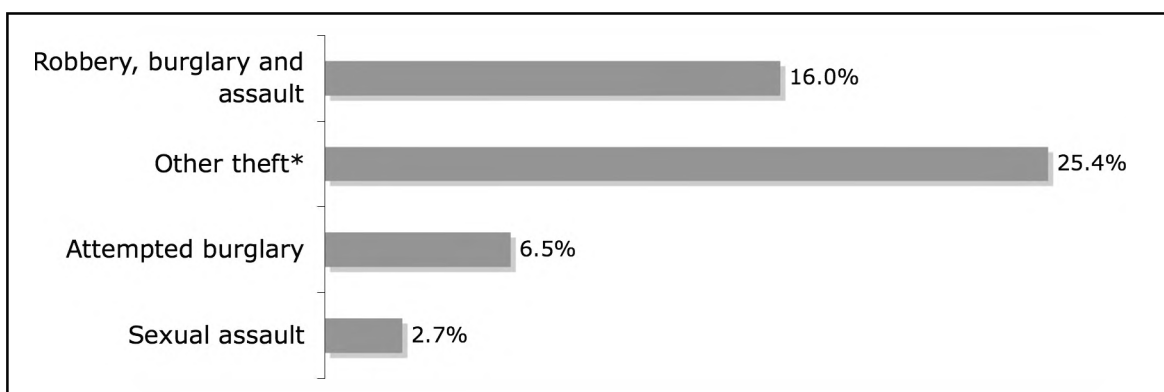
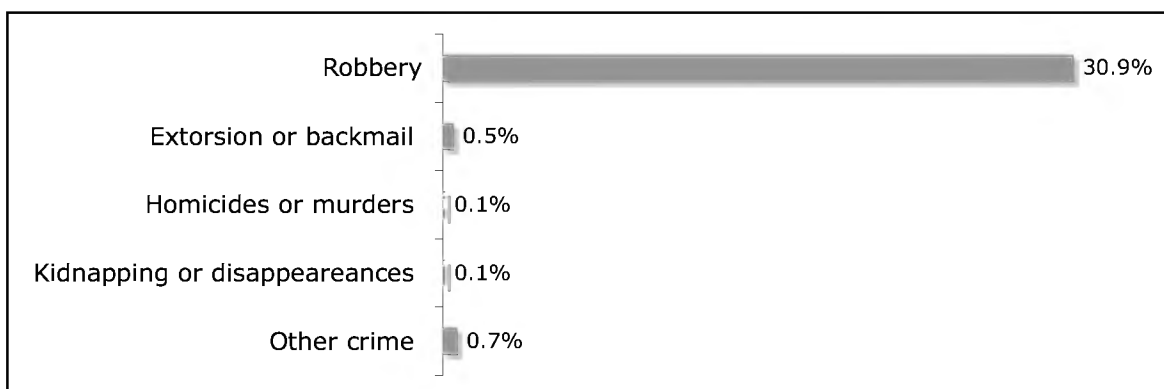
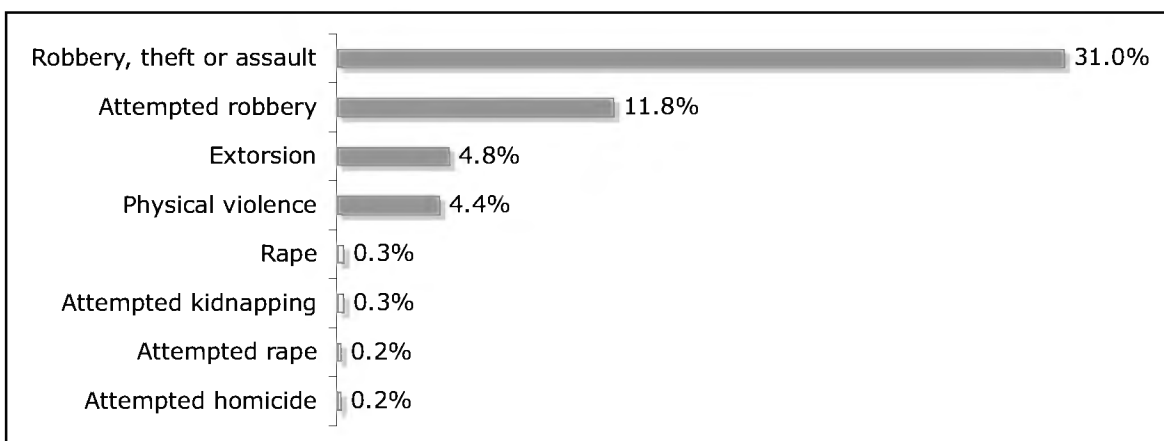
*Figure 7 – Comparative Crime Victimization Rates of Households.*²⁸⁴



This data suggest that whatever increase Paraguay may be experiencing could be part of a wider, regional trend. They also demonstrate that over the past decade, crime victimization rates in Paraguay have still been below those of some of its more prosperous neighbors.

Regarding specific crimes, there is no single survey that has comprehensively measured victimization rates from both before and after the criminal codes' revisions. However, we may compare data taken from individual studies at different points in time. The 1996 U.N. International Crime Victim Survey (ICVS), the 2000 Latinobarómetro data, and the 2005 *La Nación* survey results provide the most consistent data for comparative analysis:

²⁸⁴ Latinobarómetro Survey, *supra* note 238. Years 1999 and 2000 not represented in the database for all countries.

Figure 8 – Crime Victimization Rates (ICVS, 1996).²⁸⁵**Figure 9 – Crime Victimization Rates (Latinobarómetro, 2000).**²⁸⁶**Figure 10 – Crime Victimization Rates (La Nación, 2005).**²⁸⁷

²⁸⁵ ALVAZZI DEL FRATE, *supra* note 260. The category of “other theft” comprises theft of car, theft from car, theft of motorcycle, theft of bicycle, and theft of personal belongings.

²⁸⁶ Latinobarómetro Survey, *supra* note 238.

²⁸⁷ *Crime Has Now Hit 7 Out of 10 People*, *supra* note 1.

The 2000 and the 2005 surveys tend to show that property crimes, the most common in all three surveys, have not increased significantly from the period immediately prior to the revision of the criminal codes. Combining the theft data from the ICVS study into one rate (16.0% for robbery, burglary and assault, plus 25.4% for other theft, or approximately 41.4%), we can make a rough comparison with the 2000 Latinobarómetro and 2005 *La Nación* surveys to analyze the change in theft rates over the past decade. If this comparison is relatively accurate, there may have been an actual *decrease* in theft rates since 1996. However, these data at best portray a rough evolution in victimization rates over time, and should not substitute for a more precise analysis. First, ICTV categories do not map onto those of the other surveys precisely. In addition, the *La Nación* survey queried victimization rates for any crime committed in the respondent's lifetime, while the other surveys only went as far back as twelve months.

Despite the imperfections of this analysis, one conclusion is readily apparent—the victimization surveys do not correspond to the perception of rapidly rising rates of crime. Although it appears there has been some increase in crime rates over the past few years, the evidence is not conclusive. The data that do exist tend to show a slow, steady increase consistent with broader patterns in Latin America. This most likely means that the perception of insecurity in Paraguay over the last decade has been exaggerated. To understand how this perception has grown to current levels, we examine the role of the media and political forces in the magnification and exploitation of public fears over insecurity.

3.2 *Exploitation of Fear: The Role of the Media and Politicians in the Perception of Public Insecurity*

Exaggeration means that every morning, about three million people watching graphic crime reporting on TV say: “Look how insecure the country is. Democracy isn’t fulfilling our dreams.”

—Benjamín Fernández Bogado, General Director of *Radio Libre*.²⁸⁸

In analyzing how the public perception of insecurity affects government policymaking, it is important to identify the actors that contribute to the distortion of this perception. Two groups that have had considerable impact in this regard are the media and politicians. The next sections of this report analyze the role that sensationalist reporting in the media and exploitation of public fear for political gain plays in framing the perception of insecurity.

3.2.1 The Role of the Media

The media not only inform public opinion but often shape and create it.²⁸⁹ Although, as one media scholar observes, “[i]t is notoriously hard to prove media effects, despite the prodigious industry spent in the attempt . . . [,] in giving the news, journalists arbitrate, frame and amplify events and issues.”²⁹⁰ Nonetheless, a growing body of research demonstrates a clear, positive correlation between media coverage of crime and public fear of criminality.²⁹¹ This impact on public perception is especially disproportionate in the coverage of security issues in post-

²⁸⁸ Interview with Benjamín Fernández Bogado, *supra* note 91. Fernández Bogado was referring to the effect of live morning television coverage of violent crime on public perceptions of insecurity. He informed our researchers that “the media tend to increase the sense of insecurity in Paraguay.” He pointed out how “[i]f you turn on the TV from 5:30 to 7:30 in the morning, you will see an anchorman in the emergency room, describing all the worst cases of violence. This leads to exaggerated perceived levels of criminality.” *Id.*

²⁸⁹ See CARLOS ÁLVAREZ TEIJEIRO, MARCELA FARRÉ & DAMIÁN FERNÁNDEZ PEDEMONTÉ, MEDIOS DE COMUNICACIÓN Y PROTESTA SOCIAL [THE MEDIA AND SOCIAL PROTEST] 18-24 (2001) (exploring the powerful effect of media representation of protest on social movements).

²⁹⁰ KAREN SANDERS, ETHICS AND JOURNALISM 9 (2003).

²⁹¹ See e.g., Ted Chiricos, Kathy Padgett & Mark Gertz, *Fear, TV News and the Reality of Crime*, 38 CRIMINOLOGY 755 (2000); see also Dammert & Malone, *supra* note 236, at 31 (and sources cited within).

transitional societies.²⁹² In the democratic transitions in Latin America during the 1980s and 1990s specifically, two scholars have noted that “[p]erceptions of insecurity were further magnified by mass media, which both enjoyed greater freedom from government control and confronted pressures of market competition.”²⁹³

The impact that the media have had thus far in molding the perception of insecurity in Paraguay is evidence of this power. When “normally, the press is there before the police arrive on the crime scene,”²⁹⁴ as one leading Paraguayan journalist told us, the media likely will have a large influence on how society views the crime. Although the press did not create public concern over safety, this preoccupation has captured the media’s attention and continues to serve as the basis for many of the front-page headlines in local newspapers.²⁹⁵

One peculiar characteristic of public opinion within Paraguay that renders the media’s impact even more substantial is the level of trust the public places in media sources. One study has shown that the public’s trust in media can have a greater impact on the importance people place on issues than exposure to media alone.²⁹⁶ A 2005 opinion poll showed that in the greater metropolitan area of Asunción, 78% of respondents trusted the television media and slightly less (71%) trusted the written press.²⁹⁷ This statistic was considerably higher than in other Latin American countries surveyed, in which trust of the media fluctuated between 54% and 58% in the same year. The figure is also significantly higher—*nearly ten times higher*—than the degree of trust expressed by Paraguayans in the judiciary (10%), the police (8%), or Congress (7%).²⁹⁸ The heightened level of trust that Paraguayans hold for the media has likely led to a tendency, commonly reported by those in the media, for citizens to report incidents of crime or corruption to journalists, rather than state institutions designated for such purposes.

²⁹² INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 23.

²⁹³ Bailey & Dammert, *supra* note 233, at 6.

²⁹⁴ Interview with Humberto Rubín, *supra* note 64.

²⁹⁵ See, e.g., *Los operativos policiales no logran detener la violencia* [Police Operations Do Not Manage to Detain Violence], ÚLTIMA HORA (Asunción), Oct. 20, 2006.

²⁹⁶ Joanne Miller & Jon Krosnick, *News Media Impact on the Ingredients of Presidential Evaluations: Politically Knowledgeable Citizens Are Guided by a Trusted Source*, 44 AMER. J. POL. SCIENCE 301 (2000).

²⁹⁷ CIMA, IBERIAN-AMERICAN GOVERNANCE BAROMETER, *supra* note 240.

²⁹⁸ *Id.*

This striking and unparalleled influence on public opinion in Paraguay is worrisome in light of the prevalence of sensationalist reporting in some media outlets in the country. Sensationalist reporting may be defined as “journalism that is founded in the exploitation of public morbidity to gain profit . . . [including the following characteristics:] 1) emphasis on personalities and the personal; 2) preference for trivial news over important and significant stories; and 3) preferential use of colloquial language.”²⁹⁹ The goal of sensationalist reporting is not to inform the public, but rather to provoke an intense public reaction to improve sales.³⁰⁰

Sensationalist reporting can be especially problematic in the public security debate, as the media’s portrayal of crime and violence can distort the public’s perception of insecurity in several ways. First, sensationalistic stories focus on violent cases to draw more business, thereby distorting the perceived frequency of violent crime and increasing the feeling of insecurity. Second, through the presentation of sensationalistic accounts of crime, the media oversimplify complex situations in ways that misrepresent the underlying causes of criminality and insecurity. Finally, there is a risk that crime afflicting poorer sectors of society may be ignored, thereby diverting attention from more pressing sources of crime.

The abundance of sensationalist reporting is a common critique of the media in Paraguay. Many of the sources we interviewed complained that the media—the television, radio and the popular press—focused extensively on gruesome, violent stories, and noted that coverage was sometimes exceptionally graphic. Many popular newspapers regularly decorate their front page with shocking crime

²⁹⁹ CARLOS ELÍAS PÉREZ, *TELEBASURA Y PERIODISMO [TELE-TRASH AND JOURNALISM]* 84 (2004).

³⁰⁰ However, not all sensational news stories are irresponsible reporting. As Juan Gargurevich recognizes in his analysis of sensational media in Peru, “[s]omething sensational is, in general terms, an unpredictable story that provokes emotional reaction in the public, and that without doubt merits special journalistic treatment There is no problem with covering events of this magnitude.” JUAN GARGUREVICH, *LA PRENSA SENSACIONALISTA EN EL PERÚ [SENSATIONALIST PRESS IN PERU]* 35, (2000) (citing examples of the assassination of J.F.K., the death of Princess Diana, and the attempts on the life of Reagan and Pope John Paul II as sensational stories that do not promote sensationalism). It is rather the exaggeration of events, or an unequal reporting of exceedingly gruesome or violent incidents, that characterizes sensationalism. *Id.*

***Giant Boa Constrictor Swallows Man Whole!* – Irresponsible Reporting in the Paraguayan Media**

A recent example of widespread, sensationalist and irresponsible reporting in Paraguayan media outlets is the story of the farmer in the Chaco supposedly eaten by an enormous, ten-meter long boa constrictor in February 2007. Nearly every major news outlet, including television channels, radio, and newspapers, raced to cover this exotic, sensational—and ultimately unbelievable—story, in a fiasco that belied the responsibility and care the media should use in their reporting.

The story broke on February 15, 2007, when a distressed woman from the Presidente Hayes Department reported that a gigantic snake had devoured her husband before her eyes.³⁰¹ Soon after she reported the incident, the story appeared on the front pages of nearly every major newspaper and in the morning news programs of television and radio stations. Media outlets rushed to cover the story. However, despite the extensive coverage of this incredible and quirky tale, very few reporters conducted serious investigations. If they had, they might have discovered, as the local prosecutor did later that evening during an emotional confession by the “bereaved” woman, that her husband was alive and well working on a local hacienda.³⁰² The gravity of the collective irresponsibility of the media is heightened by the relative ease with which any single reporter could have verified that the woman’s story was suspicious. A simple call to the local Prosecutor’s Office would have revealed that her husband’s body never arrived as she had claimed.³⁰³ This embarrassing example demonstrates how the media in Paraguay have allowed competition and market pressures to inhibit objective and responsible news coverage.

³⁰¹ *Gigantesca kuriju devoró a ribereño* [Giant Kuriju Devoured Riverman], ABC COLOR (Asunción), Feb. 15, 2007; Justiniano Riveros, *Serpiente tragó y mató a un hombre en Puerto Pinasco* [Serpent Swallows and Kills a Man in Puerto Pinasco], ÚLTIMA HORA (Asunción), Feb. 15, 2007.

³⁰² *Apareció el peón que supuestamente había sido devorado por una kuriju* [Farmhand Who Supposedly Had Been Devoured by a Kuriju Appears], ABC COLOR (Asunción), Feb. 16, 2007.

³⁰³ Andrés Colmán Gutiérrez, *Una kuriju devoró la credibilidad de los periodistas* [A Kuriju Devoured the Credibility of the Journalists], ÚLTIMA HORA (Asunción), Feb. 16, 2007.

stories³⁰⁴ and contain entire sections—the “*Policiales*”—in which they feature the most sensational crimes of the day. A specific example that those with whom we spoke repeatedly mentioned was the tragedy of the Ycuá Bolaños Supermarket fire of 2004, which television media exploited through a constant barrage of morbid video and photos of the dying. Even critiques from within the media have recognized the tendency for the media to exaggerate sensational aspects of crime stories. “It is true that the media sometimes exaggerate,” Benjamín Fernández Bogado, General Director of *Radio Libre* informed our investigative team.³⁰⁵ Fernández Bogado attributed this tendency to the need to attract more attention to gain readership or viewership.

This focus on uncommon and often sensationalist reporting can easily misrepresent the frequency of a certain type of crime. A study of the intersection of criminality and media concludes that “[w]hile a single story by a single media outlet may have limited impact on public opinion, massive, repetitive coverage of otherwise isolated incidents . . . helps create the impression of a pattern, rather than a single event.”³⁰⁶

Our research team took a random sampling of morning news shows from several of the principal television channels in the Greater Asunción area. We conducted a brief survey of three major television stations that hosted morning news programs: Channel 9, *La Mañana de Cada Día*; Channel 13, *Café y Noticias*; and Telefuturo, *Día a Día*. For a period of seven days from February 26 to March 4, 2007, just over 31% of the news stories broadcasted featured a violent crime.³⁰⁷ In addition, several more stories featured accidents and bloody incidents, and each program featured a segment in which a reporter stood outside the hospital emergency room waiting for crime victims or injured persons to appear. The distorted picture of crime these televised stories present is likely to have a disproportionate impact on public opinion, given that most people in Paraguay inform themselves of current events through television media. In a 2003 survey,

³⁰⁴ See, for example, the recent front-page story, *Papá violó a su hija de 12 años mientras viajaba esposa a España* [Dad Rapes His 12 Year-old Daughter While Wife Travels to Spain], EL DIARIO POPULAR (Asunción), Jan. 4, 2007.

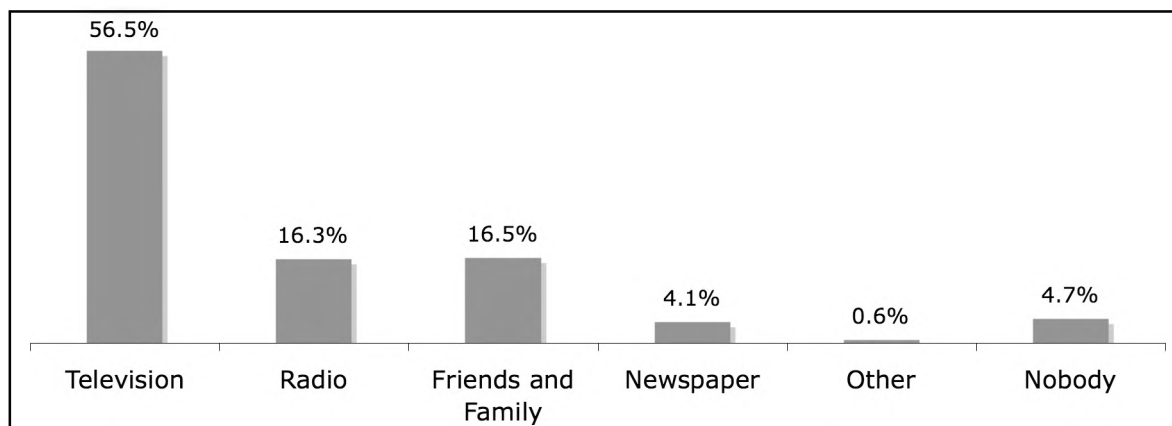
³⁰⁵ Interview with Benjamín Fernández Bogado, *supra* note 91.

³⁰⁶ INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 48.

³⁰⁷ On the weekend, Telefuturo’s *Día a Día* was the only of the three programs to air and it mostly repeated the important stories of the week.

over 56% of participants responded that the television is their most reliable source of information for political news:

Figure 11 — Most Reliable Source of Political News.³⁰⁸



Most respondents were also uncritical of television news reporting, as 83% felt that the television media performed excellently or well in fulfilling its social responsibility.³⁰⁹

A second danger of an excessive focus on high profile and sensational stories is the tendency to oversimplify complex issues and reduce stories to simple binary considerations of good versus evil:

In the context of public security, such reductionism often leads to a simplistic portrayal of crime - suspects and victims—that eliminates uncomfortable grey areas and encourages grossly polarized analyses. Accordingly, criminals are ‘bad’—often horrendously ‘evil’, while victims are ‘good’, wholesome, and innocent. Media sources, though often committed to portraying fairly the complexity of reality, tend to find cases that fit neatly into such simple paradigms, because they are more attractive, easier to explain and improve sales or ratings.³¹⁰

³⁰⁸ Latinobarómetro Survey, *supra* note 238. The question was phrased: “Which information source do you trust the most with respect to political news?”

³⁰⁹ *Id.* The question was phrased: “Would you say the television performs with excellence, well, poorly or very poorly with respect to its social responsibility of informing freely and objectively?”

³¹⁰ INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 48.

Again, several journalists and editors with whom our researchers met confirmed that the media in Paraguay oversimplified the complex analysis of crime. “The media in general give much attention to crime but not to addressing its actual causes,” stated an investigative reporter who did not want to be identified.³¹¹ The director of the newspaper *Última Hora*, Ignacio Martínez, criticized newspapers that take what he referred to as the “folklore” approach—those that use popular terminology and oversimplify stories to get more readers. “[These newspapers] do not go in-depth. There is no added value to the facts, no analysis. They do not go into the ‘why’ of crime. They do not report about the causes.”³¹² By ignoring vital, though more complicated issues of public safety, the media further distort the public conception of insecurity by portraying it as a simple problem requiring an equally simple solution—most commonly, a “*mano dura*” (“firm hand”) against crime.

Another problem inherent in irresponsible journalistic practices is the tendency to ignore valid public safety concerns that do not have a high profile or a sexy angle. This trend has meant that the media have simply not covered the more mundane, common crime that makes up the majority of criminal cases in Paraguay. Instead, media focus on rarer and more interesting crimes such as kidnapping, which affects only a small minority of the population.³¹³

This underrepresentation of certain crimes could alter public perception in harmful ways. First, the lack of coverage of common crime could obscure pressing security concerns that have a greater impact on poorer communities. As mundane crimes such as simple theft and burglary may affect mostly the poorer segments of society, the security concerns of working and lower class families may be proportionally underrepresented in public discourse. An investigation on security fears in Caracas, Venezuela has demonstrated how the media there have distorted perceptions of crime. The study shows how selective focuses in the media have fueled the inaccurate belief that the middle and upper classes are more susceptible to violent crimes, while also promoting the perception of less affluent elements of

³¹¹ Interview, in Asunción, Para. (Oct. 2005).

³¹² Interview with Ignacio Martínez, *supra* note 59.

³¹³ See *infra* Text Box, “The Cecilia Cubas Case.”

society as “antisocial” and “expendable.”³¹⁴ In Paraguay, although news stories do represent certain sensationalized crimes that affect the poor, such as murder, highly publicized crimes such as kidnappings are a major personal security concern only for the wealthy.

Several of the major newspapers specifically market themselves toward upper class audiences. Directors from both the newspapers *ABC Color* and *Última Hora* aim to reach the educated, wealthier sectors of Paraguayan society, a focus that is reflected in the price of the newspaper and the topics and themes covered. As the director of *ABC Color* told our research team, “[Our paper] is directed toward people who have more purchasing power — people who can afford it.”³¹⁵ As a consequence, news reporting focuses on crimes that affect the upper classes of society more, such as kidnapping. The Commander of the National Police, Fidel Isasa, spoke with our team about this trend in news reporting regarding kidnappings, noting that media coverage is more likely “when it is an important person—that has a great impact The social class of the victim matters.”³¹⁶ However, as an anonymous source within the police informed us, crimes affecting the segment of society most afflicted by problems of insecurity—poorer and working classes—largely go unreported.³¹⁷

Finally, although not directly associated with sensationalist reporting, there is a risk that irresponsible journalists may underreport crimes or abuses that the police or government authorities commit. This risk stems from the close relationship that reporters have with their sources of information, and is compounded by the problem that “[r]eporters that benefit from such privileged relationships with police sources are often reluctant to file stories that are damaging to the police.”³¹⁸ This problem also seems to characterize reporters’ relationships with other government officials. When the research team queried Humberto Rubín, Director of *Radio Ñandutí*, about the impartiality of the media in covering abuses by some government officials, he admitted that in some media

³¹⁴ Angel Cisneros & Veronica Zubillaga, *El temor en Caracas: relatos de amenaza en barrios y urbanizaciones* [*Fear in Caracas: Stories of Threats in Slums and Housing Developments*], 63 REVISTA MEXICANA DE SOCIOLOGÍA 161, 167-69 (2001).

³¹⁵ Interview with Aldo Zuccolillo, *supra* note 92.

³¹⁶ Interview with Fidel Isasa, *supra* note 84.

³¹⁷ Interview, in Asunción, Para. (Oct. 2005).

³¹⁸ INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 47.

sources, “[i]f the criminal is a friend of the government, then maybe there is some distortion involved.”³¹⁹ A confidential source also informed our research team that close relationships with police also may create disincentives for coverage of police violence: “There is a very close relationship between reporters and the police and Public Ministry, leading to a level of corruption among journalists who cover police issues.”³²⁰

These considerations are even more troublesome in light of evidence that many media outlets in Paraguay not only engage in irresponsible reporting, but may also actively engage in misrepresentation of information. In the 2001 country report of the Inter-American Commission on Human Rights, the Special Rapporteur on Freedom of Expression noted many reports that “some media are used as tools to defend personal and/or economic interests, without a commitment to the truth, to the detriment of Paraguayan society’s right to information.”³²¹ The Special Rapporteur found evidence that several media outlets were serving as instruments to gain economic benefits or political favors.³²² A 2003 survey of journalists conducted by INECIP has also confirmed this behavior within the media in Paraguay.³²³

³¹⁹ Interview with Humberto Rubín, *supra* note 64.

³²⁰ Interview, in Asunción, Para. (Oct. 2005).

³²¹ *IACHR Third Report*, *supra* note 3, ch. VI, ¶ 67 (2001).

³²² *Id.* ch. IV, ¶ 68.

³²³ The survey found that 63% of respondents reported that the media outlet they worked for had a “black list” of persons or issues that journalists could not address in stories, often due to economic or political affiliations of the owner. INECIP, *LOS PERIODISTAS DE PARAGUAY, UNA EVALUACIÓN DE SU FORMACIÓN, CAPACITACIÓN, PERCEPCIONES Y PREOCUPACIONES* [THE JOURNALISTS OF PARAGUAY, AN EVALUATION OF THE EDUCATION, TRAINING, PERCEPTIONS AND PREOCCUPATIONS] 6 (2004), *available at* <http://www.inecip.org.py/archivos/biblioteca/investigaciones/LOS%20PERIODISTAS%20DE%20PARAGUAY.pdf>.

3.2.2 Political Pressures

The counter-reform is about certain politicians wanting to get back in power and its mission seems to be to return to the social controls of the past.

—Judge Pedro Mayor Martínez.³²⁴

Politicians, political campaigns, and political discourse have sought to seize control of the public debate over criminal justice and public safety to secure political authority. “The criminal justice system is not part of the agenda of the media,” Marcos Köhn, President of the Paraguayan Chapter of the *Instituto de Estudios Comparados en Ciencias Penales y Sociales* (INECIP) (Institute of Comparative Criminal and Social Sciences Studies) told us. Rather “it is the politicians that have an agenda.”³²⁵ Political actors can further exacerbate distortions of public opinion in matters of security, as it is often easier to garner political support by simplifying complex issues of criminality and supporting harsh, potentially counterproductive policies on crime. Political campaigning that exploits public security fears for political gain often promotes aggressive rhetoric at the expense of addressing the more complex underlying problems of crime and insecurity. This form of political manipulation of security reform can create an apt environment for the proliferation of misconceptions about crime and safety. This exploitation exacerbates the public’s feelings of vulnerability and “in this context, intelligent, reasoned discourse on public security may be stifled by inflammatory ‘law and order’ or ‘tough on crime’ rhetoric.”³²⁶

In the current context, it is likely that elected officials in Paraguay feel significant pressure to promote punitive approaches to criminal justice. Professor Wolfgang Schöne told our researchers that politicians have consulted him, asking for help in formulating policies that focus on retribution without regard to their efficacy. “[T]hey tell me: you have to understand that you cannot come with your

³²⁴ Interview with Pedro Mayor Martínez, Judge, in Asunción, Para. (Oct. 27, 2005).

³²⁵ Interview with Marcos Köhn and Roque Orrego, *supra* note 88.

³²⁶ INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 32.

scientific argument because I need votes. If I do not have a bill that increases the maximum sentence, they will kick me out.”³²⁷

This trend toward punitive approaches can be seen in the manipulation of public opinion on highly visible cases, such as the following examples:

- Act No. 2.493/04, restricting the use of alternative measures under Article 245 of the Criminal Code.³²⁸ The promulgation of this law occurred in the midst of public clamor over cases in which judges mistakenly applied alternative measures,³²⁹ such as the release of José María Eguez, a suspected Uruguayan car thief in 2004. The judge in the case released Eguez under alternative measures. Two days later police arrested Eguez for another auto theft.³³⁰
- In response to increasing concern over kidnapping cases in the media, legislators and the executive have presented bills proposing to increase the sentences for kidnapping. In support of one such proposal, legislators specifically cited concerns over the “very dangerous situation in the country, with the increase of cases of kidnapping for extortion.”³³¹

The *Comisión de Legislación, Codificación, Justicia y Trabajo del Senado* (Senate Commission on Legislation, Codification, Justice and Labor), charged with

³²⁷ Interview with Wolfgang Schöne, *supra* note 90.

³²⁸ Ley No. 2.493/04, Oct. 20, 2004, Ley que Modifica el Artículo 245 de la Ley No. 1.286/98 “Código Procesal Penal” [Act that Modifies Article 245 of Act No. 1.286/98 “Criminal Procedure Code”]. The law modifies Article 245 of the Criminal Procedure Code by forbidding the use of alternative measures when a defendant is accused of committing or participating in intentional crimes against the life or physical integrity of a person.

³²⁹ Justice Víctor Manuel Núñez mentioned several cases included the release of a suspected rapist. Interview with Víctor Manuel Núñez, *supra* note 34. The measures were passed specifically with the intention to restrict the use of alternative measures by judges. See *Restrungen Medidas Sustitutivas* [Restrict Substitute Measures], ABC COLOR (Asunción), Oct. 22, 2004.

³³⁰ *Soldado de Insfrán operaba con una libertad condicional* [Insfrán Soldier was on Parole], ABC COLOR (Asunción), Feb. 16, 2004; *Debe reverse con urgencia, dice Schupp* [An Urgent Reexamination is Needed, Says Schupp], ABC COLOR (Asunción), Apr. 25, 2004.

³³¹ *Penas más severas para secuestradores* [More Severe Penalties for Kidnappers], ABC COLOR (Asunción), Oct. 9, 2002; see also *Proponen endurecer penas para secuestro y otros delitos* [Proposals to Harden Penalties for Kidnapping and Other Crimes], ABC COLOR (Asunción), Sept. 26, 2003. Kidnapping, despite the disproportionate attention it received in the press, see *infra* Text Box, “The Cecilia Cubas Case,” is arguably not the most pressing criminal justice issue for Paraguay, as only in three of the last ten years have there been more than ten kidnappings reported by the police. See *infra* Table 4.

drafting of the new reforms, has also felt pressured by the political demand for tougher sentencing. One congressional staffer told us that, after the highly publicized case of the suspected Uruguayan auto thief mentioned above, “society went to the politicians asking for more severe sentences.”³³² Although members of the Commission were reluctant to enact restrictive reforms at first, they admitted, “[the string of high profile kidnapping incidents] have really affected us and forced us to make two modifications—increasing the sentence for kidnappings and putting limits on the availability of alternative measures.”³³³ Other segments of civil society pushed the commission to adopt enhanced sentences in their reforms.³³⁴ The majority of the proposals that the commission received requested increases in criminal sanctions: “Some even asked for a maximum sentence of fifty or sixty years for kidnapping . . . we eventually decided to increase the maximum to thirty years.”³³⁵

In addition to contributing to the sense of insecurity, political exploitation of security fears can weaken support for human rights and marginalize poor communities. There is a tendency for populist political discourse that plays on security concerns to characterize alternative plans for reform as promoting the interests of criminality and wrongdoers. In transitional societies, “where rights are fragile in both public consciousness and political discourse, this hard-line appeal threatens a loss of public support for hard-won rights.”³³⁶ Judge Mayor Martínez told our researchers that Paraguayan “politicians who are authoritarian are viewed much better from society’s perspective, while those having more progressive views are synonymous with terrorism and are stigmatized as enemies of society.”³³⁷

The political discourse that feeds these sentiments often targets and stigmatizes the portions of society that are perceived as more prone to commit crime. Just as increased media attention to crime can paradoxically remove crimes

³³² Interview with Lucas Samuel Barrios, Consultant, Comisión de Legislación, Codificación y Trabajo de la Honorable Cámara de Senadores, in Asunción, Para. (Mar. 15, 2006).

³³³ Interview with Bader Rachid Lichi, Marcelo Duarte and Edmundo Rolón, *supra* note 165.

³³⁴ These included proposals from the Secretary for Women’s Affairs. Interview with Lucas Samuel Barrios, *supra* note 332.

³³⁵ *Id.*

³³⁶ Rachel Neild, *The New Face of Impunity*, HUMAN RIGHTS DIALOGUE, Fall 2002, at 7 quoted in INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 32.

³³⁷ Interview with Pedro Mayor Martínez, *supra* note 324.

affecting poorer communities from the public view, this public rhetoric can marginalize low-income communities in the political debate. Judge Mayor Martínez has noted this disturbing trend: “The poor are potentially criminals so politicians think they should neutralize them — it is very difficult to impart justice when society is unjust.”³³⁸ This can ultimately leave large segments of Paraguayan society—those that suffer most from the lack of personal security—outside the political debates concerning crime control policy.

3.2.3 Negative Consequences on Policymaking

An inflated and distorted sense of insecurity can produce disastrous results if it becomes the basis for making public policy. Criminal justice reform is a complicated project that requires careful analysis and planning to be successful. It frequently involves policies that are not always intuitive or popular, and political support for thoughtful reform often wavers. This is a common problem in transitional societies in Latin America, as a *Centro de Estudios de Justicia de las Américas* (JSCA) (Justice Studies Center of the Americas) study recognizes:

Here the challenges are sometimes related to the lack of political support for the reform process. This support exhausts itself in legislative negotiation and, during the implementation process, is diluted and even turned against itself, faced with highly visible, public problems or errors that transform the new system into a preferred target for critique. This in itself contributes even more to the deterioration of the implementation process.³³⁹

In a hostile political environment that demands quick and decisive responses to crime, long-term, constructive reform that respects human rights may be an impossible task.³⁴⁰ Such an environment can undermine efforts at reforming laws

³³⁸ *Id.*

³³⁹ CRISTIÁN RIEGO RAMÍREZ, JSCA, INFORME COMPARATIVO PROYECTO DE SEGUIMIENTO DE LOS PROCESOS DE REFORMA JUDICIAL EN AMÉRICA LATINA [COMPARATIVE FOLLOW-UP PROJECT ON THE JUDICIAL REFORM PROCESSES IN LATIN AMERICA] 13 (2004) *available at* <http://www.cejamericas.org/doc/proyectos/ceja-comparativo-seguimiento-oct04.pdf>.

³⁴⁰ This unfavorable political climate may partially be the consequence of the lack of broad public debate concerning the initial drafting of the reforms. Some experts with whom we spoke noted that this lack of

or prevent the proper implementation of existing ones. It may also erode support for human rights protections and exclude impoverished communities, who often experience the effects of insecurity most directly, from public discourse on policymaking

First, this exaggerated public sense of insecurity can lead to premature evaluations of police programs and legal reforms that do not reflect the actual effect—beneficial or negative—that these have on crime rates and public safety. In Paraguay, the outburst of criticism over the 2001 reforms of the Criminal Procedure Code came so soon after the reforms took effect, that it “did not yet allow for serious assessment of the supposed influence that this new legal order had on the criminal phenomenon.”³⁴¹ Our interviews confirmed the view that the public condemnation of the reforms may have been premature. Judge Pedro Mayor Martínez feared that “the manipulation of information around certain high profile cases causes commotion, prohibits politicians from accepting alternative measures [in the reform] and does not permit society to analyze properly the reasonableness of their use.”³⁴²

Second, pressure from media and politicians may also prevent judges and governmental officials from properly implementing existing reforms or existing laws. Justice Víctor Manuel Núñez, of the Supreme Court of Paraguay, expressed particular concern to our research team about the threatened independence of the judiciary. “Of course there is pressure [on the judiciary].”³⁴³ Justice Núñez was specifically concerned with public pressure on judges to convict and issue harsher sentences and the modification of Article 245 restricting the use of alternative measures. He attributed both of these to popular and political pressures.

discussion facilitated the ability of politicians to exacerbate public fears concerning safety and in opposition of the new Criminal Procedure Code. For example, Professor Wolfgang Schöne, member of the commission charged with drafting the reforms, told our researchers that there was almost no effort to build support among the general population. “I do not think we managed to overhaul the criminal legal system due to any groundswell of support; there was no broad scientific, legal debate. We had a small group of members of Congress and the Senate that worked tirelessly.” Interview with Wolfgang Schöne, *supra* note 90.

³⁴¹ Jorge Rolón Luna, *Medidas alternativas y sustitutivas de la privación de libertad* [Alternative and Substitute Measures to the Deprivation of Liberty] 4, Presentation at the Semana de la Reforma Judicial en el Paraguay, Feb. 2001 (on file with the IHRC).

³⁴² Interview with Pedro Mayor Martínez, *supra* note 324.

³⁴³ Interview with Víctor Manuel Núñez, *supra* note 34.

The Cecilia Cubas Case

The tragic kidnapping of Cecilia Cubas, daughter of the ex-president Raúl Cubas Grau, occurred on the evening of September 21, 2004, in the midst of a fierce shootout.³⁴⁴ This highly publicized case, along with those of several other kidnappings, seized hold of the collective attention of the media, politicians, and general public. Together they present a case study of how a high profile case, covered in a sensational manner can lead to distorted public perception and poor public security policy.

The media were quick to capitalize on what became one of the most important national stories in recent years. Press coverage ranged from extensive to excessive. Since the incident took place over two years ago, *ABC Color's* website has amassed a collection of well over 1,000 stories related to the incident.³⁴⁵ The massive public attention that the Cecilia Cubas case and other similar kidnappings generated have contributed to, and shaped public views on security priorities.³⁴⁶

Congress passed legislation increasing the maximum sentence for kidnapping from ten to thirty years in direct response to the publicity around the Cecilia Cubas case.³⁴⁷ This occurred despite the Criminal Code provision limiting the maximum sentence for any crime to twenty-five years imprisonment.³⁴⁸

This public perception of insecurity and concern with kidnapping probably do not correspond to the real threat kidnapping poses in Paraguay. In an interview,

(continued on page 82)

³⁴⁴ *Secuestran a Cecilia Cubas tras acribillar su camioneta* [They Kidnap Cecilia Cubas After Shooting Her Truck], ABC COLOR (Asunción), Sept. 22, 2004.

³⁴⁵ Temas Relacionados, Secuestro de Cecilia Cubas Gusinky, <http://www.abc.com.py/temasartic.php?tid=97&previous=no> (last checked Jan. 1, 2007).

³⁴⁶ For example, Transparency International's corruption survey, conducted in November and December 2004, two months after the initial kidnapping, showed that 88% of respondents considered kidnapping to be one of the principal problems in the country. TRANSPARENCY INTERNATIONAL, ENCUESTA SOBRE CORRUPCIÓN: PARAGUAY 2004 [CORRUPTION SURVEY: PARAGUAY 2004], at 18 (2004).

³⁴⁷ *Ley Antisecuestro se trataría en breve* [Anti-kidnapping Act Will Be Examined Soon], ABC COLOR (Asunción), Feb. 22, 2005; *Diputados ratifican 30 años de prisión para secuestradores* [Legislators Ratify 30 Years of Prison for Kidnappers], ABC COLOR (Asunción), Nov. 18, 2005. The bill was eventually passed into law as Ley No. 2.849/05, Dec. 26, 2005, Ley Especial Antisecuestro [Special Anti-Kidnapping Act]. The former maximum penalty of ten years was dictated by Article 126 of the Criminal Code.

³⁴⁸ Código Penal [Criminal Code] art. 38, Ley 1.160/97, Nov. 26, 1997.

(continued from page 81)

Roberto Carlos Franco, Director of Paraguay's *Comisión Nacional para la Seguridad Ciudadana* (National Commission on Public Safety) commented that “kidnapping is a huge sensation in the media despite the fact that in comparison to other countries in Latin America, it is not such a pressing issue.”³⁴⁹ Indeed, police reporting on kidnappings, despite a sudden surge in 2001 and 2002, and again recently in 2007, indicates that there have been relatively few cases in the past ten years. A rough comparison with the number of reported kidnappings in Rio de Janeiro, a city with roughly the same population as Paraguay,³⁵⁰ shows that the figures overall are relatively low:

Table 5 – Kidnappings in Paraguay and Rio de Janeiro.³⁵¹

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007 ³⁵²
Paraguay	5	0	7	14	24	7	3	1	5	10
Rio de Janeiro	12	18	4	3	6	4	16	79	58	N/A

³⁴⁹ Interview with Roberto Carlos Franco, *supra* note 167.

³⁵⁰ According to PAHO statistics, Paraguay's population was approximately 5.470 million in 2000 and 6.158 million in 2005. PAHO, Technical Health Information System, *supra* note 253. The population of the city of Rio de Janeiro according to Brazilian government statistics was 5.858 million in 2000 and 6.137 million in 2006. Cidades@, Instituto Brasileiro de Geografia e Estadística [Brazilian Institute of Geography and Statistics], Ministério do Planejamento, Orçamento e Gestão, *available at* <http://www.ibge.gov.br/cidadesat/default.php>. Admittedly, it may be somewhat imprecise to compare a nation with varied urban and rural environments (Paraguay) with a major urban center (Rio de Janeiro).

³⁵¹ Paraguay kidnapping rates taken from Dep't of Statistics, Nat'l Police of Paraguay, *supra* note 255. Rio de Janeiro data from 1998-2005 were obtained from Centro de Estudos de Segurança e Cidadania [Center of Studies for Security and Citizenship], Município do Rio de Janeiro: crimes violentos não-letais intencionais contra a pessoa e crimes contra o patrimônio registrados pela polícia 1991-2005 [City of Rio de Janeiro: Non-lethal, Intentional Violent Crimes, Against the Person and Crimes Against Patrimony Registered by the Police 1991-2005], *available at* http://www.ucamcesec.com.br/arquivos/estatisticas/evol2005_p07.xls. 2004-2006 statistics include incidences of “flash kidnappings” (*sequestro-relâmpago*); those from 2006 were compiled from Secretaria de Segurança Pública [Secretary of Public Security], Governo do Estado do Rio de Janeiro [Government of the State of Rio de Janeiro], Boletim Mensal de Monitoramento e Análise No 30-42 [Monthly Monitoring and Analysis Bulletin 30-42] (2006).

³⁵² 2007 statistics include cases through the month of October, 2007. Figures for Rio de Janeiro for 2007 were not available at this writing.

Additionally, the overly simplistic images of criminal justice issues that the media and politicians sometimes present may further complicate reform efforts. As Christopher Stone and Heather Ward observe:

Perhaps the most common complaint among reformers, both inside and outside police organizations, is that the media frustrates serious efforts at reform by focusing only on the most sensational crime of the day. Every police commander on the job for more than a few days understands that he or she is under the watchful eye of the press, and that he or she needs cooperation from the press, but reports are often poorly informed and rarely go beyond the facts of a brutal crime.³⁵³

This misrepresentation can be counterproductive in various ways. One consequence is the strong risk that this perception will lead to public clamor *in opposition* to the respect of fundamental human rights. This is especially troubling because, as Judge Mayor Martínez told our researchers, “[b]asic guarantees are necessary for the judicial order, and there is little analysis of this in the discussion about the counter-reforms [here in Paraguay]. The power to manipulate the media has a strong influence over how the public perceives the importance of these guarantees.”³⁵⁴ María Victoria Rivas of INECIP informed us that she believes that “[t]here was a distortion in public perception of the reforms [through the media]. The guarantees were eventually seen as benefits for the prisoners and not for society in general.”³⁵⁵ This interference with human rights protection is felt considerably in the area of police abuse, as Hugo Valiente notes:

Torture and other “minor” forms of mistreatment and police brutality are progressively losing their capacity to infuriate a populace that lives burdened by the feeling of insecurity, which feeds off the disproportionate emphasis that the media give to crime. When the image that the media portray is that of a country under attack from uncontrollable criminal groups that operate in the face of the impotence of security organizations, overwhelmed due to “lack of

³⁵³ Christopher Stone & Heather Ward, *Democratic Policing: A Framework for Action*, 10 POLICING & SOC’Y 11, 36, (2000).

³⁵⁴ Interview with Pedro Mayor Martínez, *supra* note 324.

³⁵⁵ Interview with María Victoria Rivas, *supra* note 48.

resources” and conditioned by laws that privilege the “rights of the criminal” and that hinder police action, it is more than foreseeable that people end up distrusting the promises of greater civil liberties and improved welfare that democracy brought, and that they long for the old days of the *mano dura*.³⁵⁶

3.2.4 The Need for Improved and Targeted Information Gathering

One main point that we seek to highlight with the above analysis is the need for accurate, reliable information on crime rates and the effectiveness of the justice system. If armed with this information, policymakers would be able to develop responses likely to improve overall security. Without precise data, however, distorted public fears of insecurity and political pandering to these fears become the bases of policymaking. Unfortunately, the lack of an adequate systematization of statistical information continues to be a major weakness in many criminal justice systems that have undergone recent reforms.³⁵⁷ In a comparative study on criminal justice reform in Brazil and other countries in Latin America, Prof. Fiona Macaulay has found that lack of information and research has had a significant negative impact on policy formation:

The lack of research has meant that, until very recently, policymakers have made decisions about criminal justice reform on the basis of ideological inclination, the promises of external actors, local political imperatives or the path of least resistance when faced with institutional opposition. Lack of data meant governments were not challenged on their failure to address this crisis, as they were able to blame any host of factors other than their policies.³⁵⁸

Precise statistical analysis is especially important given the present trends in the available security data in Paraguay. Although not entirely reliable for reasons

³⁵⁶ Hugo Valiente, *Tortura: fuera de la agenda pública*, in HUMAN RIGHTS IN PARAGUAY 2004, *supra* note 169, at 57, 57.

³⁵⁷ JSCA, REFORMAS PROCESALES PENALES EN AMÉRICA LATINA: RESULTADOS DEL PROYECTO DE SEGUIMIENTO, IV ETAPA [CRIMINAL PROCEDURE REFORMS IN LATINAMERICA: RESULTS OF THE FOLLOW-UP PROJECT, STAGE IV], 26 (2007) [hereinafter JSCA STAGE IV REPORT].

³⁵⁸ Fiona Macaulay, *Knowledge Production, Framing and Criminal Justice Reform in Latin America*, 39 J. LAT. AMER. STUD. 627, 650 (2007).

explained above, recent data show a trend toward increasing property crimes and decreasing homicides. Police crime reporting data in Tables 3 and 4, *supra*, show that while homicide reports have fallen approximately 14.4% from 2005 to 2006, theft reporting has increased 18.5% over the same period. Such a trend, if confirmed, would require policy responses designed to address the increase in crimes against property while stimulating further declines in homicide rates.

Much of recent criminal policy undertaken by the government has been conducted without the analysis that such policy choices require.³⁵⁹ Commenting on the development of the *Plan Paraguay Seguro*, Carmen Echaury of the UNDP informed our researchers that the plan and the proposal that UNDP developed with the government were not based on a statistical analysis of criminality. “We had a diagnostic study [on the organizational structure of various agencies], but it wasn’t very in-depth. At that time, the government said it didn’t want any more diagnostics and wanted to get started right away.”³⁶⁰ The *Coordinadora de Derechos Humanos del Paraguay* (CODEHUPY) (Office for Human Rights in Paraguay) also publicly criticized measures to change the codes in 2004 as “rushed and incomplete,” asserting that such changes, “without sufficient time for active reflection, [are] not the best way to resolve the problems of insecurity in the country, but rather a visible measure that will actually aggravate existing problems.”³⁶¹ This style of planning, combined with reactionary responses driven by high profile kidnapping cases,³⁶² has led to dubious policymaking.

³⁵⁹ Obviously, given the resource constraints with which the Paraguayan government is often forced to contend and emergency situations that may arise at any given time, it is not always possible to enact criminal policy that is firmly based on statistical data, especially when that data remain unavailable. However, it should still be a top priority for the government to develop the institutional capacity to start conducting such technical investigations.

³⁶⁰ Interview with Carmen Echaury, *supra* note 132.

³⁶¹ *CODEHUPY critica modificación a las apuradas del Código Penal* [CODEHUPY Criticizes Rushed Modification of the Criminal Code], ABC COLOR (Asunción), June 10, 2004.

³⁶² See *supra* Text Box, “The Cecilia Cubas Case.”

3.3 *Blaming the Reform of the Criminal Justice System*

3.3.1 “Soft” Laws

A common reaction of the media, politicians, and officials of the criminal justice system has been to attribute increasing insecurity to “soft laws.” This reaction attacks policies that are perceived as too lenient on criminals and therefore contrary to the purpose of a criminal justice system. The brunt of this critique is aimed at the new criminal codes. The new Criminal Procedure Code represented a major shift in approaches to criminal investigation and prosecution, creating a presumption of innocence and a presumption that incarceration is an exceptional form of punishment.³⁶³ Because the reforms included alternatives to pretrial detention,³⁶⁴ many saw these as facilitating the opportunity for criminals to exploit the system and immediately return to the streets. Justice Víctor Manuel Núñez of the Supreme Court opined that this reaction results from the belief that “here in Paraguay, the only way to do justice is prison. Here, everyone thinks that all suspects must go immediately to jail.”³⁶⁵

Many other countries in Latin America that have undertaken similar reforms have experienced equally adverse reactions to criminal law reforms that run counter to the conventional wisdom that more jail means less crime. In the reform of the Chilean Criminal Code, there was general reaction that “the ‘softness’ of the law had generated an increase in crime in the regions in which the reform had been implemented.”³⁶⁶ A similar study has noted in Ecuador that there exists “the general perception that when pretrial detention measures are not taken, it is very difficult for the system to work,” and that “the crimes that do not allow for

³⁶³ For an overview of the changes in the new Criminal Procedure Code, *see supra* sec. 2.2.3.

³⁶⁴ Código Penal Procesal [Criminal Procedure Code] art. 242, Ley No. 1.286/98, July 8, 1998.

³⁶⁵ Interview with Víctor Manuel Núñez, *supra* note 100.

³⁶⁶ Cristián Riego Ramírez, JSCA, *Segundo informe comparativo: proyecto de seguimiento de los procesos de reforma judicial en América Latina* [Second Comparative Report: Follow-up Project of the Judicial Reform Processes in Latin America], 5 REVISTA SISTEMAS JUDICIALES [JUDICIAL SYSTEMS JOURNAL] 34, 74-75 (2003), available at <http://www.cejamericas.org/doc/proyectos/ceja-comparativo6.pdf>.

preventative prison—those with penalties less than a year—generally remain unpunished.”³⁶⁷

In Paraguay, members of the police force also share this perception, which is widespread among the general public. According to Fidel Isasa, Commander of the Paraguayan National Police, the morale of police, who feel that the former code was easier and more comfortable, suffers when suspects they detain one day “are back on the streets committing the same crime days later.”³⁶⁸ Police station chief Néstor Baéz Sosa told our researchers that the public blames the police when they see the criminals back on the streets. “They say that the police know who did it but do not do anything. They blame it on us.”³⁶⁹ On the other hand, the judiciary has reacted adversely to the restrictions on alternative measures. Justice Núñez noted that this was largely “because judges want the power to decide over sentencing, and they do not want their power to be constrained.”³⁷⁰

3.3.2 Legal Mismatch – First World Laws, Third World Context

Another common explanation for why the new Criminal Procedure Code led to a supposed increase in crime posits that the code was an artificial implantation not apt for the structural and cultural context of Paraguay. As with other criminal justice reforms in Latin America, the drafters of the new code drew their inspiration from a German model.³⁷¹ One variant of the mismatch argument suggests that Paraguay is unprepared culturally for a justice system that respects basic human rights. A second version holds that the implanted system has been poorly adapted to the structure and needs of Paraguay; a mismatched legal structure forced onto a social and economic reality distinct from the one for which it was designed.

³⁶⁷ JSCA, EVALUACIÓN DE LA REFORMA PROCESAL PENAL EN ECUADOR [EVALUATION OF THE CRIMINAL REFORM PROCESS IN ECUADOR] 75 (2001) available at <http://www.cejamericas.org/doc/proyectos/cejacpp-ecuador.pdf>.

³⁶⁸ Interview with Fidel Isasa, *supra* note 84.

³⁶⁹ Interview with Néstor Báez Sosa, *supra* note 249.

³⁷⁰ Interview with Víctor Manuel Núñez, *supra* note 100.

³⁷¹ Interview with Wolfgang Schöne, *supra* note 90.

The first critique typically posits that Paraguayan culture is inherently deficient in such a way that it is fundamentally conflictive with the principles of human rights and modern, democratic governance. Our interviews with various institutional actors of the Paraguayan justice system revealed sentiments ranging from lamenting that the code was “for a more civilized society” to contending that “all of us [Paraguayans] are dictators to some extent.” Others have noted that “it is not easy to deal with human rights in our Paraguayan society.” The Attorney General, Rubén Candia, used the following metaphor when describing the problems of cultural mismatching:

The presumption of innocence has been imported to Paraguay like some small, Chinese shoes that have been put on our big feet, which obviously do not fit; this model was imported and “forced” upon us. The presumption of innocence does not fit our conduct and culture.³⁷²

The second form of the critique contends that the new code is “too strict a copy of the German system” and not adapted sufficiently to the institutional and social structure of Paraguay.³⁷³ This perspective is reinforced by complaints that the reforms were originally pushed through with too little debate, and that there was a “general lack of education of the public and the press at the time these measure were adopted.”³⁷⁴ Although the actual code itself may not be deficient *per se*, this argument goes, too little time and effort were given to adapting the basic structure to Paraguay’s social and economic conditions. Constitutional Law Professor Jorge Seall told our researchers: “The ineffectiveness of the German approach has nothing to do with ethnicity or race, but is simply a matter of the conditions in the society in which it is operating.”³⁷⁵

There is considerable evidence that reforms that simply impose one institutional or legal structure over another, without adjusting for the particular characteristics or needs of the reforming society, are likely to fail.³⁷⁶ The U.N.

³⁷² Interview with Rubén Candia Amarilla, Attorney General, in Asunción, Para. (Mar. 14, 2006).

³⁷³ Interview with Carlos Escobar, *supra* note 206.

³⁷⁴ Interview with María de la Paz Martínez and Raquel Sosa, *supra* note 104.

³⁷⁵ Interview with Jorge Seall, *supra* note 71.

³⁷⁶ See, e.g., Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 AM. J. COMP. L. 163 (2003); Inga Markovits, *Exporting Law Reform, But Will it Travel?*, 37 CORNELL INT’L

Secretary-General has asserted that for legal and institutional reform in transitional societies, “effective and sustainable approaches begin with a thorough analysis of national needs and capacities, mobilizing to the extent possible expertise resident in the country.”³⁷⁷ Despite critiques, there are strong indications that the reforms *have* had a positive impact on the functioning of the criminal justice system. There still exist several problems with the implementation of the reform and the overall operation of the criminal justice system, particularly the continuing prevalence of corruption. However, these advances dispel arguments that the principles and structure of the reform are not compatible with economic, social or cultural conditions in Paraguay.

3.4 *Advances of the Reform*

Even after the end of the dictatorship, the penal system continued to be an authoritarian system, with little emphasis on the defense of human rights. The Criminal Procedure Code was obsolete . . . in the vast majority of cases the judge signed sentences without ever seeing the condemned person, and even more often, the record did not reflect what was declared in testimonies.

—Justice Víctor Manuel Núñez, Supreme Court of Paraguay.³⁷⁸

Considering the valid critiques of the new Criminal Procedure Code, there have been relatively few efforts to conduct an adequate evaluation of the actual effect of the reforms. Such an evaluation is vital to the development of effective criminal justice policy. This is especially true in light of the widespread sensation of insecurity prevalent in Paraguay and its influence on counter-reforms and public policy decisions. Although the constraints of this investigation do not allow such a detailed, institutional analysis, we do present some evidence that the reforms may

L. J. 95 (2004); Pierre Legrand, *What Legal Transplants?*, in ADAPTING LEGAL CULTURES 55 (David Nelken & Johannes Feest eds., 2001).

³⁷⁷ Report of the U.N. Secretary Gen. to the Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, ¶ 15, U.N. Doc. S/2004/616, Aug. 23, 2004.

³⁷⁸ Interview with Víctor Manuel Núñez, *supra* note 34.

have produced a net beneficial impact on public safety, and that there is still a strong need for the human rights guarantees that they contain.

3.4.1 Increasing Efficiency

Even shortly after the implementation of the new codes, there was evidence of a drastic improvement in the efficiency of the criminal justice system.³⁷⁹ We can observe this improvement in the reduced time periods for processing criminal cases in the system. The following data show a reduction in time periods ranging from 71% to 79%. The system is now processing cases more quickly, thus reducing the time accused persons spend awaiting trial, often in pretrial detention:

Table 6 – Average Delay in Days Before Reaching Resolution in Case.³⁸⁰

Crime	1996 (Old Procedure)	2000-01 (New Procedure)
Against Sexual Autonomy	1151	247
Against Property	930	227
Homicide	948	250
Drug Related Crimes	823	244

A follow-up study by JSCA showed that in 2001, cases were taking an average of only 190 days to reach the oral trial phase after formal accusation and an average of 368 days from the commission of the crime.³⁸¹

Other evidence suggests a parallel increase in the number of convictions and a decrease in the number of acquittals as a result of the new system. Of the cases reaching the trial phase, the total number of convictions has more than doubled since the adoption of the reforms, and acquittals have significantly decreased:

³⁷⁹ Although the following statistics are indicative that there has been improvement within the operation of the system, they are not dispositive, as they rely largely upon the available statistical data, which as we note above, are not entirely reliable. Therefore, we present this information as the best possible approximation at this time.

³⁸⁰ María Victoria Rivas, *La reforma del sistema penal en proceso* [The Reform of the Penal System in Process], in HUMAN RIGHTS IN PARAGUAY 2002, *supra* note 185, at 117, 119.

³⁸¹ Riego Ramírez, *supra* note 366, at 48-49.

Table 7 – Total Number of Convictions and Acquittals.³⁸²

Year	Convictions	Acquittals
1996 (Old Procedure)	264	90
2000 (New Procedure)	715	61
2001 (4 months)	843	86

Other data further support the conclusion that guilty criminals are *not* taking advantage of the alternative sentencing provisions to avoid punishment. Over the course of the ten months in 2000 when the reforms had taken effect, the actual number of cases employing alternative measures was very low. An analysis of the relevant data accessible at the time revealed that only 3.8% of all the cases that came before the Public Ministry (440 cases out of 11,587), and only 11.56% of the cases that reached the trial court level (431 cases out of 3,728), ended with the application of an alternative measure.³⁸³

Another indicator of the improved efficiency of the system is the number of incarcerated persons brought to trial. During the last decade of the Stroessner dictatorship, estimates of the number of incarcerated individuals who had not been tried were well over 90%.³⁸⁴ However, even after beginning the transition to democracy, the level of pretrial detainees still had not improved and remained shockingly high. The most recent surveys of the prison population have shown a remarkable improvement, with a reduction in the total number of detainees still awaiting trial from 92% in 1991 and nearly 96% in 1996, to below 78% in 2005 and just under 73% in 2006:

³⁸² Rivas, *supra* note 380, at 121.

³⁸³ RIVAS, *supra* note 43, at 48.

³⁸⁴ INECIP CRIMINAL PROCEDURE CODE, *supra* note 17, at 12.

Table 8 – Prisoners Still Awaiting Trial.³⁸⁵

Year	1990	1996	1998	1999	2002	2003	2005	2006
Total Prisoners	2,234	3,510	3,900	4,179	4,705	4,965	6513	6510
Awaiting Trial	2,058	3,360	3,635	3,882	3,531	3,756	5059	4745
% Awaiting Trial	92.12%	95.73%	93.20%	92.89%	75.05%	75.65%	77.68%	72.89%

Although sudden drops in the number of prisoners still awaiting trial could be the result of changes in other parts of the criminal justice system, the consistency in this decrease over several years suggests that these data represent an improvement in judicial efficiency.³⁸⁶ Reducing this number of unsentenced prisoners, as María Victoria Rivas of INECIP informed our researchers, is a clear indication of improved efficiency. “The criminal justice system marks a violent moment in the interaction of the State and the individual. When a person commits a crime, if the public order is restored quickly by [trying, convicting and] sentencing the [guilty] person, then that’s efficient.”³⁸⁷ This improvement is also an important indicator of the success of the reforms considering the negative consequences that Paraguay’s prison policies imply for crime rates, as we discuss later in section 4.2.1.

There are other indications of improvement within the system that are still not readily quantifiable. One such improvement has been to increase citizen access

³⁸⁵ 1991 data from CENTRO INTERDISCIPLINARIO DE DERECHO SOCIAL Y ECONOMÍA POLÍTICA [INTERDISCIPLINARY CENTER FOR SOCIAL RIGHTS AND POLITICAL ECONOMY], SISTEMA PENITENCIARIO PARAGUAYO Y REACCIÓN ESTATAL CONTRA LA CRIMINALIDAD [PARAGUAYAN PENAL SYSTEM AND STATE RESPONSE TO CRIME] 102 (1991). 1996 data from Hugo Valiente & Soledad Villagra de Biedermann, *Situación carcelaria en Paraguay* [Prison Situation in Paraguay], in DERECHOS HUMANOS EN PARAGUAY 1996 [HUMAN RIGHTS IN PARAGUAY 1996], at 115, 120 (CODEHUPY ed., 1996). 1998 data from Jorge Rolón Luna & José Caballero Quiñónez, *Situación carcelaria* [Prison Situation], in DERECHOS HUMANOS EN PARAGUAY 1998 [HUMAN RIGHTS IN PARAGUAY 1998], at 53, 55-56 (CODEHUPY ed., 1998). 1999 data from Ramón Corvalán, *Situación carcelaria* [Prison Situation], in DERECHOS HUMANOS EN PARAGUAY 1999 [HUMAN RIGHTS IN PARAGUAY 1999], at 65, 66 (CODEHUPY ed., 1999). 2002 data from HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 52. 2003 data from Negri, Mayor & Luna, *supra* note 42, at 53. 2005 data from INTER-INSTITUTIONAL COMMISSION REPORT, *supra* note 160, at 26. 2006 data from EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160.

³⁸⁶ Todd Foglesong and Christopher Stone suggest that a reduction in the number of unsentenced prisoners is ambiguous if not accompanied by other data, as it could reflect changes in arresting or prosecution rates. Todd Foglesong & Christopher Stone, *Measuring the Contribution of Criminal Justice Systems to the Control of Crime and Violence: Lessons from Jamaica and the Dominican Republic* 9-10 (Center for Int’l Dev. at Harvard Univ. Working Paper No. 144, 2007), available at <http://www.cid.harvard.edu/cidwp/144.htm>. However, the consistency of the data over the years since the new codes and the evidence showing increased conviction rates, *supra* Table 6, support the assertion that there has been an improvement in efficiency.

³⁸⁷ Interview with María Victoria Rivas, *supra* note 48.

to the system. Prosecutor Teresa Martínez Acosta told our research team that the public, at least in Asunción, was starting to see the Office of the Prosecutor as an agency that will listen to their complaints. “People are starting to come to the prosecutor’s office more and more to make complaints. And not just for crimes. Everything comes to the prosecutor. All kinds of things.”³⁸⁸ Roque Orrego of INECIP also noted to our investigators that reforms have made the roles within the criminal justice system clearer, thereby facilitating the ability of citizens to present complaints and requests to authorities.³⁸⁹ Increasing trust and access to the criminal justice system is vitally important as it improves citizen participation, fundamental in reducing crime.³⁹⁰

Additionally, several of the experts and practitioners we interviewed pointed to the potential of the new codes to reduce official corruption. Professor Marcos Köhn, President of INECIP, commented during an interview that “[b]efore [the reform], they would never indict a president or vice-president or high state official.”³⁹¹ Prosecutor Teresa Martínez Acosta also told us that prosecutors have undertaken several investigations that have already led to the prosecution of three senators and one member of the House of Representatives.³⁹² Sources interviewed also informed us that the transfer of investigatory powers from the police to the Public Ministry was partially responsible for this. As Köhn told us, “before, the police managed everything from the *cajón* [file drawer], and could make cases appear and reappear out of the *cajón*.”³⁹³ One prosecutor has noted recent calls by politicians to move the investigatory powers back to the police, and attributed these demands to the politicians’ fears regarding the increased probability of corruption investigations.³⁹⁴

Nevertheless, the above examples are minor advances that mostly represent potential spaces for improvement. Although these spaces were not available before the reforms, most of those we interviewed agreed that there is much work to be

³⁸⁸ Interview with Teresa Martínez Acosta, *supra* note 36.

³⁸⁹ Interview with Roque Orrego, *supra* note 53.

³⁹⁰ See *infra* sec. 4.1.2.1.

³⁹¹ Interview with Marcos Köhn, *supra* note 47.

³⁹² Interview with Teresa Martínez Acosta, *supra* note 36.

³⁹³ Interview with Marcos Köhn, *supra* note 47.

³⁹⁴ Interview with Teresa Martínez Acosta, *supra* note 36.

done. This is especially true in the case of corruption, as the Public Ministry is still viewed by many as an institution with high levels of corruption.³⁹⁵

3.5 Poor Implementation of the Reforms and Continuing Institutional Deficiencies

Rather than the structural or cultural inappropriateness of the reforms, the problem may instead lie in the lack of political will to guarantee the full implementation of the reform agenda and to combat existing corruption. Our interviews of experts working with the Paraguayan criminal justice system from distinct vantage points revealed a consensus that the reforms have been either badly adopted into the system or are being applied incorrectly in practice. This is a recurring problem with similar reforms to the criminal justice systems of other Latin American nations, as a JSCA study notes:

In general, the great distance between what has been achieved and the expectations created has to do with the incapacity of the promoters of reform or of the institutions involved therein to identify the new challenges stemming from the successes obtained, or with the poor management of the instruments necessary to face these new challenges. There also exist situations in which the problem resides in the lack of political support for the implementation process or in the inconsistencies of this support, or in the incapacity of the institutions to maintain and reconstruct external support.³⁹⁶

Additionally, poor performance by criminal justice officials, lack of coordination among agencies, and corruption hinder efficiency within the system and undermine public trust. This mistrust alone can greatly increase perceptions of insecurity and obstruct crime control.³⁹⁷ This section of the chapter will consider some of the ways in which poor implementation of an otherwise sound legal reform may be partly responsible for the rise in insecurity in Paraguay. We specifically assess how lack of funding, limited inter-institutional coordination,

³⁹⁵ Interview with Ana María Mendoza de Acha, *supra* note 54.

³⁹⁶ RIEGO RAMÍREZ, *supra* note 339, at 3-4.

³⁹⁷ See Heinemann & Verner, *supra* note 258, at 14-15.

inadequate training, and the absence of political will to apply the new laws, combined with the continuing prevalence of corruption, all may have caused a potentially effective legal reform to fail to address the rising insecurity in the country.

3.5.1 Lack of Adequate Funding

One of the factors leading to the failure to implement reforms has been the lack of funding and resources dedicated to institutions responsible for their execution. Other Latin American countries going through similar reforms have also encountered this problem.³⁹⁸ Resource allocation is particularly important in the early phase of reform, as initial success has “an important connection with the availability of the resources necessary to carry through with the new tasks that the accusatory system involves.”³⁹⁹

The Paraguayan criminal justice system in general has tended to suffer from a lack of funding. In 2002, the then-newly-appointed Minister of Justice and Labor, Angel José Burró contended that there were no resources at all in the budget of the Ministry.⁴⁰⁰ The lack of resources for proper implementation has been particularly acute in the execution of the alternative measures to pretrial detention. These alternative measures likely will not be effective if there is no adequate monitoring system, as is the situation in Paraguay.⁴⁰¹ The absence of a monitoring program is

³⁹⁸ RIEGO RAMÍREZ, *supra* note 339, at 12. This study especially noted how the lack of political will to implement reforms fully can create problems with providing adequate defense lawyers, essential for the operation of an accusatory criminal trial. “The new procedural laws [in the Latin American countries undergoing reforms] have operated with enormous deficiencies in defense lawyers—due to the lack of resources—generating grave problems in coordinating hearings, delays, and a very low quality of service in general.” *Id.* at 19; *see also* U.N. Human Rights Comm., Working Group on Arbitrary Detentions, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, ¶ 52, U.N. Doc. E/CN.4/2003/8/Add.3 (Dec. 17, 2002) (noting the lack of resources for public defenders in Mexico).

³⁹⁹ RIEGO RAMÍREZ, *supra* note 339, at 12; *see also* U.N. Human Rights Comm., Statement by Ms. Leila Zerrougui, Chairperson of the Working Group on Arbitrary Detention after Country Visit to Ecuador (Feb. 24, 2006) [hereinafter Statement by Ms. Leila Zerrougui], *available at* <http://www.ohchr.org/english/issues/detention/visits.htm> (noting that the lack of implementation of criminal defense mechanisms and of a budget for penitentiary reform undermines the capacity of the criminal justice system to function properly).

⁴⁰⁰ HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 49.

⁴⁰¹ Interview with Jorge Seall, *supra* note 71.

not only the result of insufficient funding, but is also due to a lack of police and other personnel to monitor those sentenced to such measures,⁴⁰² including a lack of probation judges to hear and process cases.⁴⁰³

Public defenders also lack adequate financial support, and are often extremely overworked and understaffed, limiting their ability to cover their caseloads adequately.⁴⁰⁴ This is an important deficit in the new accusatory system that is based on the principle of equality in representation of both sides in the criminal trial.⁴⁰⁵

Finally, the National Police also have suffered from a lack of resources. This has been a continuing problem dating back prior to the reforms. In addition to receiving relatively low salaries, police officers do not receive life insurance and, sources informed us, must purchase their own bullets and bulletproof vests.⁴⁰⁶ This situation has been described to our researchers as a “policy of molotovs,”

⁴⁰² Interview with Liliana Zayas, in Asunción, Para. (Oct. 25, 2005).

⁴⁰³ Interview with María de la Paz Martínez and Raquel Sosa, *supra* note 104 (noting that only one or two probation judges existed at the time, although at the time of the interview, three more had been recently named without yet having been sworn in).

⁴⁰⁴ Cecilia Pérez, a public defender for several years in San Lorenzo, in the Greater Asunción area, noted to our research team that public defenders operate on an unequal basis with the public prosecutors. In San Lorenzo, Pérez noted that there were not even half as many public defenders as prosecutors, and that these defenders worked with less than one-tenth the support staff. There were seven prosecutor’s offices in San Lorenzo with a support staff of over fifty, while three public defenders had a combined staff of only five. Interview with Cecilia Pérez, *supra* note 67. This lack of support can be especially debilitating given the existing difficulties in preparing an adequate defense. One example that Pérez noted was how difficult it was to contact clients: she often has to resort to paying inmates to locate her clients in prisons; when they are released, they are nearly impossible to locate without the help of family members. *Id.*

⁴⁰⁵ As the Working Group on Arbitrary Detentions has recently observed in its report on the situation in Ecuador:

. . . an accusatorial system requires the necessary mechanisms and resources to function adequately. Most important is to ensure the effectiveness of rights of defendants at all the stages of the process. This requires a strong and independent system to guarantee adequate defense for all, especially for those who cannot afford to pay a lawyer.

Statement by Ms. Leila Zerrougui, *supra* note 399.

⁴⁰⁶ Interview with María José Garcete and Andrés Vázquez, *supra* note 274; *see also* U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee on the Situation in Paraguay*, ¶ 11, U.N. Doc. CCPR/C/PRY/CO/2 (Apr. 24, 2006) (noting that most of the National Police must purchase their own weapons in an unregulated fashion and are not adequately trained). In regard to salary, Commissioner Planás informed us that starting salary is minimum wage (approximately US\$200 per month) and remarked that his salary, after twenty-eight years of service, was just over US\$500 a month. Interview with Vera Planás, *supra* note 51. Several of those we interviewed have expressed puzzlement with the continuance of this trend, considering the new funding and equipment provided for the new *Policía Urbana* department. *E.g.*, Interview with Marcos Köhn, *supra* note 47.

emphasizing the *ad hoc* and improvised nature of the policy for equipping police officers.⁴⁰⁷ Commissioner Vera Planás, director of the Department of Identifications of the National Police, informed us that underfunding continues to be a problem in the criminal investigations of the police, which often must rely on outdated techniques.⁴⁰⁸

3.5.2 Lack of Adequate Training and Human Resources

Given the extent of the structural changes in competencies and responsibilities that the new criminal codes introduced, adequate training and education of criminal justice officials are essential for the reform's success. However, this kind of personnel capacity-building has not taken place widely in Paraguay, and at times, the law's application in practice has not followed the principles of the reform. Many of those we interviewed in the criminal justice system complained of a lack of adequate training in the judiciary, the Public Ministry, and police, and informed us that all three institutions continued to apply the previous code not only in spirit, but also in form and letter.⁴⁰⁹

Within the judiciary, this lack of training has been apparent in the problematic application of alternative measures. Some have argued that there is a “lack of a legal basis for the judicial resolutions imposing precautionary measures [of pretrial detention] and their ratification in the sentencing tribunals.”⁴¹⁰ Still others point to the highly publicized cases in which judges incorrectly apply alternative measures, such as the case of the suspected Uruguayan auto thief

⁴⁰⁷ Interview with María José Garcete and Andrés Vázquez, *supra* note 274.

⁴⁰⁸ Commissioner Planás provided the specific example of the fingerprint identification system that still requires all ten digits to perform a match. Interview with Vera Planás, *supra* note 51.

⁴⁰⁹ We certainly do not mean to suggest that there has been no effort to train officials of the various criminal justice institutions in Paraguay. Several of the criminal justice professionals we interviewed have noted many training courses that the government has implemented with international cooperation. Interview with Alicia Pucheta de Correa, Justice, Supreme Court of Justice of Paraguay, in Asunción, Para. (Oct. 20, 2006); Interview with Marcos Köhn, *supra* note 47 (noting the support of *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) an international NGO based in Germany, although lamenting that this was the only international organization involved with training). Nonetheless, the frequency and intensity of the criticism we observed in relation to the lack of training demonstrate the need for further efforts and sustainable programs to reinforce the training that has been given.

⁴¹⁰ RIVAS, *supra* note 43, at 52.

mentioned above.⁴¹¹ The poor implementation of the new codes implied in this and other cases prompted the Supreme Court to provide judges with instructions on how to apply the alternative measures properly. It also generated increasing criticism from the public, which in turn led to the *Acordada* (decree) 319/04.⁴¹²

Our investigation also revealed widespread concerns about deficiencies in the training of police personnel. Many of those we interviewed focused their critiques on the lack of police training directed specifically to managing crime scenes and coordinating investigations with prosecutors. One source within the police informed us that many of the police had been trained under a militarized system, which “is insufficient for the issues we face What police really need to learn is to look with critical eyes, manage the crime scene, and interact well with people.”⁴¹³ Others have argued that police still are not properly trained in how to conduct a proper investigation.⁴¹⁴ This is likely a result of the legacy of the dictatorship, during which “actual physical evidence was not needed. All that was needed was someone to say you were guilty and you were.”⁴¹⁵ Veteran members of the police force have been equally critical of the ability of the Public Ministry to

⁴¹¹ E.g., Interview with Víctor Manuel Núñez, *supra* note 100; *Insfrán Soldier was on Parole*, *supra* note 330; *An Urgent Reexamination is Needed*, *Says Schupp*, *supra* note 330.

⁴¹² Interview with Víctor Manuel Núñez, *supra* note 100; see also *Preocupa ligereza en la concesión de medidas sustitutivas de prisión* [Preoccupying Ease in the Granting of Alternative Measures to Prison], ABC COLOR (Asunción), May 21, 2004 (reporting on a judicial conference to discuss the preoccupation with judges incorrectly applying alternative measures). The *Acordada* in Article 1 instructs judges to “consult criminal histories, as part of the personal information of the accused, in the application or revocation of precautionary measures.” *Acordada de la Corte Suprema de Justicia* [Decree of the Supreme Court of Justice], No. 319/04, June 16, 2004.

⁴¹³ Interview, in Asunción, Para. (Oct. 2006).

⁴¹⁴ E.g., Interview with Teresa Martínez Acosta, *supra* note 36. Unfortunately, the NGO community has not been active in providing the necessary follow up to promote sustainable change within the police as an institution. Interview with María José Garcete and Andrés Vázquez, *supra* note 274. Although it is doubtful that human rights awareness courses—those that focus on teaching the black letter law of international conventions—have any effect on actual police practices, practical training with a focus on “improving professionalism” can improve respect for human rights while “reducing the chance of misunderstandings and alienation [among the police force].” INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 110 (citing Fiona MacAuley). It is this second style of training that is needed, with an emphasis on adapting existing police procedures to incorporate the new institutional roles and the greater respect for individual rights that the new penal codes envision.

⁴¹⁵ Interview with Vera Planás, *supra* note 51. Since this time, the technical investigatory practices have improved significantly, considering continuing funding problems. *Id.* However, others have noted that the police still operate with a “military” mentality. Interview with Teresa Martínez Acosta, *supra* note 36.

conduct investigations.⁴¹⁶ In addition, experts expressed similar concern regarding the training and human resource capacities of public prosecutors. The new responsibility of leading criminal investigations has created new challenges for the Public Ministry. The institution recently implemented a full training program for all new prosecutors. However, the benefits of this training program may be diminished by the Public Ministry's high institutional turnover rate.⁴¹⁷ Observers of the criminal justice system have previously identified this problem. In a 2002 report, JSCA noted that in Paraguay, "in practice, there does not exist a true career path that allows prosecutors to aspire to higher positions through the execution of their job."⁴¹⁸

3.5.3 Lack of Inter-Institutional Coordination and Cooperation.

One consistent problem since the implementation of the new codes has been the lack of adequate coordination among the different institutions in the Paraguayan criminal justice system. Failure to coordinate properly the operation of institutions is a critical problem that has been identified in many criminal justice reforms throughout Latin America.⁴¹⁹ In Paraguay, this lack of integration has manifested itself in communication problems across institutions, as well as in shortcomings in the coordination and direction of investigations. In some cases, this has led to an atmosphere of distrust that has bordered on animosity.

First, statistical data are not well-coordinated between and among agencies. For example, when the Public Ministry has compared its data regarding the processing of cases with the data from the judiciary, there have been notable inconsistencies.⁴²⁰ The executive branch, through the Ministry of the Interior, relies

⁴¹⁶ Interview with Vera Planás, *supra* note 51.

⁴¹⁷ Interview with Teresa Martínez Acosta, *supra* note 36.

⁴¹⁸ CRISTIÁN RIEGO RAMÍREZ, JSCA, INFORME COMPARATIVO PROYECTO DE SEGUIMIENTO DE LOS PROCESOS DE REFORMA JUDICIAL EN AMÉRICA LATINA [COMPARATIVE FOLLOW-UP PROJECT ON THE JUDICIAL REFORM PROCESSES IN LATIN AMERICA] 40 (2002), *available at* http://www.cejamericas.org/doc/proyectos/inf_comp.pdf.

⁴¹⁹ In a recent review of criminal justice reforms in Latin America, JSCA STAGE IV REPORT, *supra* note 357, the JSCA has identified problems in coordination in criminal procedure reforms in Bolivia, *id.* at 72 & 98, Colombia, *id.* at 127-29 & 135-38, Nicaragua, *id.* at 158 & 168, and the Dominican Republic, *id.* at 212-14.

⁴²⁰ Interview with Teresa Martínez Acosta, *supra* note 36.

exclusively on data from the police. The Vice-Minister of the Interior informed our researchers that the Ministry lacked capacity to gather statistics on its own.⁴²¹

Coordination between the Ministry of the Interior and the police is further complicated by the lack of control of the police by the Ministry. Even though the Ministry of the Interior is the coordinating institution between the police and the executive branch, Senator Ana Maria Mendoza de Acha informed our team that “the Ministry has no direct control over the police” in practice.⁴²² The Vice-Minister of the Interior, Félix Silva Monges, confirmed this: “The Ministry has no administration over the police. The police are an autonomous institution.”⁴²³ This political structure creates obvious difficulties in coordinating the police with other branches of government.

Another example of the lack of coordination between the police and other government agencies can be seen in the implementation of the new PUE department. Carmen Echauri of the UNDP office in Paraguay complained to our researchers of coordination gaps between the two institutions that have caused resentment among the police. “Two police bodies with two different functions cannot coexist. The police see the Specialized Urban Police as taking away their resources and as a threat.”⁴²⁴ The police themselves have not been properly prepared for the implementation of this new department. When interviewed by our team in October 2006, several high-ranking officials of the National Police had not been informed yet of the precise responsibilities, hierarchy and working relationship between the regular police and the new PUE.⁴²⁵

The PUE is not the only source of tension among criminal justice agencies. “The relationship between the Public Ministry and the National Police has been problematic, with the existence of mutual distrust especially at the inception of the new system.”⁴²⁶ As noted earlier, this tension apparently arises from the sharing of investigatory responsibilities and the lack of communication among the agencies. The new criminal codes have required the police and the Public Ministry to

⁴²¹ Interview with Félix Silva Monges, *supra* note 50.

⁴²² Interview with Ana María Mendoza de Acha, *supra* note 54.

⁴²³ Interview with Félix Silva Monges, *supra* note 50.

⁴²⁴ Interview with Carmen Echauri, *supra* note 132.

⁴²⁵ Interview with Virgilio Barboza Brítez and Pablo Torres González, *supra* note 124.

⁴²⁶ RIEGO RAMÍREZ, *supra* note 418, at 40.

coordinate investigations for six years now. Despite this formal requirement, in practice the Public Ministry and the police are “just now beginning to create some channels of communication,” prosecutor Teresa Martínez Acosta told out investigators.⁴²⁷ Even with these minor inroads, Martínez Acosta admits, “In general, it is still very difficult to make institutional connections [between the police and the Public Ministry].”⁴²⁸ The police, in turn, have been uncertain about the capacity of prosecutors to undertake investigations. Commissioner Vera Planás, who previously worked on leading police investigations, recognized that tensions often originated from years of difference in experience the two institutions have, and noted, “Those who end up losing are the people.”⁴²⁹

Additionally, there are problems with coordination between the central government and the local, municipal governments. María Victoria Rivas of INECIP brought this lack of coordination between the Ministry of the Interior and municipal governments to the attention of our researchers. She considers this problem especially significant because “municipalities and municipal authorities play a major role in reducing local conflicts that eventually turn into violence. In this way they are a vital part of security.”⁴³⁰

Finally, there is a serious lack of coordination between criminal justice institutions and one of the most important and yet overlooked sectors of law enforcement—the public. Our researchers interviewed an anonymous source within the police force who told us that “the police need to work more on communication. They do not communicate with the citizens.”⁴³¹ Commissioner Viviano Machado of the 911 emergency system emphasized how difficult it was for citizens to contact many precincts because of a lack of infrastructure.⁴³² This communication is vitally important, as citizen cooperation with police is necessary for effective crime control.⁴³³ We examine the positive aspects of community policing programs in section 4.1.2.1.

⁴²⁷ Interview with Teresa Martínez Acosta, *supra* note 36.

⁴²⁸ *Id.*

⁴²⁹ Interview with Vera Planás, *supra* note 51.

⁴³⁰ Interview with María Victoria Rivas, *supra* note 48.

⁴³¹ Interview, in Asunción, Para. (Oct. 2006).

⁴³² Interview with Viviano Machado, *supra* note 120.

⁴³³ See Heinemann & Verner, *supra* note 258, at 15.

3.5.4 Corruption

The final institutional impediment to the proper implementation of the reforms that we consider, and which was emphasized by many sources we interviewed, is the persistence of corruption in the criminal justice system. This corruption has operated on several levels. It has allowed wealthy offenders to purchase impunity, led to the politicization of the National Police and the Public Ministry, and created a sense of distrust with the system as a whole. The Inter-American Development Bank, in reference to the judiciary, has expressed concern with corruption, stating that “the rule of law in Paraguay remains under the influence and, on occasion, co-opted, for the benefit of some sectors of the political and economic elites.”⁴³⁴

Nearly all of those we interviewed felt that many criminal justice agencies are plagued by corruption. Senator Ana María Mendoza de Acha expressed her sentiment to our team that Paraguay “has terrible problems with corruption among prosecutors and the police.”⁴³⁵ Although he asserted that corruption among actual judges was rare, Justice Víctor Manuel Núñez admitted that there was corruption in the administrative levels of the judiciary.⁴³⁶ In 2005, Guillermo Delmás Frescura, then member of the Magistrate Council, initiated proceedings against several judges and prosecutors for corruption. “There are highly corrupt magistrates as well as prosecutors, many of whom have even been investigated and prosecuted in the *Jurado de Enjuiciamiento de Magistrados* (Judicial Oversight Council) and absolutely nothing happened [to them].”⁴³⁷

Although exact figures on corruption investigations in the police were not available through the Department of Internal Affairs, one commissioner estimated that approximately 200 police officers had been purged recently due to charges of corruption and abuse of authority.⁴³⁸ A source within the police who wished to remain anonymous also told our team that many police officers work as private

⁴³⁴ INTER-AM. DEV. BANK, ESTRATEGIA DE PAÍS DEL BANCO CON PARAGUAY 2004-2008 [Bank Country Strategy with Paraguay 2004-2008], at 12 (2004) [hereinafter BANK COUNTRY STRATEGY].

⁴³⁵ Interview with Ana María Mendoza de Acha, *supra* note 54.

⁴³⁶ Interview with Víctor Manuel Núñez, *supra* note 34.

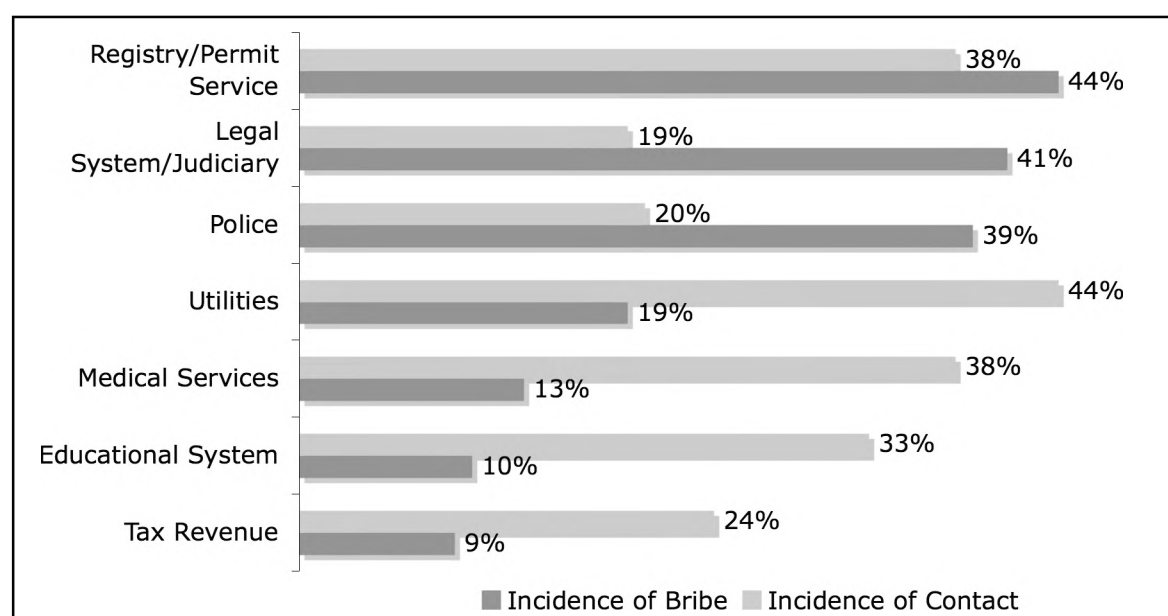
⁴³⁷ HUMAN RIGHT SITUATION IN PARAGUAY 2005, *supra* note 32, at 30.

⁴³⁸ Interview with Vera Planás, *supra* note 51.

security guards on a part-time basis or accept bribes to provide extra protection to businesses.⁴³⁹

The 2006 Transparency International *Global Corruption Barometer* survey results partially confirmed many of these accusations, and suggested a high level of corruption within the legal system. The survey found that 39% of respondents indicated that they or a member of their household had paid a bribe to the police within the last twelve months.⁴⁴⁰ Of all the responses for Paraguay, the legal system/judiciary and the police were the institutions second and third most likely to have accepted a bribe, slightly behind the registry and permit service:

Figure 12 – Incidence of Contact and Bribery in Previous 12 Months.⁴⁴¹



However, the prevalence of bribery in both the police and the judiciary is likely higher than other in institutions, given that respondents were just half as likely to have had contact with either the police or judiciary than with other

⁴³⁹ Interview, in Asunción, Para. (Oct. 2006).

⁴⁴⁰ TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION BAROMETER 2006 SURVEY (2006), available at http://www.transparency.org/content/download/12148/115527/version/1/file/GCB_2006_Data.zip. The question was phrased: “In the past twelve months, have you or anyone living in your household paid a bribe in any form to each of the following institutions/organizations?”

⁴⁴¹ *Id.*

institutions surveyed.⁴⁴² In addition, the bribes paid to officials of the legal system and to the police were the highest, averaging US\$59.10 and US\$41.90, respectively.⁴⁴³ This situation has also had a drastic effect on the public's perception of, and trust in, government institutions: over 80% of respondents to Transparency International's survey indicated that the justice system in Paraguay is corrupt.⁴⁴⁴ Some 90% of respondents identified the police as being either corrupt or extremely corrupt, and 87% of respondents felt similarly about the judiciary.⁴⁴⁵ Other survey results reflected a perception of widespread corruption within the Paraguayan government generally: 55% of respondents characterized the government's actions against corruption as completely ineffective or nonexistent, and 40% believed that the government's actions actually encouraged corruption.⁴⁴⁶ In addition, there is some evidence that the frequency of corruption may be increasing. In a 1996 victimization survey conducted by the Public Ministry as part of the U.N. Crime Victimization Survey, only 14.7% of respondents reported an incident of corruption with a public official in the previous year.⁴⁴⁷ Although the institution responsible and the methodology of the two studies differed (in particular, the 1996 Public Ministry study focused on the person surveyed rather than on her family as in Transparency International's 2006 survey), the data suggest a significant increase over the decade between the studies. While only 14.7 percent reported having paid a bribe in 1996, more than twice that percentage responded affirmatively in 2006.

Another form of corruption still prevalent within the Public Ministry and the National Police is the politicization of the hiring process. Several of those whom our team interviewed were highly critical of the hiring policies of the Public

⁴⁴² Although the survey did not specify the exact circumstances of the bribery, it is likely that the incidence of bribery to police officers was made to municipal traffic police, with whom the average individual has a higher incidence of contact out of all members of the National Police.

⁴⁴³ *Id.* The next most expensive bribes were to the tax revenue (US\$36.40) and the education system (US\$35.00); the other institutions averaged US\$10 or less. *Id.*

⁴⁴⁴ *Id.* The question was formulated as: "Which of the following statements would describe your attitudes towards using the justice system as stated above? The justice system is corrupt."

⁴⁴⁵ *Id.* The question posed was: "To what extent do you perceive the following category in this country to be affected by corruption?"

⁴⁴⁶ *Id.* The question posed was: "How would you assess your current government's actions in the fight against corruption? Very effective, effective, not effective, does not fight at all, encourages it."

⁴⁴⁷ PUBLIC MINISTRY, ENCUESTA INTERNACIONAL DE VICTIMIZACIÓN 158 (1996).

Ministry.⁴⁴⁸ Other reports have expressed this concern as well.⁴⁴⁹ The application process for new prosecutors does involve a written examination with objective criteria. However, a personal interview, over which little external control is exercised, weighs heavily in the results and, as sources told us, is more often than not the basis for selection.⁴⁵⁰ Although the police have a separate hiring process with a different structure, our researchers encountered a broad consensus that the politicization of the hiring process—which, we were told, is based less on merit than on political or personal connections—is a pervasive problem within the National Police, as well.⁴⁵¹ Many feel that the politicized hiring process compromises the functioning of both these institutions. It provides no reasonable guarantees regarding the qualifications of new hires, promotes favoritism and furthers corruption. As an anonymous police source expressed to our researchers: “The [corruption in the admission process] creates a corrupt institution, as people who come in through the window tend to leave through the window as well—and bring other people in through the window.”⁴⁵²

3.6 *Socio-Economic Factors Contributing to Rising Crime*

I don't think the laws are soft in Paraguay, but the application of the laws is soft. The government does not follow or comply with the laws that have to do with education, health, labor, child nutrition, water, etc.

—Luis Claudio Celma, *Global Infancia*.⁴⁵³

⁴⁴⁸ Interview with Teresa Martínez Acosta, *supra* note 36; Interview with Helio Vera, *supra* note 36.

⁴⁴⁹ See RIEGO RAMÍREZ, *supra* note 418, at 42-43.

⁴⁵⁰ The body charged with making the selection for the Public Ministry is the *Consejo de Magistratura* (Magistrates Council), the same body that elects judges. The Council elects a *terna*, or list, of three candidates, each of which then can either be approved or rejected by the Supreme Court. As there is no external criteria for selection apart from the judgment of the Council and the curriculum vitae of the applicants, very few *ternas* are rejected. Interview with Teresa Martínez Acosta, *supra* note 36.

⁴⁵¹ Interview, in Asunción, Para. (Oct. 2006) (estimating that the overwhelming majority of new recruits get in through their political connections or friendships with officials within the police).

⁴⁵² Interview, in Asunción, Para. (Oct. 2006).

⁴⁵³ Interview with Luis Claudio Celma, *Global Infancia*, in Asunción, Para. (Mar. 12, 2006).

As we have discussed in this chapter, the most commonly perceived causes for decreasing security in Paraguay—soft criminal laws and the cultural and structural incompatibility of Paraguayan society to the new reforms—most likely bear little, if any, relation to the increase in criminality that Paraguay may be experiencing. Instead, there is another less visible set of factors that may be at the root of public perceptions of insecurity. We consider these factors below.

Criminality and violence are complex phenomena that preclude simple analysis. Researchers Irma Arriagada and Lorena Godoy have observed:

In light of the nature of the phenomenon of violence, it is appropriate to adopt a multicausal focus—like the epidemiological focus of public health—through which we do not look to establish the cause of violence, but rather identify the factors that produce it or are frequently associated with it and that habitually operate simultaneously, and then place emphasis on the task of prevention.⁴⁵⁴

These causes include a variety of social, cultural, individual, and situational factors such as: economic hardship, absence of social capital, intra-familial violence, substance abuse, inequality and social marginalization, inadequate urban planning, concentration of crime in certain areas, and institutional inefficiency.⁴⁵⁵

Studying the conditions specific to Latin America, Carlos Basombrío of the Carnegie Council has found:

There is a general consensus among sociologists and criminologists regarding the causes of crime in [Latin America]. These factors include rapid, large-scale urbanization that is incapable of sustaining basic services; extreme inequalities between rich and poor; a culture of violence carved from many years of internal wars; poverty, exclusion, and lack of opportunity for young people; police abuse, corruption, and inefficacy; and the unimpeded availability of guns,

⁴⁵⁴ Irma Arriagada & Lorena Godoy, *Prevenir o reprimir: falso dilema de la seguridad ciudadana* [*To Prevent or Repress: The False Dilemma of Citizen Security*], 70 REVISTA DE LA CEPAL [ECLAC JOURNAL] 107, 109 (2000) (citations omitted).

⁴⁵⁵ See UNDP, GOBERNABILIDAD LOCAL, CONVIVENCIA Y SEGURIDAD CIUDADANA [LOCAL GOVERNANCE, PEACEFUL COEXISTENCE AND CITIZEN SECURITY] (2006).

drugs, and alcohol, including an overwhelming presence in many cities of small-scale drug trafficking.⁴⁵⁶

The dramatic rise in crime that Paraguay has experienced in recent years may be attributed to many factors including: increasing population, rural-to-urban migration, international drug trafficking, and dramatic inequalities in resource distribution. Many of these problems have already been identified as potentially contributing to the situation of insecurity in Paraguay. Justice Víctor Manuel Núñez explained:

This increase [of insecurity] is due to several factors. One of the main ones is the lack of programs to solve social problems. Regretfully, the country lacks an adequate social policy and has lacked such a policy for about 12-15 years. There is no employment policy, and the issues of education, health, and housing haven't been adequately addressed All these problems, being neglected, have driven the increase in crime, especially crimes against property.⁴⁵⁷

Identifying the potential root causes of crime and insecurity in the country is essential in evaluating the criminal justice system and developing recommendations to improve its effectiveness. Further, as reforms are implemented, “it is necessary to recognize the necessities of each situation to identify the instruments adequate [for addressing those situations].”⁴⁵⁸

⁴⁵⁶ Carlos Basombrío, The Carnegie Council, *Crime: A Latin American Challenge for Human Rights* (1999), <http://206.252.132.104/viewMedia.php/prmTemplateID/8/prmID/604>.

⁴⁵⁷ Interview with Víctor Manuel Núñez, *supra* note 100.

⁴⁵⁸ RIEGO RAMÍREZ, *supra* note 339, at 4.

3.6.1 Inequality

It is quite harmful to say that poverty is the source of violence. It's actually inequality that is the source of violence.

—Roque Orrego, INECIP.⁴⁵⁹

It is a common perception among criminologists and the general public that increasing poverty is directly responsible for increases in crime rates. In a 2005 survey on perceptions of insecurity by the newspaper *La Nación*, nearly 60% of respondents in Asunción considered that lack of employment generates high levels of crime in Paraguay.⁴⁶⁰ Research has found a significant positive correlation between poverty and crime rates in other countries, such as the United States.⁴⁶¹ However, as the quotation that introduces this section asserts, it is not clear that a direct causal connection between poverty and crime exists. This overly simplified view can easily obfuscate more complex underlying causes of criminality, or even lead to the criminalization of poverty by equating the poor with criminals.⁴⁶² Arriagada and Godoy have noted that:

Habitually, the increase in urban poverty has been associated in the past decade with the increase in violence, crime, and insecurity in cities. However, violence and insecurity do not depend only on poverty. Experience has proven that, more than poverty, it is inequality, in conjunction with other social, cultural, and psychological factors, that generates greater violence. This permits us to understand in a more integral manner the phenomenon of crime, as much as a traditional phenomenon as an emerging one.⁴⁶³

⁴⁵⁹ Interview with Roque Orrego, *supra* note 53.

⁴⁶⁰ 60% of People Think that Unemployment Creates Crime, *supra* note 244.

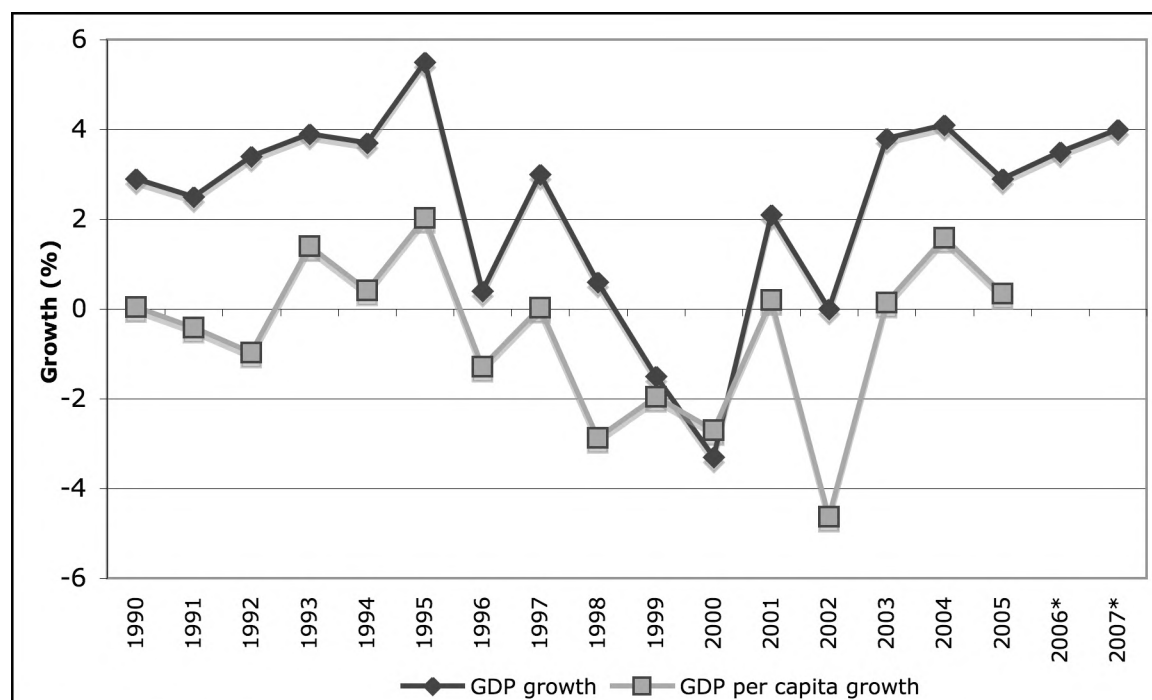
⁴⁶¹ See, e.g., Eric Gould et al., *Crime Rates and Local Labor Market Opportunities in the United States: 1979-1997*, 84 REVIEW OF ECON. & STATISTICS 45 (2002). Although Gould et al. found that there exists a significant correlation between the unemployment rate and crime rates in their study on the United States, they concluded that wages for low-skilled laborers played a greater role in crime trends over the past few decades. *Id.* at 45.

⁴⁶² As Roque Orrego further noted to our research team: “We should see more than just the common criminality of street crime. We should see the criminality in structures: white collar crime, corruption, etc.” Interview with Roque Orrego, *supra* note 53.

⁴⁶³ Arriagada & Godoy, *supra* note 454, at 109.

Indicators show that poverty levels in Paraguay have been rising steadily since at least the early 1990s. At that time, Paraguay suffered an economic downturn that lasted nearly a decade. As the graph below illustrates, the rate of economic growth in the 1990s, measured by the yearly increase in Gross Domestic Product (GDP) was very poor, and at times negative.

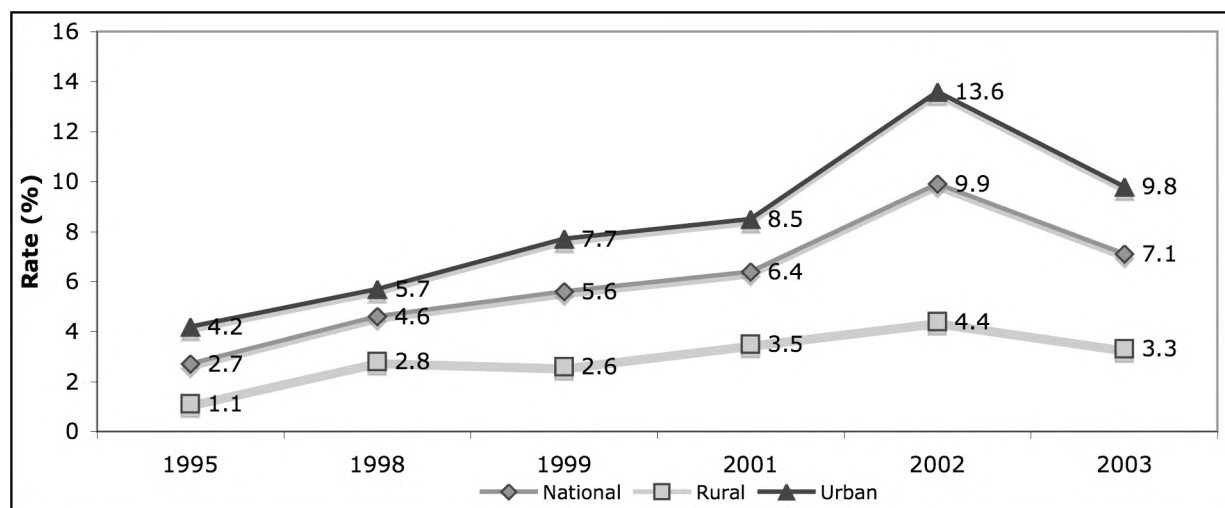
*Figure 13 – Annual Percentage Change in GDP and GDP per capita, Paraguay.*⁴⁶⁴



It has not been until relatively recently that Paraguay's economy has begun to grow again, albeit modestly. While the country stagnated, poverty levels rose. The World Bank reports that in 1990, 4.9% of Paraguayans lived on less than US\$1 per day. By 2002, that number had more than tripled to 16.4% of the total population.⁴⁶⁵ Unemployment rates have also followed this trend, rising sharply from 2.7% in 1995 to 9.9% in 2002, with the steepest effect felt in urban areas:

⁴⁶⁴ GDP growth rate data from Int'l Monetary Fund (IMF), World Economic Outlook Database, Sept. 2006, <http://www.imf.org/external/pubs/ft/weo/2006/02/data/index.aspx>. Data for years 2006 and 2007 are estimates of the International Monetary Fund. GDP per capita growth data from the World Bank, World Development Indicators Database (2007).

⁴⁶⁵ World Bank, Millennium Development Goals, Paraguay Country Profile (2004), <http://devdata.worldbank.org/idg/IDGProfile.asp?CCODE=PRY&CNAME=Paraguay&SelectedCountry=PRY>.

*Figure 14 – Unemployment Rate in Paraguay (pop. ages 15-64).*⁴⁶⁶

There is an apparent connection between national economic performance and crime, and an arguable correlation between unemployment and crime rates.⁴⁶⁷ A 1998 study on crime rates in Latin America demonstrated that economic downturns can produce increases in national crime rates, and that these increases “may be felt long after the initial shock.”⁴⁶⁸ Pablo Fajnzylber et al. have shown that changes in GDP, which have a statistically significant, negative correlation to crime rates, can be an accurate measure of when faltering economies lead to rising crime.⁴⁶⁹ Other studies conducted on U.S. cities have shown a positive, although not very strong, correlation between unemployment rates and crime.⁴⁷⁰ The homicide rates (Figure 4) and the Latinobarómetro crime victimization surveys (Figure 6) seem to follow trends in GDP growth and unemployment rates. The years of peak crime incidence, 1997 and 2001-2002, correspond to periods

⁴⁶⁶ Inter-Am. Dev. Bank, Sociometro, <http://www.iadb.org/sociometro/index.html> (last visited Apr. 1, 2007).

⁴⁶⁷ Heinemann & Verner, *supra* note 258, at 12-13.

⁴⁶⁸ PABLO FAJNZYLBER ET AL., WORLD BANK, DETERMINANTS OF CRIME RATES IN LATIN AMERICA AND THE WORLD, AN EMPIRICAL ASSESSMENT 31 (1998).

⁴⁶⁹ See Pablo Fajnzylber et al., *Inequality and Violent Crime*, 45 J. L. & ECON. 1, 25 (2002).

⁴⁷⁰ See Richard Freeman, *Why Do So Many Young American Men Commit Crimes and What Might We Do About It?*, 10 J. ECON. PERSPECTIVES 25, 33 (1996); see also Douglas Massey, *Concentrating Violence Breeds Poverty*, in 24 POPULATION TODAY (U.N. Population Info. Network, 1996) (noting that: “Criminal behavior is strongly associated with income deprivation, and the geographic concentration of poverty will thus yield a concentration of criminal violence in poor neighborhoods.”), <http://www.un.org/popin/popis/journals/poptoday/today0696.html>; Gould et al., *supra* note 461, at 45.

following downturns in the national economy, with 2002 representing the highest crime rates and the longest period of macroeconomic instability. In addition, the high crime rates in 2002 also correspond to the highest unemployment rates over the six-year sample in Figure 14.

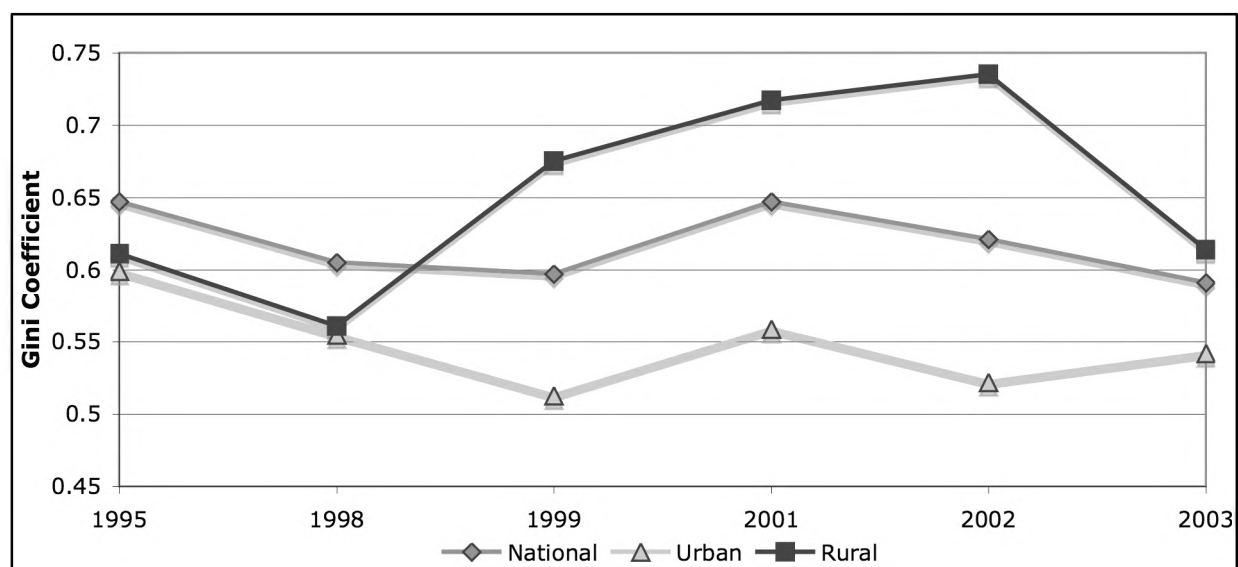
However, many of the same studies show that the correlation is stronger between income inequality and crime than it is between poverty and crime. As two scholars have observed, “Countries with more unequal income distribution tend to have higher crime rates than those with more egalitarian patterns of income distribution Data suggest that changes in income distribution, rather than changes in absolute levels of poverty, are associated with changes in violent crime rates.”⁴⁷¹ Pablo Fajnzylber et al. have also demonstrated that, even more than GDP growth, Gini coefficient data measuring income inequality are a robust and statistically significant determinant of both homicide and robbery rates.⁴⁷² Another study has shown that changes in the Gini index can have a significant impact on crime rates: “A five percentage point change in the Gini index . . . would produce on average an increase of approximately fifteen per cent in the homicide rate, and two or three times this figure for robberies.”⁴⁷³

While levels of poverty and unemployment in Paraguay have trended upwards over the past decade, the Gini coefficient has remained high, fluctuating in parallel to crime surges. The following chart shows the change in the Gini coefficient of per capita household income in Paraguay for six years between 1995 and 2003:

⁴⁷¹ Heinemann & Verner, *supra* note 258, at 12, *citing* Fajnzylber et al., *supra* note 469; *see also* Arriagada & Godoy, *supra* note 454, at 109-11.

⁴⁷² Fajnzylber et al., *supra* note 469, at 25. The Gini coefficient was developed to measure relative levels of inequality. A score of 0.0 represents perfect equality while a score of 1.0 represents perfect inequality.

⁴⁷³ François Bourguignon, World Bank, Crime, Violence and Inequitable Development 22, Paper prepared for the Annual World Bank Conference on Development Economics, Washington, D.C., Apr. 1999.

*Figure 15 – Gini Coefficient of Per Capita Household Income.*⁴⁷⁴

According to the above chart, there was a rise of nearly five percentage points in the Gini coefficient of per capita income between 1999 and 2001. Matching the predictions of the above studies, this rise in inequality roughly corresponds to the largest increase in crime rates, which took place in 2001 and 2002. This trend suggests a likely causal relation between the increasing levels of inequality in Paraguay and surges in crime rates.

It is becoming increasingly clear in Paraguay that properly addressing public safety concerns requires a broadly focused effort. Addressing the high levels of income inequality should be a central part of this focus. In addition to improving security, it would fulfill one of the Inter-American Development Bank's principal development challenges of "Reducing Poverty and Inequality: The Challenge to Promote Human Development."⁴⁷⁵ As Hugo Valiente, a lawyer with the *Centro de Documentación y Estudios* (Center for Documentation and Studies), suggested to our investigators, "[a] society in which over a third of the population lives in poverty is definitely insecure."⁴⁷⁶ The solution to resolving this situation is to recognize that the eruption of violence "is not just the responsibility of the police,

⁴⁷⁴ Inter-Am. Dev. Bank, Sociometro, *supra* note 466.

⁴⁷⁵ BANK COUNTRY STRATEGY, *supra* note 434, at 19.

⁴⁷⁶ Interview with Hugo Valiente, *supra* note 104.

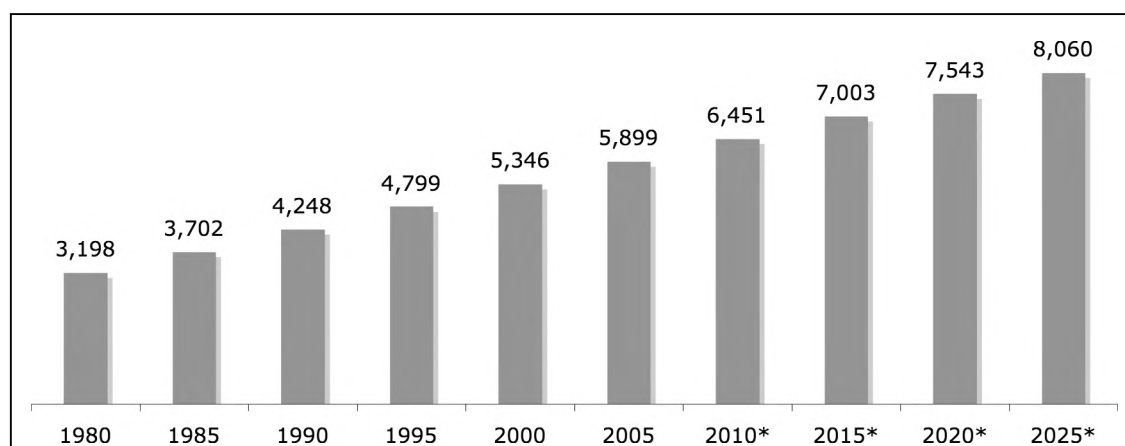
but rather the result of corruption, unemployment, and the lack of opportunities to live a dignified life.⁴⁷⁷

3.6.2 Increasing Population

Demographic shifts can also have an effect on crime levels, as a rapidly increasing and predominantly young population can place further strain on an already faltering economy. First, for the economy to keep pace with the growing population, it must continually increase its output to provide the same standard of living. Otherwise, there will be insufficient resources to provide for the new members of society, and each person will be left with less than before. As poorer segments of society tend to experience higher population growth rates, low-income families will experience this effect more sharply. In turn, this likely will lead to increasing levels of inequality, and thus higher crime rates.

The population of Paraguay continues to grow. From over 3.1 million residents in 1980, the population has nearly doubled to just under 5.9 million by 2005:

*Figure 16 – Population Growth, in thousands (2010-2025 projected).*⁴⁷⁸



⁴⁷⁷ HUMAN RIGHTS SITUATION IN PARAGUAY 2002, *supra* note 76, at 67.

⁴⁷⁸ Data from DGEEyC, Projection of National Population by Sex and Age 1950-2050, *supra* note 256.

Based on the current rates of population growth, the General Office of Statistics, Surveys and Census of Paraguay estimates that the population will pass eight million by 2025.⁴⁷⁹

Although the national economy has improved in recent years, it did not keep pace with the increasing population in the late 1990s and early 2000s. As can be seen above in Figure 13, the Paraguayan economy experienced an eight-year period of dismal growth starting in 1995. The contemporaneous increase in population during that period likely magnified the adverse effects of this economic downturn. Indeed, the average annual growth in GDP per capita from 1995-2005 was significantly negative: -1.4% per year, indicating a serious decline in the average standard of living.⁴⁸⁰ This population growth, coupled with its effects on the economy and the steadily increasing unemployment rate, likely exacerbated problems with crime throughout the 1990s.

3.6.3 Rural → Urban Migration

Many scholars argue that rural-to-urban migration also can lead to increased crime and poverty.⁴⁸¹ In their analysis of crime victimization in Latin American societies, Alejandro Gaviria and Carmen Pagés presented evidence that “rapid urbanization is associated with a substantial increase in crime.”⁴⁸² They attribute this correlation to various factors:

Rapid urban growth may be accompanied by increasing poverty, unemployment and joblessness, which in turn may give rise to higher crime rates. Further, urban growth may, at least under some

⁴⁷⁹ *Id.*

⁴⁸⁰ See World Bank, Paraguay at a Glance, Aug. 13, 2006, http://devdata.worldbank.org/AAG/pry_aag.pdf.

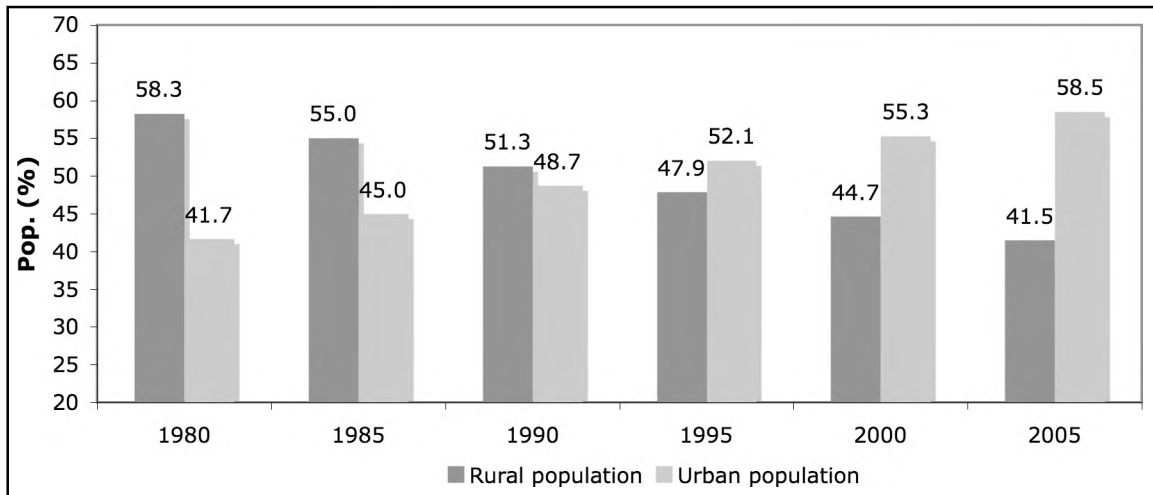
⁴⁸¹ See Alejandro Gaviria & Carmen Pagés, *Patterns of Crime Victimization in Latin America* (Inter-Am. Dev. Bank, Working Paper No. 408, 1999); see also Peter Gizewski & Thomas Homer-Dixon, *Urban Growth and Violence: Will the Future Resemble the Past?: Part 2, Project on Environment, Population and Security* (Am. Association for the Advancement of Science and the University of Toronto, Occasional Paper, 1995), available at <http://www.library.utoronto.ca/pcs/eps/urban/urban2.htm> (asserting that “some cities today provide strong prima facie evidence for the claim that various interactive combinations of urban growth and other factors will sharply increase urban violence in the future.”).

⁴⁸² Gaviria & Pagés, *supra* note 481, at 19.

circumstances, trigger a self-reinforcing process between rising crime rates and increasingly ineffective law enforcement institutions. Population growth may overload law enforcement institutions, diminishing their effectiveness. Ineffective institutions may in turn lead to higher crime rates, as criminals perceive that the police and prosecutors are not keeping up. Finally, higher crime may in turn exacerbate institutional ineffectiveness, all resulting in a negative spiraling of bad institutions and high crime.⁴⁸³

Paraguay's urban population has increased dramatically over the latter half of the twentieth century. The graph below depicts this movement from the countryside to Asunción and other Paraguayan cities:

*Figure 17 – Rural → Urban Migration in Paraguay.*⁴⁸⁴



This migration is most likely a result of the lack of development, infrastructure and investment in the interior of the country, which continues to suffer from underdevelopment in sanitary infrastructure, access to education, and adequate housing.⁴⁸⁵ Only 33% of rural homes have access to piped water,⁴⁸⁶ only 32% to

⁴⁸³ *Id.*

⁴⁸⁴ World Bank, World Development Indicators Database (2007).

⁴⁸⁵ UNDP, INFORME NACIONAL SOBRE DESARROLLO HUMANO PARAGUAY 2003 [NATIONAL REPORT ON HUMAN DEVELOPMENT IN PARAGUAY 2003], at 125 (2004) [hereinafter NATIONAL REPORT ON HUMAN DEVELOPMENT].

⁴⁸⁶ Data from 2003. Inter-Am. Dev. Bank, Sociometro, *supra* note 466.

improved sanitation facilities,⁴⁸⁷ and just under 50% of people in rural areas have attended secondary school.⁴⁸⁸ The precarious economic situation of those living in rural areas is apparent in the concentration of poor families that these areas contain. Just over half (50.5%) of families in rural Paraguay are impoverished, and 31.1% live in extreme poverty.⁴⁸⁹ As the above Figure 15 indicates, rural areas also experience higher levels of income inequality.

In addition, there exists a continuing problem with extremely high levels of inequality in land distribution in rural areas. Paraguay has one of the most unequal distributions of land in the world, with a Gini index of land distribution hovering around 0.90 (an index of 1.0 signifies absolute inequality).⁴⁹⁰ This unequal distribution can make subsistence farming on small parcels of land very difficult, as rural lots of less than twenty hectares cannot produce enough to support an average family and to yield a surplus.⁴⁹¹ As a result, those without access to land often must seek employment in urban areas.

If rural-to-urban migration does have an adverse effect on crime, the rapid increase in urbanization in Paraguay in recent years may partially explain the dramatic rise in crime. Indeed, in an interview with our research team, members of the *Comisión Nacional de la Reforma del Sistema Penal* (National Commission for the Reform of the Penal System) highlighted this movement and its possible negative effects on the crime rates in the capital.⁴⁹²

⁴⁸⁷ Inter-Am. Dev. Bank, EQxIS Information System on Social Indicators and Equity, <http://www.iadb.org/xindicadores> (last visited Apr. 2, 2007). Estimates based on data from DGEEyC, Encuesta Permanente de Hogares, Oct.-Dec., 2004 (2004). “Improved sanitation facilities” are correctly installed and properly maintained facilities that hygienically separate human excreta from human, animal and insect contact, such as sewers, septic tanks, pour-flush latrines and simple pit or ventilated improved pit latrines. *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ Compared to the 43.2% poverty rate and 14.6% extreme poverty rate in urban areas of Paraguay. DGEEyC, CONDICIONES DE VIDA DE LA POBLACIÓN PARAGUAYA 2002 [CONDITION OF LIFE OF THE PARAGUAYAN POPULATION 2002], at 11-13 (2002).

⁴⁹⁰ NATIONAL REPORT ON HUMAN DEVELOPMENT, *supra* note 485, at 136.

⁴⁹¹ ESTANISLAO GACITÚA MARIÓ ET AL., WORLD BANK, SOCIAL DEVELOPMENT PAPER NO. 63, PARAGUAY: SOCIAL DEVELOPMENT ISSUES FOR POVERTY ALLEVIATION 45 (2004).

⁴⁹² Interview with Bader Rachid Lichi, Marcelo Duarte and Edmundo Rolón, *supra* note 165.

3.6.4 Internationalization of Criminality

Over the past decade, Paraguay's entrance into the global economy has attracted international criminal syndicates that view the country as a safe location from which to conduct illegal operations. As a result, "Paraguay today is a strategic South American hub for international drug trafficking, arms smuggling, money laundering and counterfeiting, among other crimes."⁴⁹³ Although there are indications that illegal trafficking has increased in recent years, it is important to note that trading in contraband and drugs has been a recurring problem in Paraguay, prevalent even during the Stroessner dictatorship.⁴⁹⁴

Drug trafficking is one of the most serious of Paraguay's problems with transnational crime. The U.N. Office on Drugs and Crime (UNODC) has noted: "Paraguay is said to be the major source of the cannabis consumed in the Southern Cone and Brazil, and, according to government estimates, may be the single largest producer of herbal cannabis in the world."⁴⁹⁵ As Paraguay has the lowest adult cannabis consumption rate in all of Latin America (0.5%),⁴⁹⁶ the production of cannabis in Paraguay is likely for exportation only.⁴⁹⁷ Paraguay is also a major

⁴⁹³ Jack Sweeney, *DEA Boosts its Role in Paraguay*, WASH. TIMES, Aug. 21, 2001,

⁴⁹⁴ See International League Report, *supra* note 38, at 20. The report alleged evidence of contrabanding of cocaine, cigarettes, whiskey, and other merchandise, and implicated the involvement of several top ranking military officials of the Stroessner regime. *Id.* at 20-21; see also FÁTIMA MYRIAM YORE, BASE INVESTIGACIONES SOCIALES [BASE OF SOCIAL INVESTIGATIONS], LA DOMINACIÓN STROESSNER: ORÍGENES Y CONSOLIDACIÓN [THE STROESSNER DOMINATION: ORIGINS AND CONSOLIDATION] 103 (1992) (citing especially drug and contraband trafficking by military during the dictatorship: "There has never existed a profitable economic enterprise, private or public, legal or illegal, in which the military has not been involved in some way. Cases of large deals and corruption in which military heads were implicated where known throughout the time of Stroessner.").

⁴⁹⁵ U.N. OFFICE ON DRUGS AND CRIME [UNODC], WORLD DRUG REPORT 2006, at 26 (2006) [hereinafter WORLD DRUG REPORT], available at http://www.unodc.org/pdf/WDR_2006/wdr2006_volume1.pdf.

⁴⁹⁶ *Id.* at 162.

⁴⁹⁷ Former Minister of the Interior Nelson Alcides Mora Rodas told our researchers that in his experience, Paraguay has been a major importer and exporter of marijuana for several decades, a situation that he first noticed 20 years ago as a judge in Pedro Juan Caballero. From the northern part of the country, the marijuana is smuggled to "large Brazilian centers, such as São Paulo, and also down to Argentina, Buenos Aires, etc." Interview with Nelson Alcides Mora Rodas, Former Minister of the Interior, in Asunción, Para. (Mar. 15, 2006).

overland route for cocaine shipments between Bolivia and Brazil, and trafficking has purportedly increased in recent years.⁴⁹⁸

Several of our sources confirmed the perception that the rise in illegal trafficking has contributed to an increase in crime in Paraguay. Nelson Alcides Mora Rodas, former Minister of the Interior, told our researchers:

Organized crime is transnational, was the basis of the dictatorship, and now has developed into drug and merchandise trafficking. In the western part of the country, where there are few people, that is where most of the drugs come from. They enter in from Bolivia, Colombia and Peru and from here they go to Europe.⁴⁹⁹

Government estimates place marijuana cultivation at 6,000 hectares a year, producing approximately 15,000 tons of cannabis, although the UNODC believes this figure may be an overestimate.⁵⁰⁰

The evidence suggesting that significant international criminal activity has emerged in Paraguay in recent years is extremely troubling. The UNODC states that “[t]ransnational organized crime poses a serious threat to development, peace and security, and human rights.”⁵⁰¹ The adverse effects of transnational crime are readily apparent, as numerous studies have shown the negative social and economic impacts of trafficking.⁵⁰²

⁴⁹⁸ The trafficking route goes from Colombia to Bolivia by air, and then proceeds through Bolivia and Paraguay to Brazil by boat and land. Recent increases in cocaine smuggling along this route are likely due to 2004 legislation in Brazil authorizing law enforcement agents to shoot down planes suspected of drug trafficking. UNODC, Report of the Fifteenth Meeting of Heads of National Drug Law Enforcement Agencies, Latin America and the Caribbean, held in Santa Marta, Colombia, at 6, U.N. Doc. UNODC/HONLAC/2005/5, Nov. 1, 2005.

⁴⁹⁹ Interview with Nelson Alcides Mora Rodas, *supra* note 497.

⁵⁰⁰ WORLD DRUG REPORT, *supra* note 495, at 162-63.

⁵⁰¹ UNODC, ANNUAL REPORT 2005, at 76 (2005), available at http://www.unodc.org/pdf/annual_report_2005/AR2005_complete.pdf.

⁵⁰² For a survey of studies examining these effects as they specifically pertain to drug trafficking, see UNODC, ECONOMIC AND SOCIAL CONSEQUENCES OF DRUG ABUSE AND ILLICIT TRAFFICKING, TECHNICAL SERIES No. 6 (1998).

Effective and Ineffective Policies: Lessons from Abroad

Combating criminality and its underlying social causes is a resource-intensive endeavor for any state. Given Paraguay's resource constraints, it is particularly important that it implement the laws, policies and practices that will be most efficient in reducing crime. Due to the deficiencies in data collection on crime and public policy in Paraguay, as well as the wealth of research on similar contexts, we turn to other states' experiences to identify the least and most promising approaches to crime control. When possible, and to ensure the highest degree of relevance of the examples on which we draw, we focus on studies from Latin America and other transitional societies—states emerging from periods of authoritarian or totalitarian rule. These societies often have social and economic contexts similar to those of Paraguay and face similar criminal justice challenges.⁵⁰³ “Indeed,” as two leading researchers note, “the difficulties of post-conflict societies and police in those countries seem to have many similarities. For that reason . . . important lessons can be learned and shared across the region to improve all reform efforts.”⁵⁰⁴ It is worth noting here that the director of Paraguay's National Commission on Public Security, Roberto Carlos Franco, recognized the value of this comparative approach, stressing the “need to work

⁵⁰³ The majority of our case studies come from Latin America, where many countries likewise are facing the problem of increasing insecurity: As researchers Melissa Ziegler and Rachel Neild have observed, “[w]hile there are large variations between different countries in Latin America, [across the region] victimization rates reached an alarming rate where one in three families reported that a member had been assaulted or robbed during the previous twelve-month period.” MELISSA ZIEGLER & RACHEL NEILD, WASHINGTON OFFICE ON LATIN AMERICA [WOLA], FROM PEACE TO GOVERNANCE: POLICE REFORM AND THE INTERNATIONAL COMMUNITY 28 (2002).

⁵⁰⁴ ZIEGLER & NEILD, *supra* note 503, at 49.

with other countries and look at possibilities and positive experiences that other countries have had.”⁵⁰⁵

4.1 Policing Practices

One significant problem found in many Latin American countries and in Paraguay in particular is the public’s lack of confidence in the police. WOLA has reported that “levels of public confidence in the police [have] declined rapidly.”⁵⁰⁶ Martín Abregú, for many years the director of one of Argentina’s most respected rights groups and now Program Officer for the Ford Foundation for the Southern Cone, reports:

[M]ost people in most countries in Latin America come into contact with the state only as victims of crime or when accused of crime. When this contact is combined with corrupt or illegal behavior by the police, or rude or intimidating treatment, the result can undermine confidence in the entire system.⁵⁰⁷

The lack of confidence is responsible in turn for the public’s reluctance to report crimes. In fact, the public may even be fearful of the police. As WOLA observes:

Studies from organizations like the Inter-American Development Bank, the UN, and *Latinobarómetro* have revealed that citizens in the Southern Cone, including Argentina, Chile, Uruguay, and Peru, do not trust their police forces. Not only do most feel that the quality of the policing is poor, but they actually fear the police.⁵⁰⁸

Policymakers in Paraguay therefore should evaluate and select policing practices carefully. In many transitional societies, including Paraguay, the police and other forces charged with policing duties have resorted to tougher and more

⁵⁰⁵ Interview with Roberto Carlos Franco, *supra* note 167.

⁵⁰⁶ ZIEGLER & NEILD, *supra* note 503, at 28.

⁵⁰⁷ CECILIA ALES ET AL., CENTRO DE ESTUDIOS LEGALES Y SOCIALES [CELS], COMMON GROUND AND CROSSCUTTING THEMES ON FUNDING PUBLIC SECURITY INITIATIVES IN LATIN AMERICA 4 (2003), available at http://www.vera.org/publication_pdf/202_390.pdf.

⁵⁰⁸ ZIEGLER & NEILD, *supra* note 503, at 29.

repressive practices in response to mounting public outcry about perceived insecurity. Unfortunately, authorities often proceed without analysis based on empirical data and fail to assess the efficacy of each measure before and after it is implemented. As discussed in the previous chapter, the lack of reliable statistical information is a pervasive problem in Paraguay. Experiences of similarly situated countries thus contain particularly salient lessons for Paraguayan policymakers.

4.1.1 Least Effective Policing Strategies

4.1.1.1 Deploying More Police

When criminality is on the rise, an instinctive reaction is to increase the number of police deployed in a given area. Yet simply increasing the number of law enforcement personnel is not necessarily an effective measure for reducing crime. In Brazil, for example:

[q]uestions remain as to whether [the] growth of investment in public and private security has been excessive, sufficient or insufficient for the control of crime and the maintenance of law and order. However, if the statistics are examined, it is clear that these investments have not resulted in the reduction of violent crime. In Brazil, despite the growth in the number of police agents and municipal guards from 339,900 in 1985 to 494,162 in 1995 (+45.4%), the homicide rate increased from 14.9/100,000 in 1985 to 23.9/100,000 in 1995 (+60.4%). In the state of São Paulo, despite the growth in the number of police agents from 71,032 in 1982 to 116,564 in 1998 (+64.1%), the homicide rate increased from 16/100,000 in 1982 to 36.1/100,000 in 1996 (+125.6%).⁵⁰⁹

Criminologist David Bayley finds that “[t]he plain but disconcerting fact is that differences in crime rates cannot be attributed to variations in the number of police Changes in the number of police within any practicable range will have

⁵⁰⁹ Paulo de Mesquita Neto, *Crime, Violence and Political Uncertainty in Brazil*, in CRIME AND POLICING IN TRANSITIONAL SOCIETIES 77, 81 (Mark Shaw ed., 2001), available at http://www.kas.de/db_files/dokumente/7_dokument_dok_pdf_4865_2.pdf.

no effect on crime.”⁵¹⁰ Moreover, according to Bayley, “This discovery is not new The lack of connection between crime and police numbers can also be found through analysis of historical trends.”⁵¹¹ Bayley based this conclusion on data provided by local authorities in various countries:

For example, between 1970 and 1990 the number of full-time police officers in the United States rose by 70.7%, but serious crimes rose by 78.8% and violent crimes by 147%. Adjusting these figures for increases in population . . . the number of police rose 70.6%, the number of serious crimes 46%, and the number of violent crimes 101%. A similar lack of correspondence between changes in the number of police and crime rates can be seen in Australia, Britain, and Canada. In Australia between 1970 and 1990, the number of police per capita rose by 25% and the crime rate by 115%. In Britain between 1977 and 1990, police per capita rose by 12% and the crime rate by 67%. In Canada between 1970 and 1990, police per capita rose by 16% and the crime rate by 34%.⁵¹²

Bayley asserts, in fact, that “[a]dditional police officers do not slow, even temporarily, the rate of increase” in crime.⁵¹³ He also cites studies that have investigated the outcome of suddenly reducing the quantity of police: in these situations, the crime rates are similarly unaffected.⁵¹⁴

Additional police presence on the streets might affect the psychology of potential criminals and the public’s perception of security. However, simply deploying more police officers will probably do little to boost public confidence in the police force because society’s negative perception of the police has more to do with the quality of policing (the manner in which police receive and investigate complaints) than with the quantity of officers deployed. Additionally, according to the “10-for-1 rule,” an increase of ten police officers “in a given area” is required

⁵¹⁰ DAVID BAYLEY, *POLICE FOR THE FUTURE* 4-5 (1994).

⁵¹¹ *Id.* at 4.

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *Id.* (citing RONALD V. CLARKE & MIKE HOUGH, *CRIME AND POLICE EFFECTIVENESS* (1984); Erdwin Pfuhr Jr., *Police Strikes and Conventional Crime*, 21 *CRIMINOLOGY* 489 (1983)).

before a visible increase in police presence is noticed.⁵¹⁵ Thus, increasing the number of police officers is not an efficient way of improving the public's perception of security or deterring potential criminals. For example, Amnesty International recently observed that police efforts to organize their patrols more efficiently, rather than multiplying officers on patrol, typically involve “*reducing* the number of patrol cars to an absolute minimum and having only one officer in the vehicle.”⁵¹⁶ The key to success is to “deduce how many cars are needed to cover a certain area while guaranteeing police availability within a certain time period.”⁵¹⁷ This enables agencies to cut costs and devote forces to other necessary activities.

It is crucial to bear in mind that even if increasing the number of police in a given area provides “psychological reassurance to the population, it has a displacement effect rather than a long-lasting one, as crime simply changes venue.”⁵¹⁸ For example, in Nigeria, a society in transition from authoritarian toward democratic rule:

. . . violent crime and civil disorder continue[] to rise Federal and state authorities have focused efforts on recruiting police, deploying soldiers to quell civil unrests, importing sophisticated guns for the security agencies and reintroducing ad hoc security taskforces However, indications are that, as more weapons and police personnel are deployed, crime and sectarian violence soar. The best that has been achieved appears to be crime dispersal from one state or region to another.⁵¹⁹

While many Paraguayans believe there are not enough police officers policing the streets,⁵²⁰ the government should recognize that any attempt to reduce criminality by simply increasing the number of police is likely to be ineffective.

⁵¹⁵ MERCEDES S. HINTON, *THE STATE ON THE STREETS: POLICE AND POLITICS IN ARGENTINA AND BRAZIL* 50-51 (2006).

⁵¹⁶ AMNESTY INT’L NETH., *UNDERSTANDING POLICING: A RESOURCE FOR HUMAN RIGHTS ACTIVISTS*, at 83 (2006), <http://amnesty.nl/policeandhumanrights> (emphasis added).

⁵¹⁷ *Id.*

⁵¹⁸ HINTON, *supra* note 515, at 50.

⁵¹⁹ INT’L COUNCIL ON HUMAN RIGHTS POLICY, *supra* note 94, at 73-74.

⁵²⁰ In a survey by *La Nación* in which respondents were asked what measures should be taken to reduce crime in Paraguay, the number one response was to increase the number of police. *See supra* Figure 3.

4.1.1.2 *Encouraging/Condoning the Excessive Use of Force and Other Abusive Policing Practices*

Tacit or explicit approval of the excessive use of force by law enforcement personnel is another counterproductive crime-fighting policy. The excessive use of force, in particular deadly force, and shoot-to-kill policies worsen the (already poor) reputation of police in transitional societies, leading many citizens to avoid reporting illicit activity or to seek police involvement for fear of becoming targets or incidental victims of such aggression.

Research in various areas demonstrates no correlation between brutal police methods of eliminating criminal suspects (such as summary executions) and reduction in rates of criminality. The state of Rio de Janeiro provides a strong case study in this regard. In the mid-1990s, the state secretary of security in Rio de Janeiro implemented policies that promoted and awarded bonuses to police for “bravery,” which, in practice, frequently meant a fatal engagement with one or more suspects. As a result, killings and beatings increased dramatically.⁵²¹

Apart from the gross disregard for human rights and core democratic values inherent in such a police choice, evidence demonstrates that such brutality does not reduce criminality. Statistics from the state of Rio de Janeiro in Brazil, for example, demonstrate that the number of homicides overall, which has stayed relatively constant from 1997 to 2005, is unrelated to the number of civilians killed by the police allegedly while “resisting arrest,”⁵²² which by comparison has risen markedly during the same period, increasing by some 250%. (See Figure 18 below.)

⁵²¹ Stone & Ward, *supra* note 353, at 21. See also HUMAN RIGHTS WATCH, POLICE BRUTALITY IN URBAN BRAZIL (1997), available at <http://www.hrw.org/reports/1997/brazil/>.

⁵²² The figures for individuals killed while resisting arrest are believed to reflect, though not encompass fully, the universe of civilians killed by the police. However, some analysts suspect that the higher numbers for civilians killed allegedly while “resisting arrest” may be due in part to the police’s growing preference for registering the death of a civilian in this expedited fashion, as opposed to recording the death in more elaborate police reports. See RIO REPORT, *supra* note 523, at 27-28.

Case Study: The Brazilian Police's Mass Raids and Saturation Practice

In the impoverished, primarily hillside communities in and around Rio de Janeiro known as *favelas*, authorities have adopted a series of policing practices to respond to criminality. Among these practices have been ones that have involved mass police action in *favelas*. One practice has been the use of mass raids, often performed pursuant to collective search warrants. While of limited utility in reducing crime, mass raids fuel the erroneous, though common, police understanding that “all *favela* residents have become potential suspects.”⁵²³ The raids have resulted in extremely high levels of casualties for both police and residents, including scores of stray bullet deaths. Mass raiding has also intensified citizen fear and contempt for police. The practice has been counterproductive as a policing technique because it has turned community residents against the police, who need the cooperation of the residents to combat crime effectively. Residents “have more reason than ever to worry about being murdered by the police.”⁵²⁴ In fact, Amnesty International reported in 2005 that “residents of these communities often say they prefer the criminals . . .”⁵²⁵

A similar practice, known as “saturation,” was used by police forces throughout Brazil allegedly to combat drug trafficking in the *favelas* and to develop a closer relationship with residents. However, this practice, which involved the sporadic invasion of the entire community from “top to bottom and from bottom to top” and often included violent and discriminatory practices, exacerbated insecurity.⁵²⁶ Social movements reported that operations entailed abusive searches of women, warrantless entrances into homes, and confiscation of property. The former National Secretary for Public Security, Professor Luís Eduardo Soares, described the procedure as not being “effective in any significant way, other than being counterproductive, increasing the level of risk.”⁵²⁷

⁵²³ GLOBAL JUSTICE, RIO REPORT: POLICE VIOLENCE AND PUBLIC INSECURITY 15 (2004) [hereinafter RIO REPORT], available at http://www.global.org.br/english/arquivos/rio_report1.pdf.

⁵²⁴ Martin Kaste, *All Things Considered: Brazil—Police* (National Public Radio broadcast Feb. 6, 2001); see also Angus Stickler, *Brazilian Police ‘Execute Thousands,’* BBC NEWS, Nov. 23, 2005, <http://news.bbc.co.uk/2/hi/americas/4463010.stm>.

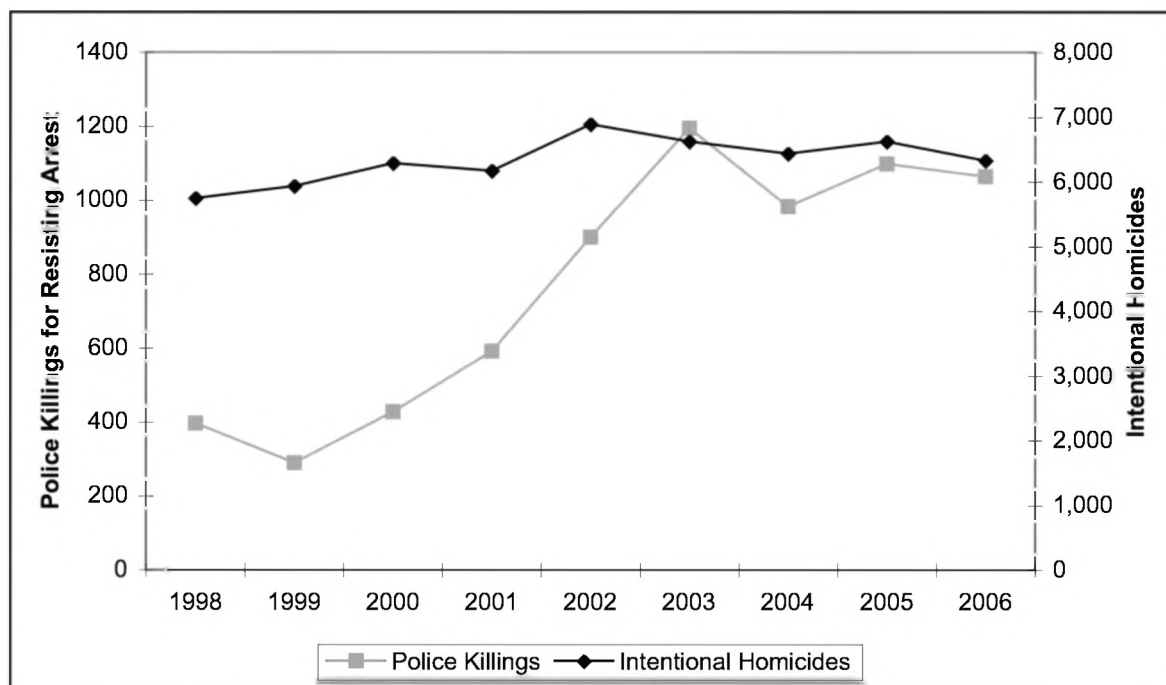
⁵²⁵ AMNESTY INT’L, “THEY COME IN SHOOTING”: POLICING SOCIALLY EXCLUDED COMMUNITIES, AI Index AMR 19/025/2005 (2005), <http://web.amnesty.org/library/Index/ENGAMR190252005>.

⁵²⁶ *Id.* (citation omitted).

⁵²⁷ *Id.*

Researchers Foglesong and Stone compared the rates of homicides and police killings in Jamaica (from 1998 through 2006) and the Dominican Republic from (January 2005 through December 2006).⁵²⁸ In both cases, the data demonstrated that it was unlikely there was any relationship between the two.⁵²⁹ They concluded: “There is, in short, no evidence that [that] brutal form of [removing criminals from society] makes a positive net contribution to public safety.”⁵³⁰

*Figure 18 –Intentional Homicides and Police Killings in Rio de Janeiro State.*⁵³¹



⁵²⁸ Foglesong & Stone, *supra* note 386, at 16-18.

⁵²⁹ *Id.* at 17-18.

⁵³⁰ *Id.* at 18 (citation removed).

⁵³¹ Data on intentional homicides from Centro de Estudos de Segurança e Cidadania [Center of Studies for Security and Citizenship], Estado do Rio de Janeiro: Mortes com tipificação provisória e homicídios dolosos—1991/2006 [State of Rio de Janeiro: Deaths with Provisional Identification and Intentional Homicides], available at http://www.ucamcesec.com.br/arquivos/estatisticas/evol2006_p12.xls (last visited Apr. 28, 2007). Data on killings by police from Centro de Estudos de Segurança e Cidadania [Center of Studies for Security and Citizenship], Estado e município do Rio de Janeiro: Civis Mortos pela polícia (autos de resistência)—1997/2005 [State and Municipality of Rio de Janeiro: Civilian Deaths by Police (registers of resistance)—1997/2005], available at http://www.ucamcesec.com.br/arquivos/estatisticas/evol2006_p11.xls (last visited Apr. 28, 2007).

4.1.1.3 *Deploying Other Security Forces to Aid Corrupt or Abusive Civilian Police*

Bringing in an external force for policing can be effective for situations in which the regular police force is corrupt, abusive or incompetent. However, this is an advisable tactic only if the deployed forces themselves are not corrupt or abusive, *and* they are able to work independently rather than simply providing logistical support or aiding the regular police in committing violations.

Moreover, the use of *military* forces in particular must be considered carefully because of its costliness, the military's history and traditional role (as, for example, the enforcement arm of a past repressive regime), and the negative perception that the public may have of the military already. Deploying law enforcement that is either militarized in nature or occasionally calls upon the military to intervene could affect adversely the public's confidence and willingness to cooperate, and hence undermine the state's ability to combat crime. The deployment of military forces to help police could perpetuate the police's "continued problems of community relations"⁵³² and may alienate the public further.

Unfortunately, more often than not, government authorities do not carefully consider the possible consequences before military forces are deployed, and as a result, the use of military forces for policing appears to have done more harm than good in many countries. For example, WOLA reports: "In the face of police ineffectiveness, governments have authorized the military to conduct policing activities in Brazil, Bolivia, Honduras, El Salvador and Mexico among others. [These] [m]ilitary responses to public security . . . do little to prevent crime and nothing to guarantee citizens' rights."⁵³³ In Guatemala, whose Congress "approved the indefinite extension of joint military-police patrols despite the lack of any indication that they [were] effective," the "joint patrols are in fact undermining the police as all the military's costs associated with these patrols are paid for out of the

⁵³² Mark Shaw, *Crime, Police and Public in Transitional Societies*, 49 TRANSFORMATION 1, 19 (2002).

⁵³³ RACHEL NEILD, WOLA, FROM NATIONAL SECURITY TO CITIZEN SECURITY: CIVIL SOCIETY AND THE EVOLUTION OF PUBLIC ORDER DEBATES 15 (1999).

police budget. Meanwhile many police stations lack gas for their cars and other basic resources.”⁵³⁴

Case Study: Intervention of Federal Police in Brazil to Respond to Organized Crime

Deploying an external security force to aid the regular police force may be effective in certain circumstances. In Brazil, for example, the federal police have intervened to address the problem of organized crime with relative success, most notably in two prominent organized crime cases: the case of the *Scuderie Detetive Le Coq* (Shield of Detective Le Coq) death squad in the state of Espírito Santo and the case of Hildebrando Pascoal in the state of Acre.⁵³⁵ In these two cases, intervention by federal police has been particularly appropriate and important because members of the state police force, as well as other state officials, were themselves part of the criminal organization or otherwise implicated in the illicit activities.⁵³⁶ For example, the Brazilian NGO *Justiça Global* (Global Justice) characterized organized crime as pervasive in Espírito Santo “*in all levels of the state administration . . .*” The reach of this organized crime is not confined to committing crimes, but also extends into all three branches of the state government. The most feared and deadly criminal organization in the state is the *Scuderie Detetive Le Coq* . . .”⁵³⁷ In an interview with our researchers, Raquel F. Dodge, one of the federal prosecutors who investigated the Hildebrando Pascoal case, emphasized the challenges her team encountered in investigating Pascoal’s crimes because he himself was the chief of police for the interior of the state of

(continued on page 129)

⁵³⁴ Rachel Neild, *Sustaining Reform: Democratic Policing in Central America*, CITIZEN SECURITY MONITOR, (WOLA, Wash. D.C.) Oct. 2002, at 28.

⁵³⁵ Press Release, Amnesty Int’l, Brazil: The Murder of a Judge Must Not Go Unpunished, AI Index AMR 19/005/2003 (Mar. 25, 2003); Interview with Raquel F. Dodge, Federal Prosecutor for Brasilia, in Cambridge, MA (Mar. 26, 2007).

⁵³⁶ Larry Rohter, *A Brazilian State Battles Crime in High Places*, N.Y. TIMES, Sept. 8, 2002; Interview with Raquel F. Dodge, *supra* note 535.

⁵³⁷ GLOBAL JUSTICE, THE HUMAN RIGHTS CRISIS IN ESPÍRITO SANTO: THREATS AND VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS 6-7 (2002), available at <http://www.fidh.org/IMG/pdf/br2507a.pdf>.

(continued from page 128)

Acre and commanded the state's military police.⁵³⁸ Moreover, in addition to his power over the local police, some of his close relatives were influential state officials.⁵³⁹ Although there is still much work to be done, in both of these cases the federal intervention has been generally considered successful. For example, according to one human rights organization in Brazil, the Special Mission to Combat Organized Crime, composed of federal agents, "succeeded in mapping the activity of organized crime in Espírito Santo, and its network of political, judicial, and military connections."⁵⁴⁰ In Acre, federal prosecutors working intensely with the federal police successfully prosecuted Hildebrando Pascoal, leading a Brazilian court to convict him for his role in the killing and intimidation of witnesses and international drug trafficking, among other crimes.⁵⁴¹ In both cases, the intervention of an external, professional force served to break a cycle of violence that had been perpetuated by the engagement of state authorities in violence and corruption. Dodge attributes much of the success of these federal interventions to the independence, professionalism, and training of the federal police and the recently created federal witness protection program.⁵⁴²

4.1.1.4 Allowing Private Citizens to Carry Out Vigilante Justice or Policing Functions Without Adequate Supervision

As the perception of insecurity increases and society loses faith in the police's ability to fight crime, citizens frequently turn elsewhere for protection. "Thus far, the dominant modes of 'private security' that have taken hold in

⁵³⁸ Interview with Raquel Dodge, *supra* note 535.

⁵³⁹ *Id.*

⁵⁴⁰ Tânia Maria Silveira, Rede Social de Justiça e Direitos Humanos, Combating Impunity in the State of Espírito Santo, (2004), <http://www.social.org.br/relatorio2004ingles/relatorio015.htm>.

⁵⁴¹ Interview with Raquel Dodge, *supra* note 535.

⁵⁴² Federal police agents are well-trained and required to have a minimum level of education, significantly higher than that demanded of state police officers. Moreover, they are selected through a public examination process, and therefore their recruitment is less susceptible to political influence. Federal police officers also receive higher salaries and have well-defined career advancement incentives, and are thus less likely to engage in corruption. *Id.*

transitional democracies are paid private policing agencies and citizen-initiated vigilante activity.”⁵⁴³ Those who have the means may hire private security firms to guard their interests and property. Recent studies show that “‘private security’ is proliferating globally”⁵⁴⁴ and that “[a]cross the world, private security is a booming business.”⁵⁴⁵ The situation in many countries is that “private security companies out-man and out-gun the police.”⁵⁴⁶ Other citizens may take matters into their own hands by pursuing vigilante justice either in groups or individually. Preoccupied with other concerns, state authorities often neglect to curb or control these extrajudicial activities as long as the private actors seem to be disposing of criminals and other socially undesirable groups.

One major problem with relying on private actors to fight crime, however, is that it is difficult to ensure that these actors are properly trained in democratic policing techniques. For example, many are ex-military personnel whose experience and training are unsuited for civilian policing. As a result, the state may spend even more resources policing these non-state agents. In fact, in many countries, the employees of private security firms are “former military and off-duty police” officers who often “engage in contract-style and social-cleaning killings.”⁵⁴⁷ However, “effective regulation of the private security sector requires law enforcement capacity,” which is “precisely the reason why private security operations were in a position to exploit the market in the first place.”⁵⁴⁸ In other words, rather than alleviating the lack of public resources, the formation of private security forces may create even greater strains on an already overburdened law enforcement system. This is an important risk to keep in mind, as the private security industry in Paraguay has proliferated. Current estimates place the number of private security forces at three times the level of public police forces.⁵⁴⁹ Moreover, as one police commissioner informed our research team, “The

⁵⁴³ Clifford D. Shearing & Michael Kempa, *The Role of ‘Private Security’ in Transitional Democracies*, in *CRIME AND POLICING IN TRANSITIONAL SOCIETIES*, *supra* note 509, at 205, 205.

⁵⁴⁴ *Id.*

⁵⁴⁵ NEILD, *supra* note 533, at 11.

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.* at 12 (citation omitted).

⁵⁴⁸ Mark Shaw, *Crime and Policing in Transitional Societies—Conference Summary and Overview*, in *CRIME AND POLICING IN TRANSITIONAL SOCIETIES*, *supra* note 509, at 9, 14.

⁵⁴⁹ Interview with Marcos Köhn, *supra* note 47.

politicians give the [private security forces] a certain amount of tacit authority to do as they please, as they are often the ones employing these services. All of these companies must register with the police, but of course there are some fringe groups that are outside the law.”⁵⁵⁰

Reflecting on the phenomenon of private security in South Africa, Mark Shaw emphasizes that despite the temptation to do so, “private policing cannot be understood as a neat complement to public security.”⁵⁵¹

The private company seeks to protect the interests of its client, while the police theoretically defend the rights of citizens In particular, the exercise of discretion by such private security personnel will often be far more influenced by their perceptions of their immediate employer, than any generalized concept of the public interest. Thus, offenders will only be handed over to the justice system if this is in the perceived interest of the client. This implies that in South Africa, as elsewhere, public and private policing do not fit as neatly together as first assumed.⁵⁵²

Throughout Latin America, groups of individual citizens, in addition to private security firms, have also assumed policing duties. For example, in Honduras, local residents in communities lacking police presence have taken matters into their own hands by forming community groups to perform policing functions. However, as a study by WOLA demonstrates, “some of these groups have reportedly supported paramilitary gangs,”⁵⁵³ demonstrating the “clear dangers to decentralizing policing without adequate regulation and oversight.”⁵⁵⁴

Policing by private actors has also been a cause for increasing concern in Brazil, as well. In some poor communities around Rio de Janeiro, the most dangerous non-state entities that have emerged in this regard are the militias composed of former and off-duty police officers.⁵⁵⁵ In these neighborhoods, there

⁵⁵⁰ Interview with Vera Planás, *supra* note 51.

⁵⁵¹ NEILD, *supra* note 533, at 11.

⁵⁵² Mark Shaw, *South Africa: Crime in Transition* (Inst. for Sec. Studies, Occasional Paper No. 17, Mar. 1997), available at <http://www.iss.co.za/PUBS/PAPERS/17/Paper17.html>.

⁵⁵³ ZIEGLER & NEILD, *supra* note 503, at 25.

⁵⁵⁴ *Id.*

⁵⁵⁵ Interview with Prosecutor from Rio de Janeiro, in Cambridge, MA (Jan. 3, 2007); see also Steve Kingstone, *Nine Killed in Rio Slum Shoot-out*, BBC NEWS, Feb. 12, 2007,

is a lack of government authority, and drug dealers traditionally have exercised vast control. Recently, some militias have expelled drug dealers and have charged the communities for this “protection.” The militias, often considered the unofficial authorities in some neighborhoods, have threatened those who are unwilling or cannot afford to pay.⁵⁵⁶ Thus, one form of domination is simply replaced by another. The cycle of violence is perpetuated, as well, because the militias are extremely violent. For example, some militias have executed drug users as part of their zero-tolerance stance on drug use.⁵⁵⁷ The drug dealers in turn have responded violently to the militias’ actions, resulting in gun battles and numerous fatalities, including deaths of civilians.⁵⁵⁸

4.1.2 Most Effective Policing Practices

4.1.2.1 Community Policing

“Community policing” has become something of a catchphrase among those who study criminality and analyze or design policing practices, as these programs gain increasing recognition for their success at reducing crime rates in troubled communities. The term has become so widely used that it is often used to refer to a variety of sometimes contradictory practices. However, Rachel Neild, an expert on criminal justice reform in Latin America, highlights four general concepts central to the theory of community policing:

- (1) Neighborhoods or small communities should serve as locations of police organization and operation;

<http://news.bbc.co.uk/2/hi/americas/6352759.stm>; Robert Garcia, *Now You Can Buy Protection in Brazil from Police-Linked Militias*, BRAZZIL MAGAZINE, Dec. 15, 2006, <http://www.brazzil.com/content/view/9763/41/>; Andrew Downie, *Brazil’s Slums Face a New Problem: Vigilante Militias*, CHRISTIAN SCIENCE MONITOR, Feb. 8, 2007, <http://www.csmonitor.com/2007/0208/p04s01-woam.html>.

⁵⁵⁶ Interview with Prosecutor from Rio de Janeiro, *supra* note 555.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Top Brazil Police Official Suspended Over Alleged Militia Involvement*, INT’L HERALD TRIBUNE, Feb. 6, 2007, <http://www.ihl.com/articles/ap/2007/02/06/america/LA-GEN-Brazil-Police-Militias.php>; *Rio gang fights leave seven dead*, BBC NEWS, Feb. 5, 2007, <http://news.bbc.co.uk/2/hi/americas/6332575.stm>; Interview with Prosecutor from Rio de Janeiro, *supra* note 555.

- (2) Urban policing should be organized and conducted at the community or neighborhood level;
- (3) Communities have unique and distinctive policing problems that conventional police organizations and responses do not address; and
- (4) Community consensus should guide police response to the community's crime and order problems.⁵⁵⁹

These concepts underlie the practical commitments that are usually at the core of community policing frameworks:

- (1) A commitment by the [police] department to deploy officers on local beats and focus attention on problems of concern to local residents, merchants, and workers, even if these are relatively minor offenses;
- (2) A commitment by the department to talk with community residents and consider their views in establishing priorities for police in their neighborhoods;
- (3) A commitment by the department to analyze and solve crime problems rather than simply respond to each individual report of crime through an individual arrest.⁵⁶⁰

A variety of specific techniques may be employed in the implementation of community policing programs, including:

- Police department-sponsored neighborhood or block watches;
- business watch meetings;
- crime prevention newsletters;
- crime education for the public;
- storefront police stations;
- promotion of civilian volunteer liaison with community;
- community identification of local problems (through surveys, town meetings or other means);
- foot patrols;
- special problem-solving task units;
- increased attention to minor offenses that are major annoyances to local residents;
- more minority hiring;
- increased education level of police;
- permanent assignment of officers to neighborhoods;
- reassignment of certain management tasks from police personnel to civilian personnel;
- [and] addition of 'master police officer' positions to increase rewards for line officers.⁵⁶¹

⁵⁵⁹ RACHEL NEILD, WOLA, THEMES AND DEBATES IN PUBLIC SECURITY REFORM: COMMUNITY POLICING 7 (1998).

⁵⁶⁰ Stone & Ward, *supra* note 353, at 24.

Case Study: Brazil's Viva Rio Community Policing Program⁵⁶²

In Brazil during the early 1990s, in the wake of police assassinations of street children and increasing concerns with the impact of crime on Rio's image and business potential, a project called *Viva Rio* implemented a community policing program in Copacabana with participation of police, churches, business and others. Sixty high-school educated police rookies received special training and were deployed to regular beats. Among other things, police worked with street children to organize them to wash cars. The effort reduced muggings and brought down car theft rates slightly in the neighborhood. As residents' confidence in police increased, they provided police with more information and several small groups of drug vendors were disbanded. Although residents were reportedly pleased with the results, a new military police commander ended the program on grounds that it was "soft" on crime. He instated a system of rewards, including pay raises of up to 150% for "bravery," typically awarded to police for killing "suspects."

The success of many community policing initiatives has been well-documented. These programs have "improve[d] community trust in and cooperation with police in solving crimes,"⁵⁶³ and have also encouraged residents to seek help from the police prospectively, before crimes occur or situations escalate. They may also help reduce public perception of insecurity. For example, in a recent study, researchers Lucia Dammert and Mary Fran T. Malone analyzed policing strategies in ten cities in Argentina, Brazil and Chile to determine the effect of "zero tolerance" and community-based policing policies on public perception of security. They found that while further research would be useful, "the city-level comparisons [were] compatible with the hypothesis that community involvement in policing strategies is linked to lower levels of public insecurity,"⁵⁶⁴ and concluded that the results "indicate[d] that [engaging the] community would be a valuable resource in reducing public fear of crime."⁵⁶⁵

⁵⁶¹ NEILD, *supra* note 559, at 7.

⁵⁶² Text Box reproduced from NEILD, *supra* note 559, at 16-17.

⁵⁶³ *Id.* at 4.

⁵⁶⁴ Dammert & Malone, *supra* note 236, at 46.

⁵⁶⁵ *Id.*

Case Study: Community Policing in Diadema, São Paulo, Brazil

One policing project designed to reduce violence in “high-risk urban areas through community policing and community cooperation” was established by the Fernand Braudel Institute of World Economics in Diadema, São Paulo, Brazil.⁵⁶⁶ The project’s activities included “pull[ing] together support between diverse political actors” by holding monthly town meetings with the participation of local government officials, police, and business, religious and community leaders; “develop[ing] contacts and in-depth knowledge on violence reduction approaches, which are transferable to other Brazilian cities”; and creating partnership between city authorities and residents.⁵⁶⁷

Among the positive outcomes of the project were a 12% decrease in the homicide rate, an 11% decrease in car thefts, greater public awareness of problems of violence and criminality, the creation of a “computerized criminal mapping system,” the establishment of a successful system for receiving anonymous calls about criminal activity, and increased dialogue with local officials in other cities facing similar criminality problems.⁵⁶⁸

Regarding the feasibility of employing the community policing model in Latin America in particular, Neild has observed:

There are useful elements of community policing that can be undertaken despite the many problems presented by many Latin American contexts. Simply placing police stations in more accessible locales, patrolling poor neighborhoods on a regular basis, providing information about crime, and discussing crime issues and police policies with community members and elected authorities would be revolutionary in many Latin American contexts and could make a useful contribution to improving discussions and the development of public security policies. It is possible that relatively minor changes

⁵⁶⁶ WORLD BANK, A RESOURCE GUIDE FOR MUNICIPALITIES: COMMUNITY BASED CRIME AND VIOLENCE PREVENTION IN URBAN LATIN AMERICA 55 (2003) [hereinafter RESOURCE GUIDE FOR MUNICIPALITIES].

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

may produce far greater impact in a Latin American context than they would in the United States or Europe.⁵⁶⁹

Given the ability of community policing to mend the broken relationship between the community and the police, to promote public cooperation with the police, and to avert crimes before they occur, Paraguayan authorities should consider instituting these types of programs at the local level. At least one private security company in Paraguay has been working for the past five years on a project entitled, *Fundación País Seguro* (Safe Country Foundation), in which it helps communities around Asunción and the interior of the country organize and train neighborhood watches.⁵⁷⁰ The neighborhood watches, known as *Vecinos en Alerta* (“Neighbors on Alert”), could be an effective part of a larger community policing effort. However, to realize this goal fully, the local government should become more engaged in the oversight and quality control of the neighborhood groups’ activities. In addition, greater coordination between the neighborhood patrols and the police responsible for the community is essential to the program’s success. A source within the police force emphasized the importance of this coordination and communication to our researchers: “We have lost the confidence of the citizenry. The police need to work more on communication. They do not communicate with citizens [Currently,] the police inform but do not communicate. Communication requires back and forth interaction.”⁵⁷¹

It is important to note that community policing programs that are poorly administered and manipulated may actually lead to feelings of greater insecurity and worsen the public’s opinion of the police. For example, authorities implemented a community policing program in Villa Nueva, Guatemala, which focused police activity on patrolling high-crime areas and controlling the illegal sale of alcohol by businesses located near schools and parks.⁵⁷² When residents in Villa Nueva were asked about the quality of the police service they received in their neighborhood after the implementation of the program, their response was

⁵⁶⁹ NEILD, *supra* note 559, at 22.

⁵⁷⁰ Interview with Luis Fretes, *supra* note 147.

⁵⁷¹ Interview, in Asunción, Para. (Oct. 2006).

⁵⁷² HUGO FRÜHLING, CENTRO DE ESTUDIOS DE SEGURIDAD CIUDADANA [CESC] [CENTER OF CITIZEN SECURITY STUDIES], POLICÍA COMUNITARIA Y REFORMA POLICIAL EN AMÉRICA LATINA [COMMUNITY POLICING AND POLICE REFORM IN LATIN AMERICA] 16 (2003).

negative.⁵⁷³ While in 1998 before implementation of the program, 44.7% stated that the police service was “adequate” or “very adequate,” this percentage dropped to 18.3% in 2000.⁵⁷⁴ The percentage of those stating that police service was “not adequate at all” or “a little bit adequate” increased from 51.3% to 79.3%.⁵⁷⁵ There were also negative results for the police patrols: in 1998, 49.3% of those surveyed believed that the police patrolled their area “often” or “very often,” and this percentage dropped to 23.8% in 2000.⁵⁷⁶ Regarding police presence, the percentage of those who believed that police presence was scarce or nonexistent increased from 27.0% in 1998 to 37.1% in 2000.⁵⁷⁷ One possible cause of these negative results may be the residents’ impression that the best patrolling efforts were diverted to entities that receive the police’s special attention, such as banks.⁵⁷⁸ Additionally, a survey conducted in August 2001 yielded unanimous criticism about the lack of follow-through on this project.⁵⁷⁹

While a potentially powerful framework for enhancing citizen engagement and confidence in the police, community policing initiatives are by no means certain to be successful. Care must be taken in their design and implementation to avoid the types of problems identified in Villa Nueva, Guatemala and elsewhere.

⁵⁷³ *Id.* at 27.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

Case Study: Community Policing in Hatillo, Costa Rica

In 1996, a community policing pilot project was started in Hatillo, an area of San José, to increase the community's involvement in fighting crime.⁵⁸⁰ The location was chosen because the community members felt a "high level of insecurity" and because there was a "high degree of community organization" in the area.⁵⁸¹ The objectives were to "identify and resolve problems in the community related to small delinquency and public safety," to "improve the public's feeling of insecurity," to "enhance the public's perception of the police," and to "incorporate the community in action plans targeting public safety."⁵⁸²

Among other measures, the project selected 120 police agents and trained them in "legal and interpersonal skills."⁵⁸³ It also created four local police stations that augmented police presence by providing permanent vehicle and foot patrol services.⁵⁸⁴ Importantly, these new patrols were designed for the community's narrow streets, and therefore most were foot and motorcycle patrols.⁵⁸⁵ The project included the development of programs on specific topics such as domestic violence, juvenile delinquency, conflict resolution, and drug abuse prevention.⁵⁸⁶ The project also established an "Advisory Committee to the Precinct Commander, comprised of representatives of the community . . . who worked together to identify security problems and their possible solutions and to provide the proper follow-up."⁵⁸⁷ After one year of implementation, the following outcomes were observed:⁵⁸⁸

(continued on page 139)

⁵⁸⁰ NEILD, *supra* note 559, at 18.

⁵⁸¹ RESOURCE GUIDE FOR MUNICIPALITIES, *supra* note 566, at 61.

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ NEILD, *supra* note 559, at 18.

⁵⁸⁵ RESOURCE GUIDE FOR MUNICIPALITIES, *supra* note 566, at 61.

⁵⁸⁶ *Id.*

⁵⁸⁷ NEILD, *supra* note 559, at 18.

⁵⁸⁸ Tables reproduced from Laura Chinchilla, *Policía de orientación comunitaria: una adecuada alianza entre policía y comunidad para revertir la inseguridad* [Community Oriented Policing: An Adequate Alliance between Police and Community to Reverse the Insecurity], Presentation at the Inter-Am. Dev. Bank Seminar: Dialogos Sobre Convivencia Ciudadana at Santiago, Chile 11-14 (Oct. 13 to 15, 1999), available at <http://www3.iadb.org/sds/doc/2106spa.rtf>.

(continued from page 138)

Table 9—Results Regarding the Perception of Insecurity

RESPONDENTS WHO AGREED STRONGLY	BEFORE	AFTER
The principal problem in Hatillo are robberies	45%	44%
Delinquency has increased in the past 6 months	65%	38%
I feel insecure, even at home	36%	19%
I am afraid of being robbed at home	54%	22%
I feel unsafe walking in the neighborhood in daytime	28%	12%
I avoid going out at night because I feel unsafe	53%	23%

Table 10—Results Regarding the Public's Perception of the Police

RESPONDENTS WHO <i>DISAGREED</i>	BEFORE	AFTER
Efficient	47%	27%
Honest	39%	22%
Disciplined	42%	18%
Well-organized	46%	20%
Trustworthy	49%	29%
Treat others well	37%	16%

Table 11—Results Regarding Victimization Rates

TYPE OF CRIME	BEFORE	AFTER
Robbery in the home	13%	14%
Street mugging, armed	5%	2%
Street mugging, unarmed	9%	8%
Robbery of vehicle	4%	5%
Robbery of bicycle or motorcycle	3%	6%

The data demonstrate a significant improvement in the public's perception of security and the police force, but the crime rates effectively remained the same. Thus, while the "positive results justified the expansion of the project in Hatillo to other communities,"⁵⁸⁹ there is a "need to reinforce the actions of the police with respect to the principal crimes that affect the population. Even though the citizens' perception of the project has been highly positive, this cannot be sustained indefinitely if there is no corresponding improvement in levels of criminality."⁵⁹⁰

⁵⁸⁹ NEILD, *supra* note 559, at 18.

⁵⁹⁰ Chinchilla, *supra* note 588, at 13. However, no subsequent evaluation is available, as the new party that came into power terminated the project after it had been in operation for a year because the project was

4.1.2.2 *Increasing Police Salaries in Conjunction with Removal of Corrupt Police*

Policing demands personal and psychological commitment. At the same time, it can provide “innumerable opportunities for graft and corruption.”⁵⁹¹ When police are poorly paid and overworked, the quality of their work deteriorates and the temptation to engage in corruption increases. In fact, “[e]xperience in virtually every developing country shows a direct correlation between low salaries and prevalence of corruption. Examples abound of extremely large numbers of police personnel kept on the payroll at such low wages that acceptance of bribes or engagement in extortion is required just to support a family.”⁵⁹² Police therefore must be paid a wage that fairly compensates them for their efforts. However, significant overhaul of existing salary structures should only be implemented in conjunction with an internal review process that roots out corrupt and abusive officers. Subsequently, higher base wages and merited periodic pay raises can fight corruption by rewarding honest officers and removing dishonest ones.

According to the Commander of the National Police, a starting police officer earns the minimum wage (approximately US\$200 per month).⁵⁹³ There are some opportunities for bonuses, but “the money is never enough.”⁵⁹⁴ All officers—regardless of their training or specialization⁵⁹⁵—are expected to cover special events, such as sporting events and demonstrations, without receiving bonuses.⁵⁹⁶ The combination of long hours and low pay undermines the morale of the police force and increases the incentives for corruption.

identified with the outgoing party. OFFICE OF EVALUATION AND OVERSIGHT, INTER-AM. DEV. BANK, SUMMARY OF FINDINGS—DECENTRALIZATION AND EFFECTIVE CITIZEN PARTICIPATION: SIX CAUTIONARY TALES 26 (2001), *available at* <http://www.oecd.org/dataoecd/12/8/35261980.pdf>.

⁵⁹¹ HUMAN RIGHTS WATCH, POLICE BRUTALITY IN URBAN BRAZIL, *supra* note 521.

⁵⁹² JANICE STROMSEM & JOSEPH TRINCELLITO, THE HAITI PROGRAM, TRINITY COLLEGE, HAITI PAPERS NO. 6, BUILDING THE HAITIAN NATIONAL POLICE: A RETROSPECTIVE AND PROSPECTIVE VIEW 11 (2003).

⁵⁹³ Interview with Fidel Isasa, *supra* note 84.

⁵⁹⁴ *Id.*

⁵⁹⁵ Interview, in Asunción, Para. (Apr. 2007).

⁵⁹⁶ Interview with Fidel Isasa, *supra* note 84.

4.1.2.3 Establishing Better Police Oversight Mechanisms

Effective oversight mechanisms to address police misconduct and corruption are an important component of any successful crime-fighting strategy. This is especially true in Paraguay, where corruption is prevalent within the police force,⁵⁹⁷ where major criminals are at times protected by the police,⁵⁹⁸ and where victims of police misconduct often remain silent for fear of retaliation.⁵⁹⁹ INECIP highlights the fact that, although the scope of the police's power to apprehend individuals is well-defined, there were many cases in 2006 (as in other years) in which police made arbitrary arrests.⁶⁰⁰ Furthermore, "the bad practices of the police include not only illegal detentions, but in some cases even more extreme behavior leading, for example, to the victim's torture or death."⁶⁰¹ Other kinds of misconduct perpetrated by police in Paraguay include corporal punishment⁶⁰² and a practice in which police illegally interrogate detainees but later characterize the information obtained in these interrogations as freely given for the purpose of presenting it as evidence in judicial proceedings.⁶⁰³ A common form of physical abuse is covering the detainee's head with a plastic bag, as this does not leave any physical signs.⁶⁰⁴

While Paraguay does have a legal oversight mechanism by which a human rights prosecutor can bring a complaint about police abuse in court, this mechanism is ineffective at deterring police misconduct because of the process's practical difficulties. As Fátima Britos Ricciardi, one of Paraguay's human rights prosecutors, explained to us, "It is very hard to investigate police officers. I have to

⁵⁹⁷ Interview with Rubén Candia Amarilla, *supra* note 372.

⁵⁹⁸ Interview, in Asunción, Para. (Mar. 2006).

⁵⁹⁹ Interview with Fátima Britos Ricciardi, *supra* note 220.

⁶⁰⁰ Juan Martens & Roque Orrego, *De la constancia de las violaciones a la legalidad penal, a la ilegalidad paraestatal de la mano de comisiones vecinales de "seguridad ciudadana"* [From the Constant Violations of Criminal Law, to the Illegality of the Paramilitary Neighborhood Commissions of "Citizen Security"], in DERECHOS HUMANOS EN PARAGUAY 2006 [HUMAN RIGHTS IN PARAGUAY 2006], at 63, 71-72 (2006).

⁶⁰¹ *Id.* at 72.

⁶⁰² Interview with Fátima Britos Ricciardi, *supra* note 220.

⁶⁰³ CRISTIÁN RIEGO RAMÍREZ, [JSCA], INFORME COMPARATIVO: PROYECTO DE SEGUIMIENTO DE LOS PROCESOS DE REFORMA JUDICIAL EN AMÉRICA LATINA [COMPARATIVE FOLLOW-UP PROJECT ON THE JUDICIAL REFORM PROCESSES IN LATIN AMERICA] 41 (2005), available at http://www.cejamericas.org/doc/proyectos/inf_comp.pdf.

⁶⁰⁴ Interview with Fátima Britos Ricciardi, *supra* note 220.

ask the police commissioner [repeatedly] for copies of documents, [which I will not receive], and then I'll have to go myself to the police station and photocopy the documents.”⁶⁰⁵ This time-consuming activity makes her work very difficult, especially given that there are so few human rights prosecutors. (There were only three in the entire country at the time of our visit in March 2006).⁶⁰⁶

Britos added that another challenge in bringing cases is the fear victims experience in denouncing police abuse. “In many of our cases,” Britos told us, “victims just present the complaint. When we call them in to tell us more facts, they don't come because they are afraid, and the case therefore becomes paralyzed. The victims are afraid . . . so it is very difficult.”⁶⁰⁷

Another obstacle to effective oversight of police in Paraguay is the tendency for serious violations to be punished with mild sanctions. The typical punishment for police abuse is some form of conditional measure, which suspends the proceedings against the officer and designates a period of time during which the officer must comply with certain restrictions, such as not being permitted to leave the country.⁶⁰⁸ Prosecutor Britos told our researchers that if subject to conditional measures,

As far as I know, the police officer keeps on working. He is not suspended from work. It is not that he recognizes that he did something wrong; he just admits that the incident happened, but he does not admit personal responsibility. These conditional measures do not have any impact.⁶⁰⁹

Another common sanction is transferring the offending police officer to another part of the police force. Again, this is a form of “soft punishment” that Britos doubts will prevent future police misconduct.⁶¹⁰

⁶⁰⁵ Interview with Fátima Britos Ricciardi, Human Rights Prosecutor, Public Ministry, in Asunción, Para. (Mar. 15, 2006).

⁶⁰⁶ Interview with César Báez Samaniego, General Director of Human Rights, Public Ministry, in Asunción, Para. (Mar. 16, 2006).

⁶⁰⁷ Interview with Fátima Britos Ricciardi, *supra* note 605.

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

In Paraguay, the office of the Human Rights Ombudsman, which was established in 2001, is also charged with oversight of police activity and the investigation of allegations of official misconduct.⁶¹¹ However, many in the field consider the office to be ineffective. In 2004, for example, CODEHUPY concluded that the Ombudsman, “[i]nstead of helping the victims and improving their situation, not only through obtaining indemnifications, but also other moral reparations . . . has hindered the entire process, in many cases humiliating these people.”⁶¹² CODEHUPY further reported that the Ombudsman, in the three years since its establishment, had never used its ability to “publicly censure” an organ of the state or a public official for violating human rights, nor had it made any pronouncement or communication about any particular situation: “It would appear, according to the opinion of [the Ombudsman], that all Paraguayan officials and institutions are perfect and do not need oversight or attention. This is disillusioning for the citizens, who expect to have an institution that defends them when there is state misconduct . . .”⁶¹³ Citizens have instead, according to CODEHUPY, a bureaucratic institution for which they are paying that is “devoid of content.”⁶¹⁴

For any police oversight mechanism to be effective it must operate as a real deterrent to police misconduct.⁶¹⁵ The table below presents an overview, developed by analysts Stone and Ward, of the various police accountability mechanisms available.

⁶¹¹ See Ley No. 631/95, Nov. 14, 1995, Ley Orgánica de la Defensoría del Pueblo [Organic Law of the Human Rights Ombudsman] art. 10(1) & (2) (“The duties and attributions of the Human Rights Ombudsman: (1) receive and investigate denunciations, complaints and reclamations of human rights violations . . . even when such violations are committed by persons acting under their official capacity; (2) require from authorities, in their various hierarchies, including those of the judiciary, Public Ministry, police and those of security forces in general, information regarding the exercise of their functions without being able to make any reservations . . .”).

⁶¹² CODEHUPY, *Graves falencias en la gestión del Defensor del Pueblo* [Grave Faults in the Management of the Human Rights Ombudsman] 2 (2004) (unpublished paper, on file with the IHRC) (2004).

⁶¹³ *Id.*

⁶¹⁴ *Id.* at 3.

⁶¹⁵ See EMMA PHILLIPS & JENNIFER TRONE, VERA INSTITUTE OF JUSTICE, BUILDING PUBLIC CONFIDENCE IN POLICE THROUGH CIVILIAN OVERSIGHT 7 (2002), available at http://www.vera.org/publication_pdf/177_336.pdf.

*Table 12—Police Accountability Mechanisms.*⁶¹⁶

	<i>Accountability for Public Safety (reducing crime, violence, disorder and fear)</i>	<i>Accountability for Police Behavior (reducing corruption, brutality, and other misconduct)</i>
<i>Accountability to Internal Control</i>	training, line commanders, crime statistics reporting, reward structure	training, line supervisors, rules, ethics codes, integrity units, administrative discipline, peer pressure
<i>Accountability to State Control</i>	operational direction by elected and appointed political officials, budget authorities, prosecutors	ombudservices, legislative committees, criminal liability, civil liability, exclusionary rules of evidence
<i>Accountability to Social Control</i>	neighborhood safety councils, community-based organizations, media, policing research and policy institutes	civilian complaint review, external auditors, media, human rights monitors, policing research and policy institutes

Studies have shown that civilian oversight of the police can be an effective way of preventing police corruption and abuse.⁶¹⁷ Joel Miller of the Vera Institute of Justice notes that many scholars and practitioners believe that:

[police] oversight ensures more thorough and fair investigations, that more complaints are sustained, or that they result in more disciplinary actions and, as a result, more police misconduct is deterred

⁶¹⁶ Table reproduced from Stone & Ward, *supra* note 353, at 17.

⁶¹⁷ *Id.* at 12; *but cf.* Christopher Stone & Merrick Bobb, Civilian Oversight of the Police in Democratic Societies 6, Presentation at Global Meeting on Civilian Oversight of Police, L.A., Cal. (May 5-8, 2002) (noting that “[t]he development of strong, effective civilian oversight represents an effort to strengthen remedies [for abuse of police power] and provide more consistent enforcement of basic rights. But the construction of these oversight mechanisms raises a wide range of issues of practice and principle,” such as who to entrust with oversight, the degree of punishment to apply, and public transparency of these processes.”), available at http://www.vera.org/publication_pdf/179_325.pdf.

[P]olice policies and priorities are more effective and more responsive to the community when civilians are involved than when the police make decisions without civilian input.⁶¹⁸

Miller emphasizes further:

Arguments about effectiveness [of police oversight] are probably most compelling in contexts where internal systems of review are conspicuously poor or absent, where there are clear and widespread abuses by police, or where police organizations are very poorly managed and organized. This may be the case, for example, in countries undergoing transitions to democracy, which have historically lacked accountability.⁶¹⁹

All of these elements are present in Paraguay—oversight is relatively poor, abuse of authority by the police continues to be a problem, police management is lacking, and the country has recently emerged from three decades of authoritarian rule. The need for external oversight in Paraguay is clear. Furthermore, policy analysts recommend engaging multiple accountability mechanisms that overlap and reinforce one another in their operations. Criminologist David Bayley notes that a “distinguishing feature of democratic police forces is that they are accountable to multiple audiences through multiple mechanisms.”⁶²⁰ This is necessary “precisely because the police are unlikely on their own to safeguard the tense balance between their powers of coercion and the requirement of legality.”⁶²¹

Lastly, once sufficient oversight mechanisms have been established, individual reports of police misconduct must be subjected to system-wide analysis. Frequently, police tend to treat reported cases of abuse as isolated instances of misconduct. As Amnesty International has observed, “[o]nce this one incident [is] solved, once the rotten apple [is] removed, the problem [is] believed to be

⁶¹⁸ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature 2*, Presentation at Global Meeting on Civilian Oversight of Police, L.A., Cal. (May 5-8, 2002), available at http://www.vera.org/publication_pdf/178_338.pdf.

⁶¹⁹ *Id.*

⁶²⁰ David Bayley, *The Contemporary Practices of Policing: A Comparative View*, in *CIVILIAN POLICE AND MULTINATIONAL PEACEKEEPING: A ROLE FOR DEMOCRATIC POLICING* 3, 5 (Nat’l Inst. of Justice, U.S. Dep’t of Justice, 1999), available at <http://www.ncjrs.gov/pdffiles/172842.pdf>

⁶²¹ HINTON, *supra* note 515, at 41.

tackled.”⁶²² However, this type of approach fails to address broader problems that often lurk beneath the surface. Thorough investigations that consider the systemic causes that may trigger visible incidents of abuse help to identify the “whole range of system failures that [leads] to the persistence of abuses.”⁶²³

4.1.2.4 Prosecution-Led Investigations

Prosecution-led investigations have shown great promise to respond to criminal violence.⁶²⁴ As the name implies, such investigations “involve the prosecutor at an earlier stage of the police investigation, guiding that process possibly from the time the crime is reported, through the time it proceeds to court.”⁶²⁵ Additionally, prosecutors and police investigators may have regular strategy sessions to ensure that the police know what to look for in their investigations. As explained below, prosecution-led investigations may help reduce crime, protect the rights of criminal defendants more effectively, leave victims with a more favorable impression of the police, and expedite the process considerably.

Prosecution-led investigations have a significant advantage in that prosecutors, with their advanced knowledge of the law, are able to conduct the investigation with an eye to what needs to be done to obtain admissible evidence. They work to ensure that information will not be excluded as coerced or against constitutional protections.⁶²⁶ Their greater adherence to the rule of law thus leads to both a higher conviction rate and greater respect for the rights of the criminal defendant. Moreover, prosecution-led investigations have the added benefit of

⁶²² AMNESTY INT’L NETH., *supra* note 516, at 204.

⁶²³ *Id.*

⁶²⁴ *See, e.g.*, VIRGINIA FRANCIS, BUREAU OF JUSTICE ASSISTANCE, PROSECUTION TASK FORCE ON CAR-HIJACKING: FINAL EVALUATION REPORT ii-iii (2001), *available at* http://www.vera.org/publication_pdf/150_212.pdf.

⁶²⁵ *Id.* at 10.

⁶²⁶ Article 174 of the Criminal Procedure Code is an exclusionary rule, which deprives any evidence acquired through means that violate procedural guarantees of evidentiary value. Código Penal Procesal [Criminal Procedure Code] art. 174, Ley No. 1.286/98, July 8, 1998 (“Evidentiary exclusions. Any act violating procedural guarantees consecrated in the Constitution, in international and domestic law, as well as all other acts that result as a consequence thereof, will lose all evidentiary weight.”).

training a pool of “expert” prosecutors that continually improve their ability to gather admissible evidence.

The prosecution-led investigation system was instituted in South Africa with significant success. Specifically, the program was implemented to combat the nation’s serious car-jacking problem as well as the low conviction rate for those arrested for that crime (around 10%).⁶²⁷ The success of the program was dramatic. After implementation, the prosecution-led task force increased the conviction rate of arrested car-jackers from under 10% to an average of 42%.⁶²⁸ The time for a case resolution (from the time of arrest) was reduced to an average of four to five months from the previous average of six months.⁶²⁹

As noted above, the reforms in Paraguay have required that investigations be led by the prosecutor. Governmental officials are currently working to implement this reform. However, authorities should ensure greater coordination and cooperation between the police and Public Ministry so that this measure actually enhances efficiency.

4.2 *Legal and Other Structural Measures*

4.2.1 **Least Effective Legal/Structural Measures**

4.2.1.1 *Increasing Use of Incarceration by Increasing the Length of Sentences, Limiting Alternatives to Incarceration, and Tolerating High Levels of Pretrial Detention*

One common governmental reaction to the phenomenon of growing public insecurity in transitional societies has been to implement policies that promote the greater use of incarceration through increasing the length of prison sentences, limiting alternative measures to incarceration, and endorsing or condoning high rates of pretrial detention. As described in the previous two chapters, approaches that emphasize incarceration and reject alternatives to prison as a solution to criminality have a long history in the country, tied to political and media

⁶²⁷ FRANCIS, *supra* note 624, at ii.

⁶²⁸ *Id.*

⁶²⁹ *Id.* at iii.

pressures.⁶³⁰ However, greater use of incarceration fosters the development of harmful environments—detention centers—that stimulate future criminal behavior. At the same time, excessive reliance on incarceration diverts attention and resources from where they might otherwise be directed: rehabilitation and reintegration efforts and addressing the proximate causes of crime. Moreover, the evidence demonstrates that simply incarcerating more individuals is not an effective measure for reducing crime.

4.2.1.2 Prisons as Crime Schools

Increasing the use of incarceration is a poor policy choice because prisons, particularly ones that are overcrowded or poorly maintained, are harmful environments where violent behavior (which can take the form of riots, fights among detainees, or abuse by prison officials), corruption, and other forms of criminality are commonplace. As our research team documented in Paraguay, individuals who have not yet been tried or who have been convicted of minor offenses are placed together with those found guilty of committing serious violations. The prisons therefore function as centers in which detainees learn criminal techniques and adopt the anti-social values of the more dangerous convicts to whom they are constantly exposed. The Director of Police Internal Affairs, Néstor Báez Sosa, described the situation to us as follows:

This is a very serious problem: The inmates call jails “crime universities” because they go there and learn new forms and methods of delinquency, including how to form a [criminal] organization, and new ways of breaking and entering. You have marginalized groups organizing, and when they leave [the prison], they commit crimes together.⁶³¹

Additionally, prisoners often learn violent behavior while incarcerated. Indeed, such behavior may be encouraged. Analyzing detention centers in the

⁶³⁰ See also Interview with Bader Rachid Lichi, Marcelo Duarte and Edmundo Rolón, *supra* note 165; Interview with Lucas Samuel Barrios, *supra* note 332; Interview with Víctor Manuel Núñez, *supra* note 100.

⁶³¹ Interview with Néstor Báez Sosa, *supra* note 249.

United States, Eric Sterling has observed that “prison teaches that any slight, any indignity, any threat to one’s place in the pecking order, *must* be met with violence or else one will become subject to violence and degradation. Inmates learn that violence is the *means* for self-protection.”⁶³²

Certainly, there are situations in which particularly violent offenders should be incarcerated. The great weight of the evidence, however, counsels against transforming incarceration into the sanction of choice for criminal justice systems, particularly those severely overburdened as in Paraguay. As important, it is vital that detention centers be structured so as to minimize the noxious effects of incarceration, particularly on first-time, young, and less violent offenders.

4.2.1.3 Overcrowding in Prisons

Endorsing policies that promote incarceration is also imprudent because it contributes to the problem of overcrowding in the Paraguayan penitentiary system. As of March 30, 2007, the *Penitenciaría Nacional de Tacumbú*, Paraguay’s main adult penitentiary, held 2,927 detainees,⁶³³ although the facility had the capacity to hold just 1,200.⁶³⁴ As of the same date, the *Ciudad del Este Penitenciaría Regional*, which is built for a maximum population of 250,⁶³⁵ had a prison population of 683 detainees.⁶³⁶

Severe overcrowding of prisons, which is a serious problem in many other Latin American countries as well, leads to a dramatic deterioration of the living standards of prisoners, and hence pushes them to their physical and psychological limits. Overcrowded prisons are volatile, leading to higher incidence of prison riots and rebellions.⁶³⁷

⁶³² Eric E. Sterling, *A Crime Prevention Vision*, in CRIME POLICY (Criminal Justice Policy Found., Silver Spring, MD), Nov. 1993, available at <http://www.cjpf.org/crime/crime.html>.

⁶³³ MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARÍAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC).

⁶³⁴ INTER-INSTITUTIONAL COMMISSION REPORT, *supra* note 160, at 5.

⁶³⁵ *Id.* at 26.

⁶³⁶ MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARÍAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC).

⁶³⁷ See, e.g., Human Rights Watch, *Special Issues and Campaigns, Prisons*, in WORLD REPORT 1999 (1999), available at <http://www.hrw.org/worldreport99/special/prisons.html>; Human Rights Watch,

Case Study: Massive, Simultaneous Prison Riots in São Paulo State

Even more dangerous than individual prison revolts are widespread, often coordinated riots in detention centers. One particularly egregious example of massive, simultaneous prison riots occurred in São Paulo in May 2006, when the criminal organization, the *Primeiro Comando da Capital* (PCC) (First Command of the Capital) “effectively managed to shut down the city of São Paulo” by coordinating simultaneous riots in and takeovers of over seventy prison units.⁶³⁸ The effort, which also included the “execution of police officers and destruction of public and private property,”⁶³⁹ resulted in over 250 people, many of whom were prison guards, being held hostage⁶⁴⁰ and scores of homicides, including police officers, prison guards, and bystanders, being killed.⁶⁴¹ In addition, throughout São Paulo, buses were hijacked and set on fire, and bars, banks, and police stations were attacked by masked men with machine guns.⁶⁴² Residents were terrified and described the situation as very “out of control.”⁶⁴³ Ordinary activity in the city slowed immensely, practically incapacitating South America’s largest metropolis for days.

The police force was so insufficient that President Luiz Inacio Lula da Silva was “prepared to send in 4,000 federal troops,” to help them handle the situation.⁶⁴⁴ The relative ease with which the PCC placed São Paulo under siege reflects the danger and precariousness of having overcrowded, poorly managed, and understaffed prisons.

Brazil, in WORLD REPORT 2003 (2003), available at <http://hrw.org/wr2k3/americas2.html>; Riot “Caused by Overcrowding,” BBC NEWS, Oct. 25, 2002, <http://news.bbc.co.uk/1/hi/england/2359897.stm>.

⁶³⁸ Heidi Cerneka, *Brazil’s PCC Prison Gang May Be Murderers But the State Is Their Accomplice*, BRAZZIL MAGAZINE, June 6, 2006, <http://www.brazzil.com/content/view/9618/78/>.

⁶³⁹ *Id.*

⁶⁴⁰ *More Die in Fresh Brazil Violence*, BBC NEWS, May 14, 2006, <http://news.bbc.co.uk/2/hi/americas/4770469.stm>.

⁶⁴¹ *Gang Violence Grips Brazil State*, BBC NEWS, May 15, 2006, <http://news.bbc.co.uk/2/hi/americas/4771455.stm>.

⁶⁴² *Brazil Gang Attacks Toll Passes 80*, CBS NEWS, May 15, 2006, <http://www.cbsnews.com/stories/2006/05/15/world/main1617033.shtml>.

⁶⁴³ *Sao Paulo Residents Under Siege*, BBC NEWS, May 15, 2006, <http://news.bbc.co.uk/2/hi/americas/4774185.stm>.

⁶⁴⁴ *Brazil Gang Attacks Toll Passes 80*, *supra* note 642.

Prison riots and rebellions are particularly serious problems as they generate a range of concrete and harmful consequences. Many police officers are needed to restore order. During periods of unrest in detention centers, authorities must therefore divert forces away from other policing duties to riot control.⁶⁴⁵ Unfortunately, this leaves fewer police officers on the street to fight crime. Furthermore, police officers (as well as prisoners) are often injured or killed during riots and rebellions.⁶⁴⁶

Importantly, the “inadequate use or lack of alternative measures to imprisonment” is regarded as a “major factor[] in causing prison overcrowding.”⁶⁴⁷ As Mikinao Kitada, Director of the U.N. Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders observes:

It is generally understood that effective measures to alleviate prison overcrowding should include innovative planning and implementation of alternatives to imprisonment. To ensure the required action, collaborative efforts at all levels of the whole criminal justice system should be mobilized [E]ffective use of alternative measures such as fines, suspended sentences, the appropriate use of bail, community service orders and so on should be made.⁶⁴⁸

Paraguayan authorities should refrain from limiting the use of alternative measures not only because there is no empirical evidence that this helps reduce crime, but also because imposing more frequent and more extensive prison sentences will contribute to the serious overcrowding problem in Paraguay’s prisons.

⁶⁴⁵ For example, the January 2007 riot that broke out in an overcrowded prison in El Salvador required “[h]undreds of police, soldiers and security guards [to be] deployed to restore order.” *El Salvador Jail Rioters Kill 21*, BBC NEWS, Jan. 7, 2007, <http://news.bbc.co.uk/2/hi/americas/6238345.stm>.

⁶⁴⁶ See, for example, sources cited *supra* note 637.

⁶⁴⁷ Mikinao Kitada, Prison Population in Asian Countries: Facts, Trends and Solutions, Paper Presented at U.N. Programme Network Insts. Technical Assistance Workshop, Vienna, Austria 8 (May 10, 2001), available at <http://www.unicri.it/wwk/related/pni/docs/2001/kitada.pdf>.

⁶⁴⁸ *Id.* at 8-9.

4.2.1.4 Cost-Benefit Analysis

Increasing incarceration is an imprudent crime-fighting measure in light of the reasons given above and because the costs of incarceration generally outweigh the benefits. Incarceration imposes a two-part burden on society: First, the penitentiary system requires vast resources, including human resources for prison oversight, and financial investment for infrastructure development and maintenance. Second, when individuals are imprisoned, they are kept from being productive, working members of society.

Though increasing the length of prison sentences is appealing to governments of transitional societies, “these repressive responses do not generally appear to be very successful crime fighting tools—indeed they often seem to reintroduce regime policing practices that may *actually hamper effective crime fighting*”⁶⁴⁹ In fact, there is widespread agreement amongst practitioners, policymakers, and scholars that increasing criminal sentences imposes heavy costs on the criminal justice system, and is unlikely to produce results in terms of deterrence and reduction of criminal activity. According to Professor Sara Sun Beale, a criminal justice expert and member of the International Society for the Reform of Criminal Law, “few criminal justice professionals believe that further increasing the length of sentences will greatly increase public safety or reduce crime The dominant expert view is that further increases in sentence length will, *at best*, bring about modest reductions.”⁶⁵⁰ The Vera Institute of Justice and the *Centro de Estudios Legales y Sociales* (Center for Legal and Social Studies) report that “[t]here is little evidence that offenders adjust their behavior on the basis of legal sanctions, for example, particularly where the chances of detection are relatively small [T]here is little correlation between the length of most sentences and the likelihood of re-offending.”⁶⁵¹ Increasing penalties is particularly ineffective at reducing crime perpetrated by younger offenders “who are likely to

⁶⁴⁹ NEILD, *supra* note 533, at 33 (emphasis added).

⁶⁵⁰ Sara Beale, *What's Law Got to Do With It? The Political, Social, Psychological and Other Non-Legal Factors Influencing the Development of (Federal) Criminal Law*, 1 BUFF. CRIM. L. REV. 23, 25 & 27 (1997) (emphasis added).

⁶⁵¹ ALES ET AL., *supra* note 507, at 6.

discount sharply both the chance of getting caught and the costs of future punishment and who may know little about actual punishments.”⁶⁵²

In 2002, the Centre for Criminal Justice Studies at the University of New Brunswick reviewed 117 studies conducted in Canada, Great Britain, and the United States involving a total of 442,471 offenders to determine correlations (i) between recidivism and prison sentence length and (ii) between recidivism and the type of sanction received (i.e. an institutional sentence, a community-based sanction, or an “intermediate” sanction involving surveillance).⁶⁵³ It found no correlation between the type of sanction chosen and recidivism and that, in fact, “there were tentative indications that increasing lengths of incarceration were associated with slightly *greater* increases in recidivism.”⁶⁵⁴

Not only are “questionable benefits . . . derived from solely increasing the length of sentences, especially since the cost of imprisonment is high,”⁶⁵⁵ but, as Marc Mauer, Assistant Director of The Sentencing Project, points out, “incarceration has deleterious effects on an individual’s earning potential and results in the absence of a potential contributing member of a family and community.”⁶⁵⁶ In this regard, increasing periods of incarceration impedes efforts to rehabilitate individuals. Since “[o]nly the best administered rehabilitative sentences appear to reduce criminal behavior,”⁶⁵⁷ increasing terms and frequency of detention is likely to foster recidivism and consequently be counterproductive to reducing criminal activity.

⁶⁵² Philip Heymann, *The New Policing*, in CRIME AND POLICING IN TRANSITIONAL SOCIETIES, *supra* note 509, at 47.

⁶⁵³ PAULA SMITH, CLAIRE GOGGIN & PAUL GENDREAU, THE EFFECTS OF PRISON SENTENCES AND INTERMEDIATE SANCTIONS ON RECIDIVISM: GENERAL EFFECTS AND INDIVIDUAL DIFFERENCES (2002), available at http://ww2.psepc-sppcc.gc.ca/publications/corrections/200201_Gendreau_e.pdf.

⁶⁵⁴ *Id.* at ii (emphasis added).

⁶⁵⁵ Harvey Gee, *Punishment and Democracy: Three Strikes and You’re Out in California*, 30 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 337, 363 (2004).

⁶⁵⁶ *Id.* (quoting Marc Mauer, Assistant Director of The Sentencing Project).

⁶⁵⁷ ALES ET AL., *supra* note 507, at 6.

4.2.1.5 Use of Pretrial Detention

Pretrial detention is also counterproductive, and unfortunately is used commonly throughout Paraguay: According to the March 30, 2007 Ministry of Justice and Labor “Daily Report,” 4,676 detainees (or 75%) of the 6,227 detainees held in adult detention centers had yet to be convicted and sentenced.⁶⁵⁸ The belief that holding accused individuals in detention before their trials keeps suspected criminals away from the rest of society and hence will reduce crime lacks empirical support. Rather, there is evidence that policing policies geared primarily toward removing criminals from society—e.g., encouraging arrest and detention of suspects—have little impact on overall crime rates.⁶⁵⁹ This is not surprising, as criminologists, psychologists, and social scientists have demonstrated the difficulty of accurately predicting future criminal behavior. For example, after reviewing over sixteen different empirical studies and reviews of studies on the accuracy of predicting future criminal behavior, Charles Patrick Ewing, a professor of both law and psychology, concluded: “Empirical research indicates that . . . predictions [of criminal conduct] are more likely to prove wrong than right” and lead to unnecessary incarceration.⁶⁶⁰ Importantly, this inaccuracy was found in predictions about both first-time offenders and recidivists, and was a significant problem no matter what kind of “objective predictors” were used.⁶⁶¹ Ewing observed, moreover, that predicting more serious crimes, such as violent crimes, is even more difficult than predicting crime in general because serious crimes occur less frequently, and “[t]he rarer an event, the more difficult it is to accurately predict its occurrence.”⁶⁶² In short, because predictions about criminal conduct are so inaccurate, attempting to use pretrial detention to prevent future crime in Paraguay

⁶⁵⁸ MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARIAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC).

⁶⁵⁹ See, e.g., Foglesong & Stone, *supra* note 386, at 16-19. Foglesong and Stone argue that instead, criminal justice policies should be aimed at addressing the proximate causes of criminality and improving coordination among the various criminal justice institutions by “aligning” their policies.

⁶⁶⁰ Charles Patrick Ewing, *Schall v. Martin: Preventive Detention and Dangerousness Through the Looking Glass*, 34 BUFF. L. REV. 173, 225 (1985).

⁶⁶¹ *Id.* at 189-92.

⁶⁶² *Id.* at 202-03 (citation omitted).

is likely to be inefficient, result in excessive jailing, and further burden the penitentiary system.

One Open Society Justice Initiative project, undertaken in 2004, studied the use of pretrial detention in Mexico. The Open Society Institute characterized pretrial detention as “used excessively” in the country, with 42.7% of the prison population in 2004 still awaiting trial.⁶⁶³ The results of the research demonstrated the fallacies of certain myths about the effectiveness of pretrial detention that had contributed to its excessive use.

One prevalent myth was that pretrial detention would help reduce crime. Mexican authorities argued that detaining criminal suspects prior to trial would reduce crime by preventing suspects from committing future criminal acts and by deterring potential criminals.⁶⁶⁴ However, the data (shown in Figure 19 below) demonstrated that “despite a steady increase in the pretrial detainee population over the last decade, the crime rate . . . remained at the same high level In spite of an average annual growth of 10.4% in the number of pretrial detainees over eight years, the crime rate [did] not decrease[] significantly over this period.”⁶⁶⁵

In response, some proponents of pretrial detention in Mexico argue that the crime rate has been decreasing in reality but has appeared relatively constant because victims are now more likely to report crimes. However, this position is not supported empirically—if there has been any shift at all, the actual crime rate is probably increasing. Studies conducted by the *Instituto Ciudadano de Estudios Sobre la Inseguridad* (Citizen Institute of Studies on Insecurity) demonstrate that willingness to report crime has decreased: the percentage of crimes reported fell from 34% to 25%, for example, from 2001 to 2002.⁶⁶⁶

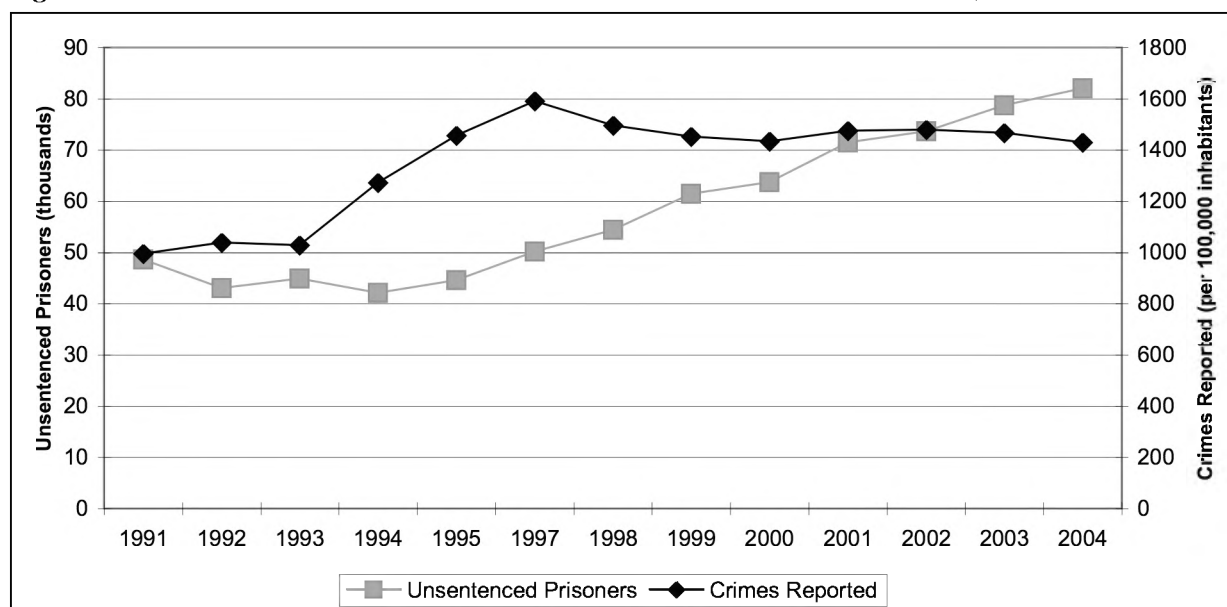
Another myth that the data questioned was that pretrial detention would make citizens feel more secure. In response to perceived increases in insecurity and public pressure to punish criminals, policymakers passed tougher laws providing

⁶⁶³ GUILLERMO ZEPEDA LECUONA, OPEN SOCIETY JUSTICE INITIATIVE, MYTHS OF PRETRIAL DETENTION IN MEXICO 6 (2005).

⁶⁶⁴ *Id.* at 9.

⁶⁶⁵ *Id.* at 10.

⁶⁶⁶ *Id.*

*Figure 19—Unsentenced Prisoners and Recorded Crimes in Mexico, 1991-2004.*⁶⁶⁷

for more pretrial detention. This resulted in the near-doubling of Mexico's pretrial detention population in a period of ten years (from approximately 42,000 prisoners in 1994 to 82,000 prisoners in 2004).⁶⁶⁸ While the State has sought to publicize prison population growth to restore the public's confidence in the criminal justice system and promote feelings of greater citizen security, at least one researcher concluded that the evidence demonstrates that "the increased use of pretrial detention at the expense of the right to liberty and due process has not had a positive impact on Mexicans' perception of their security."⁶⁶⁹

Rather, Mexican citizens continue to feel extremely insecure. A nationwide survey conducted in 2001 revealed that 47% of respondents felt "somewhat unsafe" or "very unsafe." In a national survey taken in August 2002, this figure was determined to be 44% — remaining effectively unchanged.⁶⁷⁰ In fact, in surveys conducted in and around Mexico City, the percentage of respondents who felt that public insecurity was the city's most serious problem increased from 55% in February 2000 to 74% in February 2001.⁶⁷¹ Surveys conducted nationwide

⁶⁶⁷ *Id.* at 9 (citing data from Mexico's Ministry of Public Security and Justice Services; data from 1996 unavailable).

⁶⁶⁸ *Id.* at 11.

⁶⁶⁹ *Id.* at 12.

⁶⁷⁰ *Id.* at 11.

⁶⁷¹ *Id.*

revealed a low level of confidence in the police, with only 22.6% of those responding in 2001 saying that they trusted the police.⁶⁷² In another survey assessing public confidence in various authorities, the Mexican police force ranked 4.4 on a scale of 0.0 (lowest confidence) to 10 (highest confidence); only one group—members of the federal Congress—was deemed less worthy of confidence.⁶⁷³ In short,

[t]he government treats pretrial detention as preemptive punishment in an attempt to convince victims of crime and society at large that justice is being served. The use of pretrial detention to boost public confidence in the country's ability to maintain order is a smokescreen that hides the most important problem: the inability of criminal justice institutions to respond to crime and the overwhelming reality that 97% of crimes committed go unpunished.⁶⁷⁴

As the Open Society Justice Initiative concludes, “Under public pressure to show results in the fight against crime, the Mexican criminal justice system does not seek out the perpetrators of crimes, but those whom it can most easily punish.”⁶⁷⁵ The Paraguayan criminal justice system is at risk of making the same mistake, and indeed, is likely already in the process of doing so. As judges and policymakers feel increasing public pressure to incarcerate those who appear to be criminals, authorities may become less concerned with discovering the actual perpetrators and may resort to placing suspects in pretrial detention.

⁶⁷² *Id.* at 12 (citing Ministry of the Interior of Mexico, *Encuesta nacional sobre cultura política y prácticas ciudadanas 2001*, in ESTE PAÍS: TENDENCIAS Y OPINIONES [THIS COUNTRY: TRENDS AND OPINIONS], No. 137, Aug. 2002, at 13 & 24.).

⁶⁷³ *Id.* at 12 (citing HUGO CONCHA ET AL., CULTURA DE LA CONSTITUCIÓN EN MÉXICO: UNA ENCUESTA NACIONAL DE ACTITUDES, PERCEPCIONES Y VALORES [CONSTITUTIONAL CULTURE IN MEXICO: A NATIONAL SURVEY OF ATTITUDES, PERCEPTIONS AND VALUES] 62 & 250 (2004)).

⁶⁷⁴ *Id.* at 12 (quoting Guillermo Zepeda Lecuona, CRIMEN SIN CASTIGO: PROCURACIÓN DE JUSTICIA PENAL Y MINISTERIO PÚBLICO EN MÉXICO [CRIME WITHOUT PUNISHMENT: PROCURING CRIMINAL JUSTICE AND THE PUBLIC MINISTRY IN MEXICO] 220 (2004)).

⁶⁷⁵ *Id.* at 17.

4.2.2 Most Effective Legal and Structural Measures

4.2.2.1 *Using Alternatives to Incarceration and Increasing Focus on Rehabilitation and Reintegration*

The availability of alternative measures is linked to a number of positive outcomes. First, implementation of alternative measures serves to reduce volatile prison overcrowding and therefore improves prison conditions for the incarcerated population. Second, granting alternative measures in any particular case means that the individual will not be placed in an environment in which he is exposed to violent and criminal behavior. Lastly, alternative measures focus attention on rehabilitation, promoting reintegration into the community as soon as possible and helping those convicted become productive members of society.

In Brazil, for example, judicial authorities have gradually increased their application of non-custodial sentencing measures, with the support of the federal government, as sanctions for offenders who commit relatively minor crimes.⁶⁷⁶ This initiative has yielded positive results already, including saving significant resources and reducing the level of overcrowding and tension in the country's prisons. In a November 2006 press release, the Ministry of Justice reported:

The statistics with respect to alternative measures are heartening: while the recidivism rate of the penitentiary system varies between 70% and 85%, that same rate with respect to the alternative penal structure falls to a variation of between 2% and 12%. The objective of the alternative sentence is to make citizens in conflict with the law aware that their acts were noxious to society and that the harm should be repaired.⁶⁷⁷

One official from the Brazilian Ministry of Justice's National Penitentiary Department states, "Alternative sentences do not punish less, they punish better."⁶⁷⁸

⁶⁷⁶ Press Release, Ministry of Justice of Brazil, *Brasil discute ampliação de penas alternativas* [Brazil Discusses Expanding Alternative Sentencing] (Nov. 3, 2006) (on file with the IHRC).

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.* (quoting Márcia Alencar, general coordinator of the Programa de Fomento às Penas e Medidas Alternativas [Program to Foment Alternative Sentences and Measures]).

Alternative measures are particularly important for juveniles, who currently constitute about 3.5% of Paraguay's prison population. While this is significantly less than 2001 figures, when minors constituted at least 12% of the prison population,⁶⁷⁹ Paraguayan authorities should continue to apply and expand the use of alternatives to incarceration.

Table 13—Adult & Minor Populations in Paraguay's Detention Centers⁶⁸⁰

Detention Center	Adults	Minors
Casa del Buen Pastor	205	0
Penitenciaría de Emboscada	0	0
Penitenciaría Nacional de Tacumbú	2,927	0
Centro Integral Educativo de Itauguá	0	133
Centro Educativo "Virgen de Fátima"	0	8
Centro Educativo La Esperanza	0	12
Centro Educativo "Virgen de Caupé"	0	19
Penitenciaría Regional de Villarrica	221	6
Penitenciaría Regional de Coronel Oviedo	428	0
Centro Regional de San Juan Bautista	155	2
Misiones		
Penitenciaría Regional de Encarnación	531	6
Penitenciaría Regional de Ciudad del Este	657	26
Correccional de Mujeres Juana María del	27	1
Lara		
Penitenciaría Regional de San Pedro	124	2
Penitenciaría Regional de Pedro Juan	227	1
Caballero		
Penitenciaría Regional de Concepción	419	0
Total Population	5,921	216

Miguel Gómez Torres, of the Supreme Court's office on minors in detention at the time of our interview, has been working to design and create shelters for

⁶⁷⁹ HUMAN RIGHTS SITUATION IN PARAGUAY 2001, *supra* note 74, at 43. The organization obtained its data for the *Centro Integral Educativo de Itauguá* from the *Pastoral Penitenciaria* and for the other centers of detention from the Ministry of Justice and Labor's "Daily Report" of November 22, 2001. However, the data did not include the minors held in the juvenile detention centers other than Itauguá. Therefore, the 12% figure is likely to be an underestimate of the total number of juveniles in detention in Paraguay in 2001.

⁶⁸⁰ The figures for the penitentiaries were the data provided in the Ministry of Justice and Labor's report on March 30, 2007. MINISTRY OF JUSTICE & LABOR, PARTE DIARIO DE LAS PENITENCIARIAS DEL PAÍS [DAILY REPORT OF THE PENITENTIARIES OF THE COUNTRY], Mar. 30, 2007 (on file with the IHRC). The figures for the juvenile detention centers are from EVALUATION OF THE PENITENTIARY SYSTEM, *supra* note 160.

juvenile offenders in Paraguay: “We need an institution that is not a jail If you take away the stigma [of prison], then the kids will feel that.”⁶⁸¹ Unfortunately, according to Gómez, the shelter initiative has not been well-received by the government thus far.⁶⁸² Heve Otero, the Secretary-General for the *Coordinadora por los Derechos de la Infancia y la Adolescencia* (Office for the Rights of Children and Adolescents), told our researchers about another new alternative juvenile justice initiative in Paraguay. Through this initiative, troubled youth are assigned to a tutor instead of being sentenced to detention. The tutor helps the youth find a job or enroll in an institution of higher learning and supervises the youth. However, Otero reports that “the program is still very small.”⁶⁸³ Another positive initiative directed toward adolescents in conflict with the law is the *Programa de Adolescentes Infractores* (Program for Adolescent Offenders), which was instituted as a pilot project in the city of San Lorenzo in 2004.⁶⁸⁴ The project aims to develop a model of socio-judicial intervention involving the participation of the state (through the judiciary) and the community, deploying a multidisciplinary team to work with the adolescent in conflict with the law during the preparatory stage of his trial.⁶⁸⁵ This program is a welcome development, but unfortunately it remains mostly limited geographically to one city, San Lorenzo.

Rehabilitation and reintegration programs are also critical to successful criminal justice policy. In a meta-analysis of forty-five studies on the efficacy of correctional treatment for adult and juvenile offenders, researchers at several universities found that such programs were particularly successful in reducing recidivism when they took into account the “principles of effective rehabilitation,” which are the individual’s “risk, need, and responsivity.”⁶⁸⁶ The researchers concluded:

⁶⁸¹ Interview with Miguel Gómez Torres, *supra* note 208.

⁶⁸² *Id.*

⁶⁸³ Interview with Heve Otero, *supra* note 61.

⁶⁸⁴ Interview with María Victoria Cardozo, Member of the Consultation Team of the Programa de Adolescentes Infractores, in Asunción, Para. (Mar. 20, 2007).

⁶⁸⁵ *Id.*

⁶⁸⁶ Donald Andrews et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 CRIMINOLOGY 369, 377 & 384 (1990).

Appropriate correctional service appears to work better than criminal sanctions not involving rehabilitative service and better than services less consistent with our . . . principles of effective rehabilitation [T]he positive trends [in correctional treatment] that we and others detected . . . [are] indeed worthy of serious application and evaluation. There is a reasonably solid clinical and research basis for the political reaffirmation of rehabilitation.⁶⁸⁷

In an interview with our researchers, Pastor Félix Dupont, director of Esperanza Industrial Penitentiary, emphasized the importance of reintegration programs:

The best way to secure the country is to invest in reintegration. The [current] recidivism rate is high. The criminal justice system lacks an internal plan for reintegrating individuals back into society. Reintegration includes, but is more than, just rehabilitation. Rehabilitation does not necessarily mean trying to reinsert someone into society.⁶⁸⁸

While the general level of unemployment in the country is high, opportunities for those with a criminal record are even more scarce.⁶⁸⁹ Néstor Báez Sosa, Director of Police Internal Affairs, told us that upon leaving the prison, “it is impossible to get a job because [employers] ask if you have a criminal record. [If so,] you are rejected right away. So there is no choice but to go back to crime.”⁶⁹⁰

In this regard, the establishment of the industrial prison, Esperanza, in which the detainees learn a trade, work eight hours each day, and receive a salary for their work, appears to be a positive step.⁶⁹¹ However, the center, which can accommodate up to 300 prisoners, is available only to those who have been convicted and is nearly filled to its capacity.⁶⁹² Moreover, Heve Otero informed our researchers that efforts in Paraguay to create programs for juveniles in detention have been limited: “[These programs] are difficult to maintain and thus

⁶⁸⁷ *Id.* at 384.

⁶⁸⁸ Interview with Félix Dupont, *supra* note 204.

⁶⁸⁹ Interview with Michael Oloingsigh, *supra* note 170.

⁶⁹⁰ Interview with Néstor Báez Sosa, *supra* note 249.

⁶⁹¹ Visit to Esperanza Industrial Penitentiary, Oct. 24, 2006.

⁶⁹² Interview with Félix Dupont, *supra* note 204.

[have] failed There needs to be specialized human resources for the adolescents and [greater] economic support, too. We lack most of this.”⁶⁹³

4.2.2.2 *Strengthening and Improving the Efficiency and Transparency of the Judicial System*

As WOLA observes, “The police’s ability to fight crime is ultimately only as good as the performance of the judicial system in prosecuting and sanctioning proven criminals.”⁶⁹⁴ In reflecting on the experience of judicial and police reform in Haiti, Colin Granderson, who served as head of the joint U.N. and O.A.S. mission to Haiti, observed that “the police received nearly all the attention from international reformers, while the judiciary continues to suffer from lack of resources, lack of independence, incompetent personnel, and is mistrusted by the general population. The criminal justice system is therefore unable to support the work of the police.”⁶⁹⁵ Granderson stressed that “the police cannot be effective if the proper justice systems are not in place to support the actions of the police Police reform does not take place in an institutional vacuum. Special attention must be paid to the connected aspects of the justice system and prisons.”⁶⁹⁶

In particular, there are various measures that Paraguay could implement to strengthen the judicial system. For example, it can establish stricter penalties for judicial corruption, as corruption in the judiciary is a serious problem.⁶⁹⁷ According to certain judges with whom we spoke who preferred to remain anonymous, the selection process for the judiciary has also been plagued by corruption, given the level of political pressure and interests involved in the nominations. Corruption in the selection of judges is likely to result in corrupt judicial practices, thus undermining the efficacy of the criminal justice system.

⁶⁹³ Interview with Heve Otero, *supra* note 61.

⁶⁹⁴ Rachel Neild, *Police Reform in Haiti: The Challenge of Demilitarizing Public Order and Establishing the Rule of Law*, Presentation at Conference of the Foundation Canadienne pour les Amériques, Ottawa, Can. 6 (Nov. 7–8, 1996).

⁶⁹⁵ ZIEGLER & NEILD, *supra* note 503, at 43.

⁶⁹⁶ *Id.* at 43–44.

⁶⁹⁷ Interview with Aldo Zuccolillo, *supra* note 92; Interview with Enrique Cantero, Professor of Criminal Law, Universidad Católica de Asunción, in Asunción, Para. (Mar. 16, 2006); *see also* HUMAN RIGHTS SITUATION IN PARAGUAY 2004, *supra* note 168, at 71–72.

Another measure that Paraguay should consider is the establishment of witness and victim protection mechanisms. These protection programs have proven vital to efforts to respond to organized crime and police violence in a range of contexts.

Case study: PROVITA Witness Protection Program in Brazil

In Brazil, witnesses and victims are frequently fearful of cooperating with police, prosecutors, and judicial authorities because this may often mean placing their lives in danger. Prior to 1997, the witness protection programs that existed were “relatively limited” and were frequently operated by the police themselves.⁶⁹⁸ In 1996, authorities initiated a different approach by establishing the *Programa de Apoio e Proteção a Testemunhas, Vítimas e Familiares de Vítimas da Violência* (PROVITA) (Program of Support and Protection for Witnesses, Victims and Relatives of the Victims of Violence), a witness protection program run jointly by the government of the state of Pernambuco and the nongovernmental organization, the *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP) (Office of Legal Assistance for Popular Organizations).⁶⁹⁹

Prosecutor Raquel Dodge was a member of PROVITA’s council from 2001 to 2004, the body charged with making decisions on whether applicants would be “admitted” into the witness protection program.⁷⁰⁰ She emphasized the main features of the program in an interview with our research team: (1) collaboration with civil society; (2) evaluation of whether the applicant needs protection, which consists of an in-person interview and a trial period of observation, lasting on average 10-15 days; (3) involvement of psychologists and social workers in this evaluation process; (4) witness protection strategies specifically tailored to meet the needs of each witness; (5) the police, prosecutor, and judge all have the power

(continued on page 164)

⁶⁹⁸ HUMAN RIGHTS WATCH, POLICE BRUTALITY IN URBAN BRAZIL, *supra* note 521.

⁶⁹⁹ Programa de Apoio e Proteção a Testemunhas, Vítimas e Familiares de Vítimas da Violência [Support and Protection Program for Witnesses, Victims and Families of Victims of Violence], Gabinete de Assessoria Jurídica às Organizações Populares [Cabinet of the Legal Counsel for Popular Organizations], <http://www.gajop.org.br/provita/provita.htm>.

⁷⁰⁰ Interview with Raquel Dodge, Federal Prosecutor for Brasília, in Cambridge, MA (Feb. 28, 2007).

(continued from page 163)

to solicit the program's protection for a particular individual; (6) strategies for helping the protected witness to be reinserted into society and/or resume a normal life when the protection terminates; and (7) ability to appeal decisions not to grant protection through the program to either the council itself or to a higher authority (e.g. if at the state level, then to federal authorities).⁷⁰¹

As early as its first year of operation, the program "made it possible for numerous witnesses to come forward and denounce death squad, police, and organized criminal violence without fear of reprisals."⁷⁰² The *Tribunal de Contas da União* (a quasi-judicial tribunal charged with assessing the efficacy and financial integrity of government programs) evaluated the program in 2005 and described PROVITA as an "initiative of fundamental importance in fighting against impunity in the country."⁷⁰³ It noted that since its inception, the program has protected hundreds of witnesses, and there had not been a single case in which a protected witness has been killed.⁷⁰⁴ In 2005, PROVITA, operating at full capacity, protected 3,500 victims of crimes and 830 other persons.⁷⁰⁵ Efforts are underway to expand and enhance the program.⁷⁰⁶

4.2.2.3 Devoting Sufficient Resources to Public Defense

Providing criminal defendants with an opportunity to be heard and to defend themselves will enhance significantly the accuracy (as well as fairness) of the

⁷⁰¹ *Id.* PROVITA is based on Law No. 9.807/99, July 13, 1999, Lei de Proteção a Testemunha [Act for the Program for the Protection of Victims and Witnesses], which establishes specific requirements for the organization and operation of the program.

⁷⁰² HUMAN RIGHTS WATCH, POLICE BRUTALITY IN URBAN BRAZIL, *supra* note 521.

⁷⁰³ TRIBUNAL DE CONTAS DA UNIÃO, RELATÓRIO DE AVALIAÇÃO DE PROGRAMA, PROGRAMA ASSISTÊNCIA A VÍTIMAS E TESTEMUNHAS AMEAÇADAS [PROGRAM EVALUATION REPORT, ASSISTANCE PROGRAM FOR THREATENED VICTIMS AND WITNESSES] 61 (2005) [hereinafter THREATENED VICTIMS REPORT] (on file with the IHRC).

⁷⁰⁴ *Id.*

⁷⁰⁵ SECRETARIA ESPECIAL DOS DIREITOS HUMANOS [SPECIAL SECRETARY ON HUMAN RIGHTS], PRESIDÊNCIA DA REPÚBLICA [OFFICE OF THE PRESIDENT], RELATÓRIO DE GESTÃO [REPORT OF ACTIVITIES] 4 (on file with the IHRC).

⁷⁰⁶ *Id.* at 4; THREATENED VICTIMS REPORT, *supra* note 703, at 65-68.

results obtained from judicial determinations, and will help the state devote its resources to sanctioning the guilty. In this regard, it should be noted that at present, public defenders in Paraguay are extremely overextended. In March 2006 in Asunción, for example, there were 167 prosecutors while there were only twenty public defenders.⁷⁰⁷ In San Lorenzo, there were three public defenders, each with a caseload of 450-500 cases.⁷⁰⁸

Table 14—Public Defenders per 100,000 inhabitants.⁷⁰⁹

Region	Total number of defenders	Defenders per 100,000 inhabitants	Homicide rate per 100,000 pop
Chile	192	2.1	4.8
Costa Rica	223	5.7	6.1
El Salvador	278	4.3	43
Guatemala	471	3.9	35
Honduras	233	3.3	46
Paraguay	96	1.7	18

4.2.2.4 Integrated Criminal Justice Reform and Analysis of Institutional “Alignment”

As WOLA and Colin Granderson, cited above, suggest, no reform effort can occur in an institutional vacuum. Criminologists Foglesong and Stone have also found that informed analyses about the ways in which policing actually affects crime rates, how policing methods “align” with other institutions, and the coordination between and among criminal justice institutions, are all necessary for effective policymaking.⁷¹⁰ For example, by comparing arrest rates with imprisonment rates in several different countries, Foglesong and Stone discovered that different systems relied on the arresting power for different purposes. For instance, systems that arrest many suspects but convict few may be employing

⁷⁰⁷ Interview with Cecilia Pérez, *supra* note 67.

⁷⁰⁸ *Id.*

⁷⁰⁹ Data on number of public defenders for Chile (2001), Costa Rica (2001), El Salvador (2002), Guatemala (2002), Honduras (2003), and Paraguay (2001) from RIEGO RAMÍREZ, *supra* note 339, at 19; Homicide rate data for Chile (2001), Costa Rica (2001), El Salvador (2002), and Paraguay (2001) from PAHO, Technical Health Information System, *supra* note 253; Guatemala (2004) homicide rate from USAID, Central America and Mexico Gang Assessment, Annex 2, at 4 (2006); Honduras (2005) homicide data from *id.* Annex 3, at 4.

⁷¹⁰ Foglesong & Stone, *supra* note 386, at 3.

arrests as a means of widespread intimidation. Systems that convict most of those arrested, by contrast, may focus police energies on a smaller, targeted universe of suspects, certain that conviction will likely follow arrest. In the former case, one might recommend measures to reduce wholesale arrests. In the latter, one may seek to adjust the criminal justice system to address excessively high conviction rates.⁷¹¹ As this example suggests, it is therefore necessary to examine data from disparate institutions to understand the relationships between and among them.

In light of this study, the Paraguayan government's tendency to develop criminal justice policy without reliable crime statistics is especially troubling. These statistics would provide a better understanding of how criminal justice institutions are "aligning" to affect criminality jointly. Foglesong and Stone urge governments to strengthen and integrate information collection and analysis capacities:

[G]overnments need to draw more power from their measurement systems, integrating measurement with the full range of people, knowledge, and tools that they have assembled across the criminal justice system. A strategic measurement system would encourage the disparate elements of the criminal justice system to work together in closer alignment. It would help the prosecution to reinforce and multiply the effectiveness of the police, rather than inadvertently undermining police actions. It would allow the provision of services to victims of past crimes to contribute to the reduction of future crimes. It would focus the managers of the prisons to participate in the reduction of violence rather than merely try to contain the most serious of those who are charged with crimes for a limited time. A strategic measurement system would, in short, allow a government to align the elements of its criminal justice system—and a better aligned system is more capable of delivering both public safety and justice.⁷¹²

Such an analysis appears especially necessary in Paraguay because, as several sources emphasized to us, various agencies with criminal justice responsibilities are currently facing problems with inter-institutional communication and cooperation. Six years after the accusatorial system has been

⁷¹¹ *Id.* at 21-26.

⁷¹² *Id.* at 3.

implemented, building channels and making connections between and among various institutions remain challenging tasks.⁷¹³ Moreover, a recent study on crime statistics in Asunción noted that each criminal justice institution had disparate and uncoordinated information collection methods, and that this created “serious difficulties in making comparisons and evaluating the veracity of the data.”⁷¹⁴ An analysis of institutional alignment in Paraguay would provide a better understanding of relationships among the agencies charged with criminal law enforcement activities. This deeper understanding, in turn, could help nurture the development of greater inter-institutional harmonization, currently lacking in the country.⁷¹⁵

4.3 Approaches that Address the Proximate Causes of Crime

Police reform and judicial reform by themselves are not enough to reduce crime in the long-term. Recent research by Foglesong and Stone strongly suggests that one key element in reducing criminality lies in a careful analysis of crime patterns and a focus on addressing the proximate causes of crime.⁷¹⁶ Their study on policing methods in Jamaica and the Dominican Republic demonstrate that, contrary to conventional perceptions of policing practices, “clearance policies”—those that focus on getting criminals off the street—may not have any significant effect on crime.⁷¹⁷ The underlying assumption of clearance strategies is that “the criminal justice system contributes to the reduction of crime and violence by removing individual criminals.”⁷¹⁸ This can include increasing arrest and conviction rates, harsher prison sentences, or even eliminating criminals extrajudicially through police killings. In Paraguay, much of the criticism leveled against the new criminal codes has embraced the logic of clearance policies, calling for increased pretrial detention, longer prison sentences, and cutting back alternative measures to prison as means of reducing crime.

⁷¹³ Interview with Teresa Martínez Acosta, *supra* note 36.

⁷¹⁴ Gortari, *supra* note 251, at 1.

⁷¹⁵ See Interview with Carmen Echaury, *supra* note 132.

⁷¹⁶ Foglesong & Stone, *supra* note 386, at 19-21.

⁷¹⁷ *Id.* at 15-19.

⁷¹⁸ *Id.* at 15.

As an alternative, Foglesong and Stone promote a second strategy:

. . . to eliminate the immediate conditions that permit crime and violence to thrive: *to solve the proximate underlying problems*. This is not about reducing poverty, illiteracy, inequality, or other social conditions that may cause crime, but rather eliminating the immediate conditions on streets and in neighborhoods that allow violence to flourish, such as competition between criminal gangs, the linkages between drugs and crime, or the widespread possession of guns. In a well integrated and efficient criminal justice system, this would be done through careful crime analysis to identify the crime patterns that might be disrupted, making strategic use of arrest powers to suppress key offenses, building public confidence in the criminal justice system to encourage more civilian participation in crime suppression, and so on.⁷¹⁹

4.3.1 Need for Greater Control of Firearms

In a study on crime and violence in Latin America, sociologists Roberto Briceño-León and Verónica Zubillaga observe that “[w]hat is most striking about the growth of violence in Latin America is not that of crime as such, but of the violence with which it is committed. . . . [I]t is not crime, but the lethality associated with it, which is [] surprising”⁷²⁰ They attribute this lethality to “the massive spread of firearms among the population, including both people for whom crime is a way of life and those for whom it is not.”⁷²¹

Similarly, in analyzing the problem of firearm proliferation in the Southern Cone, the *Facultad Latinoamericana de Ciencias Sociales* (FLACSO) (Latin American Faculty of Social Sciences) writes:

The presence of firearms among the population is a risk as much for national security as it is for the public: the exclusive use of force ceases to be in the hands of the state and trafficking in weapons at the

⁷¹⁹ *Id.*

⁷²⁰ Roberto Briceño-León & Verónica Zubillaga, *Violence and Globalization in Latin America*, CURRENT SOC., January 2002, at 19, 25.

⁷²¹ *Id.*

margin of the law sustains organized transnational crime and common domestic crime. This phenomenon is intimately related to the problems of citizen security, as the increase in crimes goes hand in hand with the increase in the use of firearms in crimes. As a consequence, the population feels more insecure and begins to acquire guns to defend itself, but these guns can easily turn against their owners by ending up in the hands of criminals.⁷²²

Describing the situation in Paraguay in particular, FLACSO states: “This country stands out for the large proliferation of firearms and for being a place of trafficking to neighboring countries The situation of scarce control [over firearms] on the part of institutions . . . can affect both national and regional security.”⁷²³ Although Paraguay passed arms control legislation in 2002 to address this problem,⁷²⁴ issues of concern remain:

Paraguay has many problems with firearms. For example, the Ley de Armas in Paraguay classifies firearms based on the firing mechanism, and not the caliber of the gun, through which, in principle, it is possible for a person to possess any kind of firearm as long as it is not automatic. In addition, there is a loophole in terms of the acquisition of munitions, as the law does not establish a limit for this. There exists another problem in that the law only sanctions with prison the importation and exportation of arms that are not done through customs in the capital or the airport. That is, there is no penalty for trafficking contraband through these routes, as would be the case—for example—with a trafficker underdeclaring the amount of weapons or munitions in the airport terminal. There equally exist problems with coordination and information among agencies; although, with the modification of the Ley de Armas in 2002 and the creation of the

⁷²² Liza Zúñiga, *Armas pequeñas y livianas en el Cono Sur: diagnóstico de la situación* [Small and Light Firearms in the Southern Cone: Diagnostic of the Situation], BOLETÍN DEL PROGRAMA DE SEGURIDAD Y CIUDADANÍA NO. 7 [BULLETIN OF THE PROGRAM OF SECURITY AND CITIZENSHIP NO. 7], Sept. 2006, at 1 (Facultad Latinoamericana de Ciencias Sociales, Chile), available at <http://www.flacso.cl/flacso/biblos.php?code=1991>.

⁷²³ *Id.* at 6.

⁷²⁴ Ley No. 1.910/02, June 19, 2002, Ley de Armas de Fuego, Municiones y Explosivos [Firearms, Munitions and Explosives Act].

Interagency Working Group, [the government] is attempting to overcome these obstacles.⁷²⁵

Successful gun control programs can dramatically reduce the number of gun crimes. These programs can take a number of forms. Gun control can mean limiting the number of new gun licenses granted each year, prohibiting guns from being sold altogether, instituting gun buy-back programs, requiring potential gun owners to satisfy certain requirements before being allowed to purchase a firearm, or toughening criminal penalties for possessing illegal weapons.

In Brazil, for example, gun control programs have had significant success.⁷²⁶ In the late 1990s and early 2000s, the state of São Paulo instituted a number of gun control measures designed to reduce crime, including reducing the number of yearly gun licenses from 70,000 to 2,000 per year, and increasing the number of yearly seizures from 30,000 to 40,000 per year. In addition, the state government benefited from federal legislation that, among other things, makes illegal possession of a firearm a felony, establishes a gun buyback program that bought back hundreds of thousands of guns, and requires gun owners to prove their mental stability and capacity to operate a firearm.⁷²⁷

The results of these measures have been very promising. In the city of Diadema, for example, the homicide rate decreased by two-thirds between 2000 and 2004. In 1999 the homicide rate had been a disturbingly high 110 per 100,000 persons per year. The success of the gun control programs in Diadema has been termed by *The Economist* as a “spectacular example of a broader turnaround.”⁷²⁸ Indeed, the gun control measures implemented by São Paulo were largely responsible for the dramatic fall in the state homicide rate and number of gun crimes generally. Probably due significantly to these measures, the homicide rate “has started to fall nationwide,” as well.⁷²⁹

⁷²⁵ Zúñiga, *supra* note 722, at 7.

⁷²⁶ *Protecting Citizens from Themselves: Gun Control is Saving Lives in Brazil, Voters Will Now Decide its Pace*, *ECONOMIST*, Oct. 20, 2005.

⁷²⁷ *Id.*

⁷²⁸ *Id.*

⁷²⁹ *Id.*

4.3.2 Need for Greater Attention on At Risk Youth

As the table below demonstrates, Paraguay has a predominantly young population:

Table 15 – Population Structure by Age (2010 and 2015 projected).⁷³⁰

Year	1990	1995	2000	2005	2010	2015
Median age (years)	19.3	19.7	20.4	21.7	23.1	24.5
Aged 0-4 (%)	15.5	14.4	13.3	12.3	11.5	10.7
Aged 5-14 (%)	25.9	26.0	24.9	23.5	22.1	20.8
Aged 15-24 (%)	19.1	18.9	20.1	20.7	20.3	19.5
Aged 25-59 (%)	33.4	34.6	35.2	36.5	38.5	40.4
Aged 60+ (%)	6.1	6.1	6.5	7.0	7.7	8.7

As Table 15 illustrates, the majority of Paraguay's population (56.5%) is under the age of 25, and nearly 36% of the population is under the age of 15. Authorities should take this high proportion of young people into consideration in formulating criminal justice policy. Yet, given the high proportion of youth in Paraguay, it is particularly worrisome that Paraguay appears to devote relatively limited resources to education:

Table 16—Spending on Education, 2002-2004 (as Perc. of Govt. Expenditures).⁷³¹

Country	Spending on Education
Costa Rica	18.5%
Chile	18.5%
Guyana	18.4%
Bolivia	18.1%
Belize	18.1%
Peru	17.1%
Nicaragua	15.0%
Argentina	14.6%
Colombia	11.7%
Brazil	10.9%
Paraguay	10.8%

⁷³⁰ Data from DGEEyC, Projection of National Population by Sex and Age 1950-2050, *supra* note 256.

⁷³¹ These figures are from the most recent year available during the period specified. UNDP, HUMAN DEVELOPMENT REPORT 2006 tbl. 11.

For example, Heve Otero, the Secretary-General for the Office for the Rights of Children and Adolescents, stressed to us the importance of investing in programs for education and youth, rather than “chasing youth crime.”⁷³²

Youth in poor, urban areas are especially vulnerable to succumbing to a criminal lifestyle. The threat of at risk youth joining the criminal ranks is especially prevalent today due to, among other problems, the encroachment of international drug traffickers into their communities. Impoverished, jobless, and relatively poorly educated youth have few options in Paraguay. Miguel Gómez Torres, who served as a consultant for U.N. Children’s Fund (UNICEF) promoting programs for children and adolescents in Latin America, told the IHRC that “[t]here are a number of at risk youth in Paraguay; this number will explode with the passing of time.”⁷³³ Luis Claudio Celma of *Global Infancia* (Global Children) informed our team that conditions are most difficult in urban centers in Paraguay because “there are more kids and more exposure to the street. There are many places where you can get alcohol and drugs.”⁷³⁴ The pull of the drug trade and other criminal operations promising highly lucrative returns is thus dangerously strong.

Programs that have been successful in helping the at risk youth population have focused on providing them with viable alternatives to a life of crime. The programs can be government created and managed, or they can be grassroots efforts originating from and led by the youths themselves. But in either case, as Gómez emphasized to us, there must be active citizen participation for the effort to be successful.⁷³⁵ Unfortunately, programs for children in Paraguay thus far have lacked the participation of the children themselves.⁷³⁶ “The programs for prevention [of crime] cannot be realized simply by thinking *about* the children. Rather, the programs must come *from* the children.”⁷³⁷ One example of a successful youth program was instituted in Brazil, where grassroots initiatives were started by neighborhood children and adolescents.

⁷³² Interview with Heve Otero, *supra* note 61.

⁷³³ Interview with Miguel Gómez Torres, *supra* note 208.

⁷³⁴ Interview with Luis Claudio Celma, *supra* note 453.

⁷³⁵ Interview with Miguel Gómez Torres, *supra* note 208.

⁷³⁶ *Id.*

⁷³⁷ *Id.*

Case Study: Youth Movements in Brazil⁷³⁸

Recently, in the context of responses to violence from civil society, a widespread movement has begun to emerge among young people in *favelas* and marginal outlying neighbourhoods. This consists of projects, programmes, or local initiatives based on cultural and artistic activities, which in many cases are undertaken and co-ordinated by the young people themselves. Some examples of these initiatives are . . . the hundreds of local groups that have mobilised around the hip hop culture on the outskirts of São Paulo, in the shanty towns of Porto Alegre, and in neighbourhoods in Recife, Brasilia and São Luís.

These groups are competing with the drug traffickers for influence over young people, and they are using different but equally effective seduction techniques. They are committed to a culture of peace, but a culture that is also in tune with the spirit of the times (the groups value Internet, computers, fashionable sports clothes . . . and regional and international exchange, as well as culture and the arts). In general, these groups have four main characteristics: a) they foster the generation of income and employment in the short term; b) they have a strong component of self-esteem, which includes training artists and leaders whose fame and success may serve as an example . . . ; c) they have a strong component of territorial affirmation, and very often the words of their songs, the names of the groups and their leaders, and the t-shirts and other clothes that they wear reaffirm the names of their communities . . . as a sign of commitment to change in the community; d) there is a strong component of denouncing racism and affirming their black identity in the lyrics of their songs, in their look . . . and in the names of their projects (*Música Preta Brasileira, Afro Reggae, Companhia Étnica*, etc.).

These projects and initiatives . . . are steadily growing in different cities around the country, and are becoming important not only as centres for constructing a culture which is an alternative to drug trafficking, but also as mediators between youth and local government, the press, and very often international actors like foundations and co-operation agencies.

⁷³⁸ Text Box reproduced from Silvia Ramos & Julita Lemgruber, *Brazil: Urban Violence, Public Safety Polices and Responses from Civil Society*, in SOCIAL WATCH REPORT 2004: FEAR AND WANT 136, 136-37 (Social Watch ed., 2004), available at <http://www.socialwatch.org/en/informeImpreso/pdfs/SW-ENG-2004.pdf>.

4.3.3 Utilizing General Contextual Approaches

One type of crime-fighting approach is to “seek[] to have a more specific and immediate impact on the opportunities and incentives to commit crime. These situational crime prevention programs—referred to by the Inter-American Development Bank as ‘secondary preventive’ programs—focus on the act and setting of crime itself.”⁷³⁹ These initiatives aim to reduce the opportunity for committing crimes by, for example, “improving street lighting, creating neighborhood watch groups, or discouraging the purchase of stolen goods.”⁷⁴⁰

The *Programa Desarrollo Seguridad y Paz* (DESEPAZ) (Program for Development, Security and Peace), established in Cali, Colombia, is an example of a secondary preventive initiative.⁷⁴¹ Between 1983 and 1994, the annual homicide rate in Cali increased from 23 per 100,000 inhabitants to 124 per 100,000 inhabitants.⁷⁴² Crime, violence, and the public’s perception of insecurity were so serious that the candidate for mayor ran on a platform centered on addressing these problems and created DESEPAZ upon being elected.⁷⁴³

Drawing on epidemiological analyses of crime and violence, [the program] aims to contain and prevent violence by both improving police efficiency and educating citizens and providing them with useful information. By thoroughly documenting violent incidents and related information, such as trends in alcohol consumption, local security councils . . . implemented measures to counter violent behavior. These included bans on carrying handguns and limits on alcohol availability during national holidays and other high-risk periods.⁷⁴⁴

⁷³⁹ ALES ET AL., *supra* note 507, at 3.

⁷⁴⁰ *Id.*

⁷⁴¹ *Id.*

⁷⁴² Alberto Concha-Eastman et al., *La epidemiología de los homicidios en Cali, 1993-1998: seis años de un modelo poblacional* [*Epidemiology of Homicides in Cali, 1993-1998: Six Years of Population-based Model*], 12 REVISTA PANAMERICANA DE SALUD PÚBLICA [PAN-AM. J. PUB. HEALTH] 230, 232 (2002).

⁷⁴³ RESOURCE GUIDE FOR MUNICIPALITIES, *supra* note 566, at 33.

⁷⁴⁴ ALES ET AL., *supra* note 507, at 3.

In the program's first year of operation, the city experienced its first decrease in the homicide rate in twelve years.⁷⁴⁵ From 1994 through 1995, 1996, and 1997, the homicide rate continued to decrease from 124 per 100,000 inhabitants to 112, 102, and 86 per 100,000 inhabitants, respectively.⁷⁴⁶ There was only a slight increase between 1997 and 1998 to 88 per 100,000 inhabitants.⁷⁴⁷

⁷⁴⁵ *Id.* at 3-4.

⁷⁴⁶ Concha-Eastman et al., *supra* note 742, at 232.

⁷⁴⁷ *Id.*

Conclusion and Recommendations

While Paraguay has experienced an increase in criminality over the past decade, current levels of violent crime are well below those recorded in neighboring countries. Rising insecurity in Paraguay is part of a broader, regional trend. Unfortunately, irresponsible reporting in the media and opportunistic politicians have distorted and amplified the perception of insecurity in the country. This exaggerated fear creates multiple obstacles for the effective management of Paraguay's criminal justice system. First, it inhibits objective decision-making by diverting attention from the underlying causes of criminality. Moreover, by creating a context in which policies aimed at protecting defendants' rights, buttressing the rule of law, or addressing the causes of criminality are dismissed as "soft" on crime, the climate of fear obscures many of the positive gains of the reforms. Within the context of the newly introduced reforms to the criminal justice system in Paraguay, the sense of insecurity is especially problematic. It has undermined the political support necessary for proper implementation of these reforms. Even more troubling, it glosses over pressing, systemic problems, such as corruption, which have a significant negative impact on the system's overall effectiveness and efficiency.

This report stresses that a realistic and accurate account of the situation of insecurity in Paraguay is needed. Without accurate information on criminality, policymaking cannot be effective. Rather, governmental efforts will be sporadic and ad hoc, without a proper assessment of their overall effects on public safety. Urgently needed empirical analysis must also incorporate an examination of the effect that each institution in the criminal justice system has on criminality, individually and in conjunction with other institutions. Once Paraguay has

developed a systematic and reliable method of analyzing and evaluating trends in criminality, truly informed and objective policymaking aimed at achieving long-term security can take place.

Our intention in this report has been to map out the most promising directions that should guide criminal justice policymaking efforts in Paraguay. Rather than prescribing a specific policy remedy, this report sets forth a range of options so that policymakers may develop the policies most appropriate for Paraguay. Our suggestions are by no means exhaustive. We hope that this report will contribute to the formation of policies that both increase citizen security and preserve the important procedural guarantees of the criminal codes.

By learning from the experiences of other countries, the Paraguayan government can implement policies that have yielded positive results in similar socio-economic contexts. Targeted, cost-effective measures, such as creating reintegration programs for former prisoners and focusing resources on addressing the underlying causes of criminality, have proven to be reliable methods for reducing crime. These are not policies that require structural overhauls or vast resource investment, but instead are realistic and accessible options that have gained international support from criminal justice experts.

Over eighteen years ago, the Paraguayan people took an historic first step toward becoming a modern constitutional democracy. Three years later, Paraguay declared its commitment to this vision by establishing firm guarantees of individual liberties and human rights in its 1992 Political Constitution. In the years that followed, the government further solidified this commitment by initiating several reforms to modernize its criminal justice system and implement legal changes needed to ensure rights guarantees. The reforms established several important procedural safeguards, including the presumption of innocence, and also reduced reliance on imprisonment as a means of fighting crime. These changes not only protect essential liberties but also enhance the efficacy of the criminal justice system, thus ensuring the security of all citizens in Paraguay. Despite lingering problems with institutional corruption and an inchoate implementation process, the reforms are essential if Paraguay is to respond effectively to criminality within a democratic framework.

5.1 Recommendations

To the government of Paraguay in general:

- *Develop reliable statistic-gathering methods within the National Police, the Public Ministry, the Penitentiary System and the Judiciary.* Our investigation has revealed that the reported crime data from the National Police are not complete and reliable, and that the Public Ministry and Judiciary have not established systematic methods of collecting and processing data. Accurate data are essential for effective policymaking, and the systemization of data collection in each institution should be a top priority for the government. We applaud the Public Ministry's recently inaugurated statistic-gathering system, and urge the government to support this effort and replicate it in other institutions.
- *Coordinate statistical analysis between and among the various institutions of the criminal justice system.* There is little exchange of available statistical information between and among the various criminal justice institutions in Paraguay. In addition to developing more reliable data-gathering systems, the government should coordinate and compare data across institutions regularly. Such analysis is critical to an understanding of how policies in different institutions interrelate and affect crime rates.
- *Supplement crime reporting data gathered by the National Police with annual crime victimization surveys.* Even if collection and analysis of police reporting data are improved, this information cannot provide a complete panorama of criminality, as underreporting is a common problem across criminal justice systems. The government should thus supplement these data with periodic victimization surveys, which are useful in uncovering crime data not reported to official agencies.
- *Ensure full access to data on criminality in an open and transparent manner to facilitate their analysis by nongovernmental institutions and research groups.* Proper analysis of the numerous and complex factors that affect criminality is a large undertaking that may require input from and coordination with institutions and organizations outside the government. Therefore, the government should make all non-confidential data readily accessible to the general public to

facilitate broader analysis. Transparent databases would also provide a level of public accountability for state actions and ensure the quality of data collection.

- *Pursue criminal justice policies based on analysis of actual levels of criminality and the ways that different institutions of the criminal justice system interact to affect crime rates.* Our investigation has uncovered a disturbing tendency by authorities to implement new criminal justice policies without adequate analysis of data related to criminality. The development of policy without reference to present or past crime rates is likely to create ineffective policies and waste valuable resources. We urge the government to incorporate the information gained from improved statistic-gathering and analytic methods in its development of criminal justice policies.
- *Analyze how different socio-economic factors may be influencing crime rates and address these broader issues in conjunction with criminal justice policy.* Our discussion suggests that socio-economic factors such as inequality, demographic changes, and a lack of educational opportunities are also responsible for trends in criminality. The government should include analysis and policymaking that address these factors in deciding criminal justice policy. While not the focus of our research, any policy that does not consider the root causes of criminality in society will be less effective in the long term.
- *Continue to support the criminal justice reforms and seek their full implementation.* Several of the failings and inefficiencies of the new system may well be the result from the wavering political support, insufficient allocation of resources, as well as the continuing problems of corruption and political favoritism that predate the reforms. We encourage the government to renew support for the reforms to ensure that they are fully implemented.
- *Develop and fund programs that ensure the effective use of alternative measures to imprisonment.* Experiences in other Latin American countries have shown that reducing the frequency and duration of prison sentencing and applying alternative sanctions can help reduce overcrowding in prisons and public spending. To be effective, however, alternative measures require an adequately supported and funded oversight mechanism that will ensure compliance with alternative sentences. We encourage the government to

establish and support these programs to help relieve the burden on the penitentiary system.

- *Ensure adequate oversight of private policing activity.* The private security industry in Paraguay in recent years has proliferated remarkably. The government has an obligation to monitor these private security firms to ensure that they operate within legal limits. Forces that are armed and improperly trained or abusive will pose significant threats to public security.

For policy regarding the National Police:

- *Require that police gather detailed data on arrestees, including age, background, criminal history, and prior convictions, among other characteristics.* In addition to reforming the manner in which police statistics are recorded and analyzed, we urge the government to improve the detail of the statistical data, and include information regarding, for example, age, background, criminal history, and prior convictions, among others. Such information will be useful in designing targeted policing practices and in developing a greater understanding of criminality trends in Paraguay.
- *Improve coordination between the National Police and the Public Ministry.* Our investigation has revealed tension between the National Police and the Public Ministry due to the change in the respective roles of these institutions in conducting criminal investigations. We urge the government to take steps to improve coordination between these two institutions, such as developing joint training programs and clarifying the scope of their responsibilities in practice to avoid confusion and conflicts.
- *Provide greater support for the 911 emergency system.* The 911 system has made important advances in improving police-community relations. As the public becomes more willing to communicate and work with the police, the police themselves will benefit from the increased cooperation. We applaud the steps the government has taken to implement this system and urge it to continue supporting this initiative.
- *Create controls in the recruitment process to ensure that selection of new officers is not based on personal or political connections.* Reports of political

favoritism in the selection of new police officers are worrisome and must be addressed. Allowing this form of corruption to continue sends the message to new members of the police force that corruption is acceptable and will not be investigated or prosecuted. This in turn creates space for further corruption and misconduct, creating a vicious cycle of abuse of public power. The government should address this problem immediately.

- *Require reasonable working hours and provide adequate compensation to reduce corruption incentives.* Another measure that may help reduce corruption within the police is to reduce the incentives that lead to corrupt acts. By ensuring that police officers are adequately compensated for their service and the personal risks they take, the government can reduce incentives accepting bribes, committing extortion, or working part-time as private security guards. Prior to enhancing police salaries, careful review of officers' performance records, including consideration of any complaints for abusive or dishonest behavior, should be completed to avoid rewarding undeserving officers.
- *Create incentives that promote cooperation with human rights prosecutors in investigating police corruption and abuse.* To improve the public perception of the police, allegations of police corruption and abuse must be thoroughly investigated and prosecuted, as appropriate. Our investigation has shown that human rights prosecutors have encountered difficulty in investigating and prosecuting those suspected of police abuse and corruption. Authorities should take measures to ensure the success of those investigations, including sanctions for non-cooperation.
- *Implement more effective sanctions for police abuse and corruption.* In addition to reducing incentives for corrupt and abusive behavior in the police, a permanent, effective oversight system should have the authority to implement effective sanctions that will deter such activity.
- *Address the underlying causes of criminality rather than pursuing policies that simply attempt to remove criminals from the streets.* The studies we cite demonstrate that merely removing suspected criminals from the streets—through increasing prison sentences, using pretrial detention, or even directly eliminating suspected criminals—may not reduce crime rates. Indeed, if such practices exacerbate violence and overcrowding in prisons, they might serve to

increase crime rates and insecurity. Instead, we urge the government to adopt policing practices that address the proximate causes of crime, such as targeted programs for at risk youth, improved firearm control, and secondary-prevention measures.

- *Consider implementing community policing programs.* In our comparative study of other transitional societies with similar problems of insecurity, we find that community policing programs have been implemented frequently and have often shown potential for reducing crime. The government may wish to consider developing programs based on community policing models that emphasize cooperation and coordination between the police and various sectors of society.
- *Establish within the police respect for officers' professionalism and specialized functions.* Oftentimes, police officers with high levels of experience and technical training in a specific field are underutilized or permanently assigned to tasks without regard to their expertise and with no clear or objective criteria. We urge authorities to develop appropriate training modules for law enforcement personnel, and to deploy officers and assign policing responsibilities to them methodically, in accordance with the specialized training each officer has received.

For policy regarding the Public Ministry:

- *Modify the recruitment process for new prosecutors to ensure that prosecutors are selected based solely on merit.* Our investigation has uncovered accusations of the politicization of the selection process for new hires in the Public Ministry. We urge the government to address this problem by making the selection process more objective and transparent, and to employ selection criteria based on the qualification of the applicant.
- *Create incentives for prosecutors to stay within the Public Ministry by establishing opportunities for career advancement and professional development.* We applaud the new training programs that the Public Ministry has designed for new prosecutors. However, we are concerned with reports of high turnover rates, and the effect that these will have on the efficacy of the

Public Ministry as an institution. To ensure the quality of prosecutions, the government should create incentives for public prosecutors to stay within the Public Ministry and not seek more lucrative employment elsewhere.

For policy regarding the penitentiary system:

- *Improve quality, detail, and transparency of data collected in detention centers.* Effective criminal justice policy depends on understanding not only the actors responsible for committing crimes, but also what happens to those individuals while they are in the penitentiary system and after their release. The government should ensure the operation of a transparent system to analyze data on those entering and leaving the prison system each year. It should assess regularly how this information compares with information gathered by the police, the Public Ministry and the judiciary.
- *Address overcrowding in detention centers by promoting the use of alternative sanctions to imprisonment and by restructuring existing centers.* The situation of overcrowding that still exists in prisons such as Tacumbú, Pedro Juan Caballero and Ciudad del Este undermines the effective, democratic operation of the criminal justice system. The conditions in these prisons create violent, insecure environments for guards as well as inmates and foster corruption among officials of the penitentiary system.
- *Focus attention on the rehabilitation and reintegration of former prisoners into society.* Our study demonstrates that neither prisons nor the penitentiary system dedicate adequate resources to facilitate prisoner rehabilitation and reintegration into society. Even the most promising program, that of the *Penitenciaría Industrial La Esperanza*, does not have a follow-up program to support former inmates to reintegrate successfully into society. The government should invest in programs that help former prisoners find and maintain employment upon release. These efforts will help reduce criminality by providing former prisoners with productive alternatives to a lifestyle of crime.
- *Seek alternatives to incarceration when possible that allow convicted persons to reincorporate themselves into society.* Given the poor conditions of prisons and the lack of viable programs to promote successful reintegration of detainees

into society, the criminal justice system should seek alternatives to incarceration whenever possible. This could help to alleviate strain on the already overburdened prison system, as well as to fulfill the constitutional mandate of exceptionality of incarceration in Article 17.1 of the Constitution of Paraguay.

To the NGO community:

- *Support data-gathering and conduct independent analysis of trends in criminality.* NGOs and universities should work closely with government statistical data to ensure proper analysis of information. Civil society organizations should also examine data to monitor the quality and reliability of government information-gathering methods. These are both tasks in which the objectivity and collective experience of outside organizations can be valuable in developing criminal justice policies.
- *Develop policing policy jointly with the government and work closely with the National Police to ensure effective implementation of the reforms and training of officers.* We urge civil society organizations to work more closely with the government to encourage the development of positive policy reforms that both support the democratic values and rights guaranteed under the Constitution and increase the efficacy of the criminal justice system. NGOs and universities can play an important role in providing training and follow-up for police officers to ensure implementation of new policies.
- *Promote projects that support at risk youth and provide effective alternatives to crime and violence.* The experience of other countries shows that programs targeting at risk youth and providing them with viable alternatives to criminality are often important in reducing crime. Reaching young people before they enter the criminal justice system can be an efficient method of reducing crime and public insecurity. We urge more organizations to address issues affecting the at risk youth population and to develop creative alternative outlets for them.

To the media:

- *Provide a more balanced and accurate portrayal of the occurrence of violent crimes in Paraguay.* The media in Paraguay, as in many other countries, have demonstrated an unfortunate tendency to favor sensationalistic, violent stories over responsible reporting. Given the high degree of confidence that the Paraguayan public has in media sources, print, television and radio professionals have a special responsibility to guarantee faithful and accurate reporting. The media should resist the temptation to boost readership or advertising revenue quickly with exaggerated, sensationalist news coverage.

To the international and donor community:

- *Support programs that enable Paraguayan authorities to gather, maintain and distribute data on all aspects of the criminal justice system.* International organizations can make a valuable contribution by providing expertise and/or financing to develop information systems capable of processing and managing statistical data on crime rates in Paraguay. This support can ease the burden on the Paraguayan government and help create an efficient and reliable method of assessing and analyzing trends in criminality necessary for effective policymaking.
- *Encourage criminal justice initiatives that strengthen the reform process and enhance the rule of law.* International institutions are in a prime position to provide financial and technical support to facilitate the full implementation of the criminal justice reforms. We urge these institutions to invest resources in initiatives consistent with the reforms and other proposals that will further strengthen the rule of law in Paraguay.
- *Sponsor projects that professionalize the police and prison system, emphasizing accountability and commitment to the rule of law.* Effective criminal justice policymaking will be greatly enhanced by reductions in the levels of corruption in law enforcement institutions. The international community should invest in projects that emphasize accountability and transparency to address the corruption that has plagued the Paraguayan justice system since the Stroessner dictatorship.

SECURITY IN PARAGUAY

Perceptions of rising crime have cast a lengthening shadow over Paraguay in recent years. In this context, voices calling for hard-line policies to combat seemingly rampant criminality dominate the public security debate. Accordingly, highly visible and politically expedient measures such as increasing criminal sentences, encouraging repressive policing tactics, and revisiting provisions of the country's newly implemented criminal codes have been adopted hastily, with little attention to their effectiveness in responding to criminality or their consequences for fundamental rights. This report, researched and written by the Harvard Law School International Human Rights Clinic, and released jointly with the Universidad Columbia, seeks to gather available data and to add comparative research to the debate on crime and public policy in Paraguay. The report assesses the nature and causes of these problems, as well as the implications of several current and possible strategic responses in international perspective.

INTERNATIONAL HUMAN RIGHTS CLINIC

The International Human Rights Clinic of the Human Rights Program is a center for active engagement in human rights within a context of critical reflection. The Clinic fosters coursework and thoughtful practice in human rights, and forges cooperative links with organizations promoting social justice and the rule of law around the world.

UNIVERSIDAD COLUMBIA DEL PARAGUAY

Founded on June 1, 1943, the Universidad Columbia del Paraguay is an independent institution offering high-quality university-level education. Due to its persistent and unceasing efforts over the past sixty years, the university has become a premiere center for higher learning in the country. Among its other commitments is a long-standing tradition of participating in the development of the nation's public policy.