

**STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES  
OF THE DEFENSORÍA DEL PUEBLO DE PARAGUAY  
- November 2008 -**

**I. BACKGROUND**

At the April 2006 meeting of the ICC, it was agreed that members currently accredited with status A would have their accreditation renewed as part of a regular process of re-accreditation, commencing in October 2006 according to an agreed schedule. The Defensor del Pueblo of Paraguay is scheduled for a re-accreditation review in November 2008.

The Defensor first submitted its application for accreditation as a National Institution to the International Coordinating Committee of National Institutions (ICC) in 2003. At this time it was granted an "A" accreditation status.

The following sections provide background information on the Defensor del Pueblo of Paraguay (hereinafter Defensor) based on supporting documentation submitted by the Institution to the Secretariat of the ICC, in accordance with Article 3 of the ICC Rules of Procedure.

**II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION**

To permit the ICC to make a determination as to the compliance of the Defensor with the Paris Principles, the following documentation has been submitted by the Defensor in support of its application:

- ❖ National Constitution on the Republic of Paraguay;
- ❖ Organic law 631 of 1995 on the Defensoría del Pueblo;
- ❖ Budget of the Defensoría, List of staff and an organigram;
- ❖ 2007 Annual report; and
- ❖ Statement of compliance.

**III. CHARACTER OF THE NHRI**

**1. Establishment**

The Defensoría del Pueblo de Paraguay is established by the National Constitution of 1992 (hereinafter the Constitution) and in particular its section IV section1 articles 276 to 279. In addition it is regulated by the Organic Law 631 of 1995 (hereinafter the Law).

**2. Independence**

The Defensor is autonomous and un-movable (art. 277 of the Constitution and art. 1 of the law). The Defensor does neither receive instructions form the Government, nor from the executive power or any other power (statement of compliance). Conflicts of interest are avoided as the Constitution sets the mandates and functions of the Defensoría (statement of compliance).

The Defensor shall prepare a draft budget according to the Law regulating budgetary issues and shall present it to the Senate that will then include it in the Draft Budget to be presented to the executive power (Art. 28 of the Law). The Defensor is free to spend its budget (statement of compliance).

The Defensor and the Deputy Defensor shall request their political parties or political movements to suspend their affiliation while they are performing their mandate (Art. 30 of the Law).

**3. Appointments processes and organisational infrastructure**

**3.1. Composition of the NHRI's membership and appointment processes**

The Defensor is appointed by the majority of two thirds of the Chamber of Deputies (Congress), from a list proposed by the Senate. The Defensor is appointed for five years and his/her term in office has to coincide

with the legislative term of the Congress. The Defensor can be re-elected. The Senate has to prepare the list of candidates within 45 days after the beginning of the legislative term. From the list, the Members of Parliament shall appoint one person within the similar timeframe (Art. 4 of the Law). The statement of compliance also indicates that, within the current political situation, the agreement of at least three (3) parliamentary groups is necessary to elect the Defensor as none of the three groups on their own would reach the required two thirds of the votes.

The Defensor must have the same prerogatives as those requested to the Members of Parliament. He/she also has the same incompatibilities and immunities as the judges. Article 254 of the Constitution specifies that Judges can not exercise, during the term in office, any other public or private activity, paid or unpaid, except teaching or scientific research, nor can they engage in trade, industry or professional or political activity. They can not take positions in government agencies or private companies, political parties, associations or political movements. During its tenure he/she can not belong to any power of the State nor undertake any political activity (Art. 278 of the Constitution and art. 8 of the Law).

The Defensor can only be dismissed in the case of wrong doing in the implementation of his/her functions by a political trial<sup>1</sup> as contained in the Constitution (Art. 277 of the Constitution and art. 4 of the Law). The Defensor can only be dismissed for the following reasons (art. 5 of the Law):

1. resignation presented to the members of Parliament;
2. expiration of the mandate;
3. death or sudden factual incapacity declared by the Supreme Court of Justice;
4. be more than 75 years old;
5. by a political trial in the terms contained in the Constitution.

In the case of temporary or permanent absence of the Defensor, the Deputy Defensor is to replace him/her and until the end of the term of the Defensor had he/she stayed on the post (art. 6 of the Law).

In order to be eligible for the post of Defensor, the person must be of Paraguayan nationality, older than 25 years and be in full enjoyment of his/her civil and political rights (Art. 7 of the Law). The Defensor has a monthly salary that can not be higher than the one of a legislator (Art. 9 of the Law).

The Deputy Defensor is appointed using the same process and timeframe as the Defensor. He/she must meet the same requirements as the Defensor, is subject to the same incompatibilities and dismissal procedures and is to replace the Defensor and to support its work (Art. 11 of the Law).

The Defensor and the Deputy Defensor, when taking and when leaving their positions, must present to the Controlaría of the Republic an affidavit of their assets (Art. 29 of the Law).

### **3.2. Pluralism**

The selection process for the Defensor requires the Senate to launch a public announcement of the post for qualified candidates to apply for the post of Defensor. This announcement is done on written press of the capital Asunción. Candidatures can be channelled through organizations, entities, associations or any other group or directly by the candidate (statement of compliance). The founding laws are silent on the vacancy announcement process.

In order to ensure pluralism, the parliamentary groups are evaluating the possibility to create posts in the Budget Law for the Defensoría and leaving to the Defensor the appointment of persons against these posts (statement of compliance).

### **3.3. Organisational infrastructure**

#### **3.3.1. Organisational Structure**

---

<sup>1</sup> Article 225 of the Constitution refer to political trial as: "The President of the Republic, the vice President, the ministers of the executive power, ministers of the Supreme Court, the Attorney General, the Ombudsman, the Comptroller General of the Republic, the Deputy and the members of the High Court of Electoral Justice, may only be subject to impeachment by poor performance of their duties, for crimes committed in the exercise of their office or for ordinary crimes. The accusation has to be made by the Congress, by a two-thirds majority. It will be for the Senate, by an absolute majority of two thirds, to accuse in a public trial those accused by the Chamber of Deputies, and if, pleaded guilty, it can only separate them from their posts, in cases of alleged commission crimes, the case will be forwarded to the ordinary courts".

The Resolution 65/08 of 2008 establishes the organizational structure of the Defensoría. It has 12 departments:

1. The Defensor del Pueblo
2. The Deputy Defensor
3. The Executive Office
4. The institutional auditing department
5. The planning department
6. The operation in Asuncion department
7. The operation in the interior department
8. The legal department
9. The administration and financial department
10. The executive front office
11. The communications department
12. The inter-institutional relations department.

### **3.3.2. Staffing**

According to the documentation received, the Defensoría has 86 permanent staff and 57 externally hired staff. The statement on compliance indicates that are 16 additional civil servants have requested to work for the Defensoría and 6 other that are interns. All the departments are headed by women (statement of compliance).

The Defensor has the authority to hire its own staff. The limitation is imposed by the financial constraints (statement of compliance). The Defensor indicates that it requires additional staff (statement of compliance).

### **3.3.3. Regular meetings**

The statement of compliance indicates that the Defensoría is single headed but that regular meetings are held to share information and to program activities.

## **4. Relations with Civil Society and human rights institutions**

### **4.1. Formal Relationships with Civil Society**

The statement of compliance indicates that is has formal interaction with civil society when having joint activities or to support some activities undertaken by civil society. The Defensoría also channels their concerns to the Parliament and public administration (statement of compliance).

### **4.2. Regular Consultations**

The Defensoría hols regular meetings with other bodies addressing the rights of the child and adolescents, detention centres, persons with disabilities, retired persons, women and persons with limited resources (statement of compliance).

### **4.3. Cooperation with the United Nations, regional and national institutions**

The Defensoría has autonomy to engage with the United Nations or any other body. It has participated in the general assemblies of the Network of the Americas. It is also part of the Iberoamerican Federation of Ombudsmen (FIO) in its capacity as one of the Deputy Chairs (statement of compliance). In 2005 the Defensor was part of an OHCHR lead mission to Chile and Uruguay to establish an NHRI in these countries. The Defensoría has also undertaken a mission to Brazil with the same purpose and has participated in meetings with high ranking human rights authorities of Mercosur (statement of compliance).

The Defensoría del Pueblo has not actively participated in any of the United Nations Treaty Body sessions or in the work of the Special Procedure mandate holders.

## **5. Accessibility**

### **5.1. Procedures and mechanisms to ensure accessibility**

The Defensor may appoint departmental and municipal defensores (Art. 280 of the Constitution). In Asunción, the capital of the country, the Defensoría has its own building but in other places it had to build partnerships with other institutions in order to have physical space. It has 29 regional offices in the country (statement of compliance). The annual report (page 3) indicates that the NHRI has 10 offices in the capital Asunción. All the staff of the Defensoría speaks the two official languages of the country: Spanish and Guaraní (statement of compliance).

## **5.2. Procedures and mechanisms for addressing public opinion**

The Defensor can prepare and disseminate reports on human rights situations that, in his/her view, require immediate public attention (Art. 279 of the Constitution). The Defensoría does not have publications. It utilizes written press, radio and TV to address public opinion as well as its own webpage. It also publishes special report through the FIO publications (statement of compliance).

## **5.3. Working Groups**

The Defensoría regularly meets with other institution dealing with the rights of the child and adolescents and victims of dictatorship in Paraguay (statement of compliance). The Defensoría has nominated civil servants as “delegates of the Defensor del Pueblo” to receive complaints. In Asunción there are 16 delegates. For them the following departments were created: attending persons deprived of liberty, right to education and the rights of consumers, municipal and retirees issues, access to public administration, right to health, right to public services, indigenous people, children and adolescents, environment, migrants, labour rights, financial rights, women and human rights education (statement of compliance).

See also the section on regular consultations.

# **IV. COMPETENCE AND RESPONSIBILITIES**

## **6. General Jurisdiction and Functions**

### **6.1. Mandate to promote and protect human rights.**

The Defensor is a commissioner of the parliament whose mandate is to protect human rights, to channel the complaints from individuals and the profession of community interests. In any case he/she does not have a judicial or executive function (art. 276 of the Constitution and art. 2 and 3 of the Law). He/she can not dictate, modify or cancel any resolution emanating from public administration. He/she can not assume any competence of the Electoral Justice (Art. 3 of the Law).

The mandate and obligations of the Defensor are (Art. 279 of the Constitution and art. 10 of the Law):

1. Receive and investigate complaints for human rights violations as contained in the Constitution, international treaties and laws, even when these violations have been committed by persons while performing their official duties;
2. Request authorities at all levels, including the police and security forces in general, information to best implement the mandate of the Defensoría without the possibility to raise reservations against it. The Defensor may have access to places where such alleged human rights violation has taken place. He/she can also act on its own initiative;
3. Formulate public censorship for acts or behaviours against human rights;
4. Report annually on his/her work to the Chambers of the Congress (Parliament and Senate);
5. Prepare and disseminate reports on human rights situations that, in his/her view, require immediate public attention;
6. The other function contained in the Law.

The Law 631 (Art. 10) adds the following functions to the Defensor:

1. Denounce to the Public Ministry<sup>2</sup> human rights violations committed by persons while performing their official duties as well as those in their private capacity;
2. File an *Habeas Corpus* and request “amparo” without impeaching the rights that protect the claimant;
3. Act on its own initiative or at the request of a party for the protection of human rights, channelling the popular claims of individuals and protect the interests of the community;

---

<sup>2</sup> Article 266 of the Constitution states that “the Public Ministry represents society before the jurisdictional bodies of the State. It has administrative and functional autonomy. It is composed by the Attorney General of the State and the fiscal agents”. Article 268 of the Constitution describes the mandate of the Public Ministry.

4. Promote the actions aiming at the protection of dissipated interests<sup>3</sup> ;
5. Implement projects and programmes to disseminate and promote the knowledge and use of human rights and its protection mechanisms on its own or with the participation of governmental and non-governmental organizations;
6. Suggest the modification of norms and procedures of State bodies or the behaviour of its staff when they are violating the rights of individuals. It may also do so in order to improve the services provided by administration and the functioning of the State bodies;
7. Prepare the following reports:
  - a. Annual report where the number and type of complaints is to be reflected as well as those rejected and the reasons for rejecting these, the results of the investigations, the names of authorities or civil servants that did not justify their behaviour to the satisfaction of the NHRI or that may have obstructed its activities. This report is to be presented to the chambers of the congress at the beginning of the annual session;
  - b. Special reports to any of the Chambers of the Congress, when the Defensor deems it appropriate or is requested to do so on the basis of the seriousness and gravity of the case;
  - c. Individual report presented to the appellants, in order to communicate the result of a requested action;
  - d. Report for dissemination on the human rights situation in Paraguay.
8. Appoint and remove its staff, in conformity with the Internal Regulations and within the limits of the budget.

## **6.2. The mandate in practice**

The activities of the Defensor do not stop during the resting time of the Congress neither during the state of emergency (Art. 14 of the Law). The Defensoría addresses all human rights violations, not only those based on a claim, as it may also act on its own initiative (statement of compliance).

The Defensoría has a budget of 3'540'532'281 Paraguay Guarani (PYG) (equivalent to 911'117 US Dollars (USD)). According to the documents received, the budget is entirely dedicated to internal issues such as salaries, technical and professional services, and capacity building activities. No mention is made in the budget to any protection and promotion activities such as workshops, seminars, publications, campaigns, etc. (source: budget 2008 provided). In its statement of compliance, the Defensoría indicates that the salaries of the staff of the Defensoría is lower that for other civil servants with the same responsibilities in other public entities such as the Public Ministry or the Controlaría of the Republic.

## **6.3. Functions regarding national legislation**

Article 10 of the Law indicates that the Defensoría may "Suggest the modification of norms and procedures of State bodies or the behaviour of its staff when they are violating the rights of individuals". The Defensoría presents to the Legislative Power and administrative powers draft laws and recommendations to adopt laws or amendments existing laws on human rights (statement of compliance).

## **6.4. Encouraging ratification and implementation on international standards**

The founding laws are silent on this issue.

## **6.5. Programmes for teaching and research**

Within its mandate to promote human rights, the Defensoría addresses teaching and research on human rights through its staff that participate in courses, seminars, workshops and conferences for students and associations both from the capital and from the interior (statement of compliance).

## **6.6. General powers**

Please see the sections 6.1 on the mandate and 6.2 on the mandate in practice.

## **6.7. Power to gather information**

---

<sup>3</sup> Intereses difusos

The Defensor may request authorities at all levels, including the police and security forces in general, information to best undertake its mandate and without the possibility to raise reservations against it. The Defensor may have access to places where such alleged human rights violations have taken place. He/she can also act on its own initiative (Art. 279 of the Constitution).

When the Defensor has initiated an investigation, the negative or negligence of a person to submit the requested information to the Defensor will be considered as an obstruction to the function of the NHRI, and gives the right to the Defensor to send the case to the Public Ministry to initiate the appropriate legal proceeding (Art. 20 of the Law). Public Administration is obliged to cooperate with the Defensoría del Pueblo in its investigations. If an investigation undertaken by the Defensoría is obstructed, this may be considered as contempt and will carry sanctions provided in the penal law (Art. 21 of the Law). The Defensoría del Pueblo may summon officials and other persons involved in an investigation to provide relevant documents and information to the Defensoría (art. 23 of the Law). The heads of the concerned services can not prevent the officials within their service to cooperate with the requests of the Defensoría or they may face legal responsibilities (Art. 24 of the Law). If the Defensoría is denied access to a document considered secret, confidential or reserved, it will inform one of the Chambers of the Congress for measures to be taken (Art. 25 of the Law).

In the statement of compliance it is indicated that, in order to facilitate access to public information by the general public, the Defensoría has created Department for Accessing Public Information.

## **7. Quasi-jurisdictional competence**

The Defensor may initiate and develop, on its own initiative or at the request of a party, any investigation to clarify the acts of authorities that are violating human rights (Art. 12 of the Law). Any person, without limitations and without the need to exhaust previous instances, may request the Defensor to intervene (Art. 13 of the Law). When the complaints are referring to the administration of justice, the Defensor may guide them to the Supreme Court of Justice, to the Jury of the Trial for Judges and Public Ministry depending on the nature of the complaint for these bodies to intervene within the scope of their mandate and without prejudice to the other legal actions that may be taken (Art. 15 of the Law).

All complaints must be presented in a plain paper and do not require the assistance of a lawyer or any other formality. The complaint must contain the name and last name of the complainant, address, ID number, a description of the facts and the petition from the complainant. Complaints can also be filed orally by the complainant before the designated staff of the Defensoría that will put in writing the complaint and prepare a certificate of the filing of the complaint. Complaints must have the signature or digital signature of the complainant (Art. 16 of the Law). Filing a complaint at the Defensoría is free of charge (Art. 17 of the Law).

Once a complaint is filed at the Defensoría, it has to be accepted or rejected within 30 days. If rejected it has to be by a founded resolution. The Defensor may reject complaints when they are anonymous, are based on bad faith, are lacking fundament or there is no pretension. The decision of the Defensor can not be appealed (Art. 18 of the Law). If a complaint is admitted, the Defensor must initiate immediately an investigation to clarify the facts and, if applicable, initiate the necessary actions to provide remedy to the violated right (Art. 19 of the Law). With regard to the obligation to cooperate with the Defensoría, please also refer to section 6.7 of this summary. If the complaint refers to the conduct of a civil servant in the exercise of his/her duties, the Defensor has to notify the civil servant and the persons responsible for the institution he/she is working at (Art. 22 of the Law). When an intervention by the Defensor is made at the request of a Senator or Member of Parliament of a Legislative Commission, these will be informed of the result of the investigation (Art. 26 of the Law).

The Defensor has a timeframe of twenty five (25) days starting at the admission of the complaint to provide a final ruling (Art. 27 of the Law).

## **V. SUMMARY OF THE ANNUAL REPORT**

As part of the application file, the Defensoría del Pueblo of Paraguay presented its 2007 annual report. The annual report is mainly focused on describing the complaints received by the Defensoría. During the year 2007 it has received 3258 complaints. 1703 were filed in Asunción while 1555 were files in other parts of the country. 80 complaints were filed by the Defensoría on its own initiative. In addition several interventions such as mediation, advisory and monitoring of judicial trials have taken place during the year. The Defensoría also requested the compensation of 362 victims of dictatorship within the legal framework set by the law 838/1996. The analysis of the complaints received by the Defensoría indicates that the main rights

violated in Paraguay are: Civil rights (Rights to a fair trial, right to physical integrity, right to life, right to private property); social rights (Right to work, right to access public health services); special rights (rights of the child and adolescent); cultural rights and right to education.

The report also addresses the achievements of the Defensoría in monitoring the activities of public administration. In particular it addresses the administration of detention centres, the military and police administration, education administration, and health administration. The measures requested and the recommendations from the Defensor in these areas are also described in the annual report.

With regard to the promotion of human rights, the report contains a table enumerating the different courses and conferences offered by the staff of the Defensoría during the year 2007. It is followed by a description of the capacity building activities undertaken by the Defensoría. None of these activities refer to an interaction with the international or regional human rights mechanisms. The report also describes the partnerships and agreements signed by the Defensoría with different institutions such as IDEA, the faculty of Law, etc. The report describes the use of the budget, lists the staff and the publications in annexes.