



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

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Consideration of reports submitted by States parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Paraguay

1. The Committee on the Elimination of Racial Discrimination considered the initial report and the combined second and third periodic reports of Paraguay, submitted as a single document (CERD/C/PRY/1-3), at its 2094th and 2095th meetings (CERD/C/SR.2094 and 2095), held on 10 and 11 August 2011. At its 2117th meeting (CERD/C/SR.2117), held on 26 August 2011, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the reports and the common core document submitted by the State party, the verbal responses to its questions furnished by the Paraguayan delegation and the dialogue that has taken place between the Committee and the delegation. In view of the delay with which the combined initial report and second and third periodic reports were received, in future the Committee invites the State party to abide by the timetable established in the International Convention on the Elimination of All Forms of Racial Discrimination and the reporting guidelines prepared by the Committee.

3. The Committee applauds the active participation of representatives of civil society and their dedication to eliminating racial discrimination in the State party.

B. Positive aspects

4. The Committee takes note of the commitments made by the State party in the course of the universal periodic review conducted by the Human Rights Council and encourages the State party to comply with all of the recommendations that it has accepted.

5. The Committee is pleased to note that the amount budgeted for land purchases by the National Institute of Indigenous Affairs (INDI) was raised from US\$ 4 million to US\$ 22 million in 2011.
6. The Committee welcomes the firm commitment made by the delegation of the State party to comply with rulings handed down by international courts in cases involving indigenous peoples. The Committee commends the State party on its recent recognition of the Kelyenmagategma indigenous community's ownership rights to a portion of its ancestral territory and on the transfer of official title to that land following more than 10 years of litigation.
7. The Committee is gratified to learn of the creation of the Directorate-General for Indigenous Health under the Ministry of Health.

C. Concerns and recommendations

8. The Committee is concerned about the lack of sufficient reliable, disaggregated data on the demographic composition of the Paraguayan population, particularly in the case of indigenous peoples and Afro-descendent communities. Noting that the next national census is to be conducted in 2012, the Committee is concerned by the lack of information on the corresponding preparatory work, including such matters as the training to be provided to census-takers and communities, the methodological tools to be used to ensure that the principle of self-identification is respected, and the information provided and the consultations held regarding the design of census forms (art. 2, para. 1 (a) and (d)).

The Committee recommends that the State party, working in close cooperation at all stages of the process with the United Nations and with indigenous peoples and Afro-descendent communities, in particular, take the necessary steps to refine its census methodology and develop appropriate, reliable statistical tools for use in the 2012 census that are in keeping with the principle of self-identification. The Committee requests the State party to include disaggregated, up-to-date statistics in its next periodic report on the composition of the population and reminds it that such information is needed as a basis for the development of suitable public policies and programmes for sectors of the population subject to racial discrimination and for the evaluation of the application of the Convention in respect of the different groups that make up society.

9. The Committee observes with concern that no definition of the term "racial discrimination" is to be found in the State party's laws and that racial discrimination is not defined as an offence, as required under article 4, subparagraph (a), of the Convention. The Committee takes note of the detailed information provided by the delegation about an anti-discrimination bill but is concerned by its slow progress through the legislature (arts. 1; 2, para. 2; and 4, subpara. (a)).

The Committee encourages the State party to expedite the passage of the necessary legislation to prevent racism and discrimination, including the anti-discrimination bill, which sets forth a definition of racial discrimination that is in keeping with article 1 of the Convention and that defines the various manifestations of racial discrimination as a punishable offence in accordance with article 4 of the Convention. The Committee urges the State party to take into consideration its general recommendation No. 15 (1993) on article 4 of the Convention, which expressly states that all provisions of that article are of a mandatory character.

10. The Committee regrets that the State party's report does not provide precise statistics or information on the number of complaints, court proceedings or judgements concerning acts of racism in the country as outlined in article 4 of the Convention.

The Committee recommends that the State party provide an assessment in its next report of complaints, court proceedings and judgements in the country dealing with acts of racism. In this connection, the Committee invites the State party to take into consideration its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

11. While the Committee takes note of the information supplied about the special measures implemented in the State party to contribute to the advancement and protection of sectors of the population subject to racial discrimination, it is concerned about the segmentation of the labour market and the low level of representation of indigenous and Afro-descendent communities and other vulnerable groups in decision-making positions, in social participation mechanisms and in education. It is also concerned by the lack of information about how people make use of these special measures and about their impact or scope (arts. 2, para. 2, and 5).

The Committee encourages the State party to launch a campaign for the purpose of gathering information that can be used to evaluate the extent to which these special measures are designed and applied in ways suited to the needs of the communities concerned. It recommends that the State party undertake a study to determine what impact existing special measures have had on the target communities' enjoyment of their rights and that their implementation be monitored and evaluated on a regular basis. In this connection, the Committee invites the State party to take into consideration its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

12. While the Committee is appreciative of the fact that constitutional recognition has been extended to indigenous peoples, it is concerned that, in practice, the absence of a comprehensive policy for the protection of their rights and the existence of insufficient institutional capacity pose serious obstacles to indigenous peoples' full enjoyment of their rights. The situation of indigenous women is of particular concern to the Committee, as they are subject to multiple, intersectional forms of discrimination because of their ethnic origin, gender, occupational status and poverty. The Committee is also concerned about the failure to act upon the recommendations set forth in the report of the Truth, Justice and Reparations Commission concerning means of addressing persistent racial discrimination on the basis of time-bound objectives (arts. 2 and 5, subparas. (c), (d) and (e)).

The Committee recommends that the State party take the necessary steps, including legislative measures and the establishment of national budget allocations, to ensure equal rights for indigenous peoples. It further recommends that the State party redouble its efforts to implement the recommendations contained in the report of the Truth, Justice and Reparations Commission concerning ways of countering racial discrimination. The Committee invites the State party to take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for the purpose of reviewing its laws and its institutional structure for the implementation of policies concerning indigenous peoples. It also encourages the State party to accept advisory assistance and to agree to receive visits from experts, including the Special Rapporteur on the rights of indigenous peoples. The Committee also invites the State party to take into consideration its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

13. The Committee notes with concern that many children belonging to vulnerable groups are not registered or lack identity documents and do not receive basic services in respect of health care, nutrition, education or cultural activities (art. 5, subparas. (d) and (e)).

The Committee recommends that the State party take the necessary steps to register all children in its territory, particularly those residing in areas inhabited by indigenous peoples, while safeguarding and respecting their culture, and ensure that they receive the services required to promote their intellectual and physical development.

14. The Committee is concerned by the fact that INDI lacks institutional autonomy and functional authority over other departments and ministries of the State party and by the fact that, in the absence of a statutory mandate for full consultations with indigenous peoples, these peoples do not perceive the Institute as a body that represents them. The Committee is also concerned by the fact that indigenous peoples are not systematically provided with the relevant information or consulted beforehand with a view to obtaining their informed consent to decisions that have an impact on their rights. This is made evident by the recent INDI resolution on consultations which was directed to all governmental agencies (arts. 2 and 5, subpara. (d) (viii)).

The Committee recommends that the State party undertake an institutional assessment of INDI with a view to converting it into an autonomous institution that represents the country's indigenous peoples and equipping it with the appropriate authority and resources, as well as with a mandate that covers cases of racial discrimination. The Committee also recommends that the State party take the necessary steps to create an atmosphere of trust that will be conducive to dialogue with indigenous peoples and that it do what is necessary to ensure that indigenous peoples are effectively involved in decision-making processes in areas in which their rights could be affected, taking into consideration the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples.

15. While the Committee was interested to learn from the Paraguayan delegation that 45 per cent of the indigenous communities that do not yet have secure and definitive legal land titles will have been awarded such titles by the year 2020, it is concerned that the absence of an effective system for the recognition and restitution of land rights prevents indigenous communities from gaining access to their ancestral lands. Another source of concern is the State party's failure to undertake full investigations and action in response to threats and violence against some indigenous and Afro-descendent communities in connection with evictions from their lands (arts. 2, subparas. (c) and (d); 5, subpara. (d) (v) and (vi); and 6).

The Committee recommends that the State party adopt the necessary reforms, including legal and administrative measures, to ensure that the domestic justice system has effective and sufficient means of protecting indigenous and Afro-descendent communities' rights, including effective mechanisms for lodging complaints and claims concerning land, for bringing about the restitution of their lands and for fully recognizing their land rights in a coordinated and systematic manner. The Committee urges the State party to undertake a prompt and effective investigation into threats and incidents of violence, to identify and prosecute the persons responsible for them and to ensure that victims and their families have an effective remedy available to them.

16. While taking note of the State party's efforts to abolish servitude in the Chaco, the Committee reiterates its concern about the social and economic situation of the indigenous communities in that territory, which it has addressed under its early warning and urgent action procedure. The Committee is concerned by the continued practice of debt servitude, exploitation of child domestic workers (*criadazgo*) and violations of the human rights of members of indigenous communities in that territory (arts. 4 and 5).

The Committee recommends that the State party take urgent action to ensure that the indigenous communities of the Chaco are able to fully exercise their rights. It

recommends that the State party intensify its efforts to prevent, investigate and duly prosecute cases of forced labour and to guarantee that the communities concerned have access to justice. It also encourages the State party to establish a plan of action whose components include training for labour inspectors and initiatives for raising workers' and employers' awareness of the need to eradicate forced labour in the indigenous communities of the Chaco. The Committee further encourages the State party to continue to work with specialized agencies of the United Nations in this connection.

17. While noting with interest the information furnished by the State party on the situation of the Yakye Axa and Sawhoyamaxa indigenous communities, which the Committee addressed under its early warning and urgent action procedure, on the status of the Xamok Kasek community, and on the steps taken to date to partially comply with the judgements handed down by the Inter-American Court of Human Rights concerning these three communities, the Committee is concerned by the delay in executing the most important aspects of those judgements, particularly the restitution of these communities' ancestral lands. The Committee is also concerned by the fact that the Inter-Agency Commission for the Enforcement of International Judgements has no mandate to coordinate actions taken by the legislative and executive branches (arts. 2; 5, subpara. (d) (v) and (vi); and 6).

The Committee calls upon the State party to take, as a matter of urgency, the necessary steps to fully comply with the judgements of the Inter-American Court of Human Rights, in which it found for the Yakye Axa, Sawhoyamaxa and Xamok Kasek indigenous communities, and to do so in accordance with an established timetable. It further recommends that the Inter-Agency Commission for the Enforcement of International Judgements be strengthened so that it is able to coordinate the efforts of the different branches of government to fulfil the State party's obligations.

18. The Committee is concerned about the social and economic status of Paraguayans of African descent, the fact that they lack recognition and visibility, and the lack of social and educational indicators for this group, which hinders the State party from learning more about its members' situation and developing public policies to assist them. It is also concerned by the continued discrimination against Paraguayans of African descent in terms of access to public places and services simply because of who they are (arts. 2 and 5).

The Committee urges the State party to adopt the necessary measures, including the allocation of human and financial resources, to ensure that persons of African descent are able to exercise their rights. It invites the State party to put mechanisms in place in order to ensure that Afro-descendent communities participate in the design and approval of public policies and standards and in the implementation of projects that affect them and to do so in cooperation with these communities and the United Nations, particularly the Office of the United Nations High Commissioner. The Committee recommends that the State party work to ensure that access to public places and services is not made selective or limited on the basis of race or ethnic origin.

19. The Committee notes with interest that the State party is under a constitutional obligation to promote the Guaraní language, which is an official language, and the languages of other indigenous and minority groups and to undertake to provide intercultural, bilingual education. It is concerned, however, by the fact that Languages Act No. 4251 is not being fully implemented and by the lack of information on students' access to schooling in their mother tongue (art. 5, subparas. (a) and (e) (v)).

The Committee recommends that the State party implement Languages Act No. 4251 without delay and that it set a timetable and provide a suitable budget for this purpose, especially in connection with the use of the two official languages on an even footing in, inter alia, education, vocational training and the administration of justice. The Committee also recommends that, in the course of the State party's efforts to cultivate and reinforce the languages of indigenous and other minority groups, it take into consideration Expert Mechanism Advice No. 1 (2009) on the rights of indigenous peoples to education.

20. The Committee is gratified that the status of the Office of the Ombudsman is recognized in the Constitution and that the Department for Indigenous Peoples and the Department for Action against Discrimination have been established within it. The Committee is concerned, however, about the extent of the Office's institutional capacity and about the lack of knowledge in the State party about the Office's duties and the actions it takes to protect the rights of victims of racial discrimination. The Committee regrets that information is not available on what progress has been made in acting upon complaints of racial discrimination received by the Office of the Ombudsman or on the outcome of any action taken (arts. 6 and 7).

The Committee encourages the State party to take the necessary steps to strengthen the operational capacity of the Office of the Ombudsman and to see to it that the Office of the Ombudsman makes a stronger commitment to protecting the human rights of indigenous peoples and Afro-Paraguayan communities. It also recommends that the State party provide information in its next periodic report on the progress made in resolving cases of racial discrimination that have been brought to the attention of the Office of the Ombudsman.

21. The Committee notes with interest that a national action plan on human rights is being drawn up by all three branches of government in collaboration with the Office of the United Nations High Commissioner (art. 7).

The Committee encourages the State party to continue its work on a national action plan on human rights and to ensure that this is a participatory process that addresses the issue of racial discrimination and the subject of the rights of indigenous communities, the population of African descent and other national ethnic groups within Paraguayan society. Provision should be made for the inclusion of human rights indicators so that progress in implementing the national plan and its impact on these communities can be gauged. The Committee urges the State party to garner support for the plan at the national and departmental levels and to provide for appropriate allocations of human and financial resources for its implementation. It recommends that this plan be integrated with other mechanisms for the protection of human rights in the State party.

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to those international human rights instruments to which it is not yet a party, particularly those that have a direct bearing on the issue of racial discrimination, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Prevention and Punishment of the Crime of Genocide.

23. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the Convention into its domestic legislation, the State party bear in mind the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, together with the outcome document of the Durban Review Conference, held in Geneva in April 2009. The

Committee requests that the State party, in its next periodic report, include specific information on plans of action and other steps adopted in order to give effect to the Durban Declaration and Programme of Action at the national level. The Committee also recommends that the State party assign responsibility for addressing cases of racial discrimination to an autonomous institution and that it endow that institution with the necessary authority to monitor and support the implementation of the Durban Programme of Action at the national level.

24. The Committee recommends that the State party develop, carry out and publicize in the media an appropriate programme of activities to mark 2011 as the International Year for People of African Descent, as proclaimed by the General Assembly at its sixty-fourth session (resolution 64/169 of 18 December 2009).

25. The Committee takes note of the State party's position and recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention that were approved on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolution 61/148 of 19 December 2006 and resolution 63/243 of 24 December 2008, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

26. The Committee encourages the State party to consider the possibility of making the optional declaration provided for in article 14 of the Convention.

27. The Committee notes with appreciation that the State party makes its reports readily available to the public as soon as they are submitted and recommends that it ensure that the Committee's concluding observations are also publicized and disseminated in the official languages and other commonly used languages, as appropriate.

28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on the steps taken to act upon the recommendations contained in paragraphs 9, 16 and 17 above.

29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 14, 15, 18 and 19 and requests that it include detailed information in its next periodic report on the specific measures taken to implement them.

30. The Committee recommends that the State party submit its fourth through sixth periodic reports in a single document by 17 September 2014 and notes that, in preparing those reports, it should follow the specific guidelines adopted by the Committee on the Prevention of Racial Discrimination at its seventy-first session (CERD/C/2007/1) and should address all points raised in these concluding observations. The Committee urges the State party to observe the 40-page limit for treaty-specific reports and the 60–80 page limit for the common core document (see the harmonized guidelines on reporting contained in document HRI/GEN.2/Rev.6, paragraph 19).
