



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Ninetieth session

Summary record of the 2458th meeting*

Held at the Palais Wilson, Geneva, on Monday, 8 August 2016, at 3 p.m.

Chair: Ms. Crickley

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* No summary record was issued for the 2457th meeting.

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The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined fourth to sixth periodic reports of Paraguay (CERD/C/PRY/4-6; CERD/C/PRY/Q/4-6)

1. *At the invitation of the Chair, the delegation of Paraguay took places at the Committee table.*
2. **Mr. Cárdenas** (Paraguay), introducing the State party's report (CERD/C/PRY/4-6), said that Paraguay was a multicultural, pluri-ethnic country that acknowledged that indigenous peoples had been present prior to the formation of the Paraguayan State. The country's 19 indigenous ethnicities were grouped into five linguistic families, with Guarani having official language status alongside Spanish since 1992. There were also Afro-Paraguayan communities and communities of immigrants from around the world. Discrimination was prohibited under the Constitution and the State had an obligation to eliminate any impediments to the enjoyment of full equality by all.
3. As a result of economic growth over the past decade, poverty had fallen and prosperity had increased, with the proportion of Paraguayans living on less than US\$ 4 per day falling from 35.1 per cent in 2009 to 22.5 per cent in 2015. However, major challenges remained in overcoming social inequalities, in particular how to maintain the benefits of growth in a complex international context.
4. Paraguay had made significant progress in increasing transparency and combating corruption, consolidating democracy and building institutions. The National Human Rights Plan was being linked to the National Development Plan 2030 in an effort to strengthen coordination and consolidate efforts to protect and promote human rights, in particular for vulnerable groups.
5. The national population and housing census of indigenous peoples conducted in 2012 recorded an indigenous population of 117,150, which represented 1.8 per cent of the total population; the country's 711 indigenous localities were spread across 13 of its 17 departments. The National Institute of Indigenous Affairs (INDI) had launched a campaign to register members of indigenous communities and issue them with national identity cards so that they could better exercise their rights as citizens, enjoy access to social and economic services and exercise their right to vote.
6. Since 2015, the establishment of integrated health-service networks had been promoted with a view to achieving universal access to and coverage of health-care services. The 795 family health units located around the country gave priority to the most vulnerable families; 168 of those units included indigenous communities in their catchment areas and thus served 17,674 indigenous families, for a total of 76,953 indigenous persons covered. The units provided services in such areas as immunizations, food and nutrition, sexual and reproductive health, disease prevention and health promotion.
7. The National Indigenous Health Policy provided the policy framework for health-care coverage of indigenous peoples under a rights-based approach; it had been drafted with input from representatives of indigenous peoples and civil society organizations. The newly adopted Indigenous Peoples Health Act had created a health system that took account of cultural specificities and traditional medical knowledge and practices. The Act also established a number of national-level bodies to ensure access for this sector of the population, and its implementing legislation was being prepared jointly with elected representatives from each of the indigenous groups.

8. Significant progress had been made in the educational and cultural spheres, including in preserving cultural diversity and heritage through the development of educational materials in the native languages of indigenous children. Schools had been opened in 501 indigenous communities, with a full one half of the 1,800 teachers coming from different indigenous groups. Legislation had been enacted to give indigenous peoples preferential access to tertiary education, and INDI offered monthly stipends for indigenous young people to be able to continue on to higher education; 326 students had received such support in 2016. The National Council for Culture, which included representatives from indigenous groups and public institutions, was actively engaged in the promotion and protection of culture. In addition, a university-level degree programme in multilingual intercultural education had been created, and the State was actively seeking to document and revive the country's native indigenous languages with a view to their preservation.

9. With regard to housing, over 1,600 units had been assigned in 2015 and an additional 1,500 would be handed over in 2016, meaning that around 16,000 persons enjoyed the right of access to housing.

10. Measures to ensure access to safe drinking water had included repairing existing infrastructure and building new systems for water collection, treatment and distribution in the west of the country and increasing access to water in the east. A new water supply system would transport drinking water from the north of the Chaco region to some 70 indigenous communities in the region's central area.

11. In 2013, the Government had expanded its Tekoporã social protection programme to include conditional cash transfers for indigenous families; programme coverage had risen from 3 per cent of the indigenous population in 2013 to 68 per cent in 2016. Other targeted government programmes provided support to the indigenous population through housing assistance for migrants to cities; financing for community-managed projects to build schools, health clinics and community centres; and promotion of sustainable income-generating activities with a fair trade approach, such as honey production, fisheries and farm produce.

12. With regard to access to justice, guidelines had been issued for harmonizing the State and indigenous criminal justice systems, and the Supreme Court of Justice had endorsed the Brasilia rules on access to justice for vulnerable groups. In 2014, a unit had been created within the Public Defence Service to provide specialized advice on indigenous legal affairs. Formal legislation was being prepared on consultation and free, prior and informed consent, but many State institutions had already adopted protocols to ensure this right.

13. Priority attention had been given to the Ayoreo indigenous community, which lived in voluntary isolation: a health clinic had been opened, a health promoter had been hired from the community and the Tekoporã programme had been extended to include women heads of household, with programme coverage currently standing at 60 per cent of the community. Under a joint project involving INDI and the private sector, the locality of Chaidi now had electricity in residents' homes, which would make it possible for a water supply system to be installed before the end of 2016. With regard to compliance with precautionary measure No. 54/13 of the Inter-American Commission on Human Rights, the State party was currently in discussions with stakeholders with a view to reaching a friendly settlement.

14. The 2012 census had recorded 3,867 persons of African descent — 2,045 men and 1,822 women — who, although fully integrated into Paraguayan society, maintained a strong sense of cultural identity. In 2014, the Secretariat for Social Action had signed an agreement with two organizations representing the Afro-Paraguayan community to carry out joint action to improve their quality of life; and, under the PROPAÍS social investment

programme, the Kamba Cuá community had received support for neighbourhood improvement projects and workshops in preserving cultural identity.

15. **Mr. Avtonomov** (Country Rapporteur), commending the State party's efforts to preserve the Guarani language and promote bilingualism, said that, although the country's indigenous communities constituted a relatively small percentage of the total population, preserving their traditions and culture was important for the whole of humanity. He also wished to commend the easy-to-understand methodology used by the State party to prepare and organize its periodic report, in which information on new developments was clearly separated from information provided in follow-up to the Committee's previous concluding observations (CERD/C/PRY/CO/1-3).

16. At the same time, he was concerned about the lack of information on civil society's contribution to the report and asked whether the State party had engaged in dialogue with NGOs when drafting the report and preparing for the dialogue with the Committee. He invited the delegation to clarify the State party's position regarding the possibility of recognizing the Committee's competence to receive communications. Did it envisage making the optional declaration called for under article 14 in the near future, and, if not, what were the obstacles? He also urged the State party to ratify the amendment to article 8 of the Convention, which, once adopted, would greatly facilitate management of the Committee's funds without imposing new obligations on States parties.

17. Turning to application of the Convention, he noted that the State party's failure to incorporate in national legislation a definition of racial discrimination in line with article 1 continued to impede full implementation. He encouraged the State party to address that lacuna as a matter of urgency. He had been interested to learn that the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations had examined the State party's application of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and that, in April 2013, INDI and the Ombudsman's Office had submitted a bill on the right to consultation to the legislature. Noting that the report referred to the adoption of a protocol for consultation with indigenous peoples but made no mention of a law, and, furthermore, that, according to NGO sources, the protocol had been discussed neither with civil society nor with the indigenous communities themselves, he asked what had become of that bill and whether a law was still in the pipeline. He would also like details of the principles set out in the guidelines for public servants working with indigenous communities that had been published by INDI with support from United Nations agencies.

18. He would appreciate an update on the current status of indigenous peoples' ancestral lands; sources indicated that some had still not been formally delimited and registered and that land titles providing protection against occupation and exploitation had not yet been issued to certain communities. Since the report suggested that, in some cases, and especially in the Chaco region, not all problems had been resolved even once land titles had been issued, he urged the State party to complete the process in order to ensure comprehensive support and protection for all communities. He would like to know whether land titles could be registered on behalf of those indigenous communities who lived in voluntary isolation; if not, an alternative mechanism was required to ensure that their rights were protected in the same manner. He would also like information about the outcome of investigations into reported acts of persecution against Carlos Marecos, an indigenous community leader; about alleged police interventions affecting the Ayoreo people, who, as a community in voluntary isolation or initial contact, were particularly vulnerable, as reported to the Committee by Amnesty International in October 2015; and about the action taken to ensure full compliance with the three rulings of the Inter-American Court of Human Rights concerning the rights of indigenous peoples in Paraguay.

19. Noting that the State party's common core document (HRI/CORE/PRY/2016) provided ample information about the indigenous population but made no mention of other minority groups, such as persons of African descent and the small Roma community, who might also be vulnerable to discrimination and poverty, he said that he would appreciate comprehensive, disaggregated statistics for the population of Paraguay as a whole, including details of both established minority groups and any new migratory flows into Paraguay. Was the country currently receiving immigrants from neighbouring countries such as Argentina, the Plurinational State of Bolivia, Brazil or Chile, or perhaps from further afield, including, for example, from Africa? Noting lastly that, although the State party had provided useful information about its efforts to ensure access to safe drinking water, some villages and areas still did not enjoy such access, he asked what was being done to ensure full compliance with general comment No. 15 of the Committee on Economic, Social and Cultural Rights on the right to water.

The meeting was suspended at 3.15 p.m. and resumed at 3.25 p.m.

20. **Mr. Kut**, recalling that in paragraph 28 of the Committee's previous concluding observations, the Committee had asked the State party to provide, within one year, information on the steps taken to act upon the recommendations contained in paragraph 9, concerning the lack of a legal definition of the term "racial discrimination", paragraph 16, concerning the situation of indigenous communities in the Chaco, and paragraph 17, concerning the rulings of the Inter-American Court of Human Rights, said that, according to the Committee's records, the follow-up information requested had not been received. Although the head of delegation had addressed those issues in his introductory statement, he wondered what had prevented the State party from providing the information sought in a timely manner.

21. **Mr. Calí Tzay** asked the delegation to respond to claims that the periodic report had not been subject to consultations and that indigenous organizations had only been invited to a presentation on the report after its completion. He said that it was regrettable that Paraguayan legislation did not define or penalize racial discrimination, and that the judgment recognizing the historical debt of the State of Paraguay in the Itaipú case in 2013 had been repealed. He asked the State party to comment on reports that indigenous representatives had found it difficult to attend consultations on the health-related legislation because of a lack of financial support from the Government. The State party should also provide data on indigenous persons in prison and their offences, as well as clarification on the draft document on consultation and free, prior and informed consent that was being developed by INDI.

22. He lamented that contact was being forced with the Ayoreo Totobiegosode community living in voluntary isolation in order to continue logging in its forests, despite the protective measures issued by the Inter-American Court of Human Rights, and that its land was illegally controlled by the Brazilian company Yaguareté Porã. Regarding indigenous persons living in urban areas, he asked what measures the State party was taking to address workplace discrimination against such individuals, combat the sexual exploitation of indigenous women and children, and improve living conditions. Information would also be appreciated on the labour market sectors in which indigenous persons were working; whether there were government plans to provide support for indigenous persons seeking employment; and whether any legislation was in place to protect those individuals against unfair treatment, harassment or unsanitary conditions in the workplace.

23. **Mr. Bossuyt**, recalling that racial discrimination was not limited to indigenous populations, who had been the main focus of the periodic report, said that he hoped the State party would strengthen its efforts to ensure that all individuals were registered and issued with an identity card. The Committee would welcome an explanation of the reference in the periodic report to indigenous persons who "lived in their own home", and

of why legal personality was an essential requirement for indigenous communities to claim other collective rights. He asked the State party to clarify why the role of the Supreme Court of Justice went far beyond the normal role of a court of justice, and why the draft legislation prohibiting discrimination had been rejected. He also requested additional information on the content, aim, and resulting rights and obligations of the Languages Act No. 4251/10, and called on the State party to ratify article 8 of the Convention and to make the declaration under article 14.

24. **Ms. Shepherd** asked the State party to provide the Committee with the percentages for each ethnic group within the indigenous population. She wished to know to what extent INDI represented indigenous peoples, whether the non-indigenous and non-Afro-descendent population was homogeneous, and how the State party had ensured that ethnic minorities benefited from the recent economic growth experienced by Paraguay.

25. Noting that the periodic report only contained a short paragraph on persons of African descent, she said that further information on the group would be welcome. It would be useful to have additional details on the neighbourhood improvement component of the PROPAÍS II programme implemented by the Secretariat for Social Action. With regard to article 5 of the Convention, she asked what the current situation was for persons of African descent with respect to access to housing, health care, education and training, and in what sectors of the labour market they were present. She also wished to know whether persons of African descent were subject to racial discrimination, as defined in article 1 of the Convention, whether there had been cases of racial profiling of such persons by the media and the police, and what had happened in such cases in terms of access to justice. Concerning the prohibition on discriminatory advertisements and publications, it would be useful to learn how article 14 of the Criminal Code was being implemented in practice, whether any cases had been reported and, if so, what action had been taken. What percentage of the prison population was of African descent and for what offences had those individuals been convicted?

26. **Mr. Marugán** said that he failed to understand how the reference in the periodic report to article 223 of the Criminal Code, which prohibited insults against individuals on account of their beliefs in public, at a meeting or in publications, was relevant to the Committee's previous concluding observations. Furthermore, the periodic report did not provide any information on the number of complaints, court proceedings or judgments concerning acts of racism, as had been requested in the concluding observations. The Committee would welcome details of how the State party was improving the complaints system.

27. He asked how the State party had addressed the issue of the lack of institutional autonomy at INDI, and requested up-to-date information on its budget and staffing, as the Committee had been informed that the budget of INDI had been drastically reduced in the last year. He also wished to know how land registration worked in the country and what legal protection was available with regard to land titles. It would be pertinent to know how many indigenous civil servants were employed in the national executive branch, the police force and the judiciary, and how those figures had changed in the past 10 years. Information on the budget and staffing of the Ombudsman's Office and other human rights institutions would be appreciated. He enquired how land was distributed in the country, in what way such distribution had improved in the past decade, and how the State party levied taxes on companies that might be polluting indigenous lands. Further information would be appreciated on how the State party was addressing the precarious situation of indigenous populations living on the roadside, and on the discrepancies observed in the amount of land returned to indigenous communities.

28. **Ms. Hohoueto** asked the delegation for information on the role and function of the Human Rights Network of the executive branch. She also wished to know how indigenous

communities living in voluntary isolation would be integrated into development policies and programmes, given that they had not been included in the latest census, and what special measures had been taken to prevent the disappearance of such groups. Several of the affirmative actions, such as the issuing of ethnic identity cards, gave cause for concern, as singling out ethnic groups could result in discrimination on the grounds of ethnic origin.

29. She enquired whether the Standing Advisory Committee on Indigenous Peoples in the Senate comprised any indigenous representatives, and if so, how they were appointed. The Committee would like to know whether INDI had the financial, material and human resources to carry out its function of developing and implementing policies and programmes, and what share of the State budget was allocated to the Institute. Regarding the Tekoporã programme, why was priority given to indigenous families living in the Chaco, when the majority of indigenous communities lived in the eastern region?

30. While the periodic report stated that indigenous communities enjoyed legal personality and that their rights were represented by the Public Prosecution Service, it did not mention whether legal assistance was provided for individuals from such communities. Furthermore, it contained no judicial data on the filing and processing of complaints, the prison situation, or domestic courts other than the Supreme Court of Justice. She therefore requested the delegation to provide information in that regard.

31. **Mr. Murillo Martínez** said that the core document did not acknowledge persons of African descent and therefore needed to be updated to reflect the full ethnic composition of the country. The affirmative actions against discrimination listed in the periodic report did not correspond with the scope of the special measures referred to in the Convention. He asked what the impact had been of the tax exemption measures for indigenous communities, and pointed out that no regulations were needed for prior consultation, provided that indigenous communities and stakeholders were sufficiently represented and that the consultations were held in good faith. It would be useful for the Committee to know how many prior consultations had been conducted, and whether they had been subject to any assessments.

32. He enquired what the status of customary law was within domestic law, and whether the Public Defence Service took into account, in the context of prison monitoring, the scope of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The education situation of indigenous peoples, among whom there was a high rate of illiteracy and limited access to educational establishments, was concerning. With regard to land ownership, he would like to know what plans were being developed to return the remaining land owed to indigenous populations.

33. **Ms. Mohamed** said that it would be useful to hear more about the circumstances in which the two chambers of the Congress may decide to convene extraordinary sessions under article 184 of the Constitution. She asked how the State party guaranteed access to justice for persons of African descent who had suffered racial discrimination; the right to freedom of association, the right to vote and sexual and reproductive rights for women of African descent; and access to education for children of African descent. She would also appreciate further information on the specific characteristics distinguishing female-headed households from male-headed households referred to in paragraph 10 of the common core document.

34. **Mr. Yeung Sik Yuen** said that he had been alarmed to learn that, according to the 2012 census of indigenous peoples, 11.3 per cent of the indigenous population had at least one type of disability. He asked whether the proportion of persons with a disability was as high within other ethnic groups and whether, in Paraguay, indigenous peoples tended to live in unsanitary and precarious conditions. He also wished to know about the dimensions of the dwellings constructed for indigenous peoples under the Original Peoples programme,

the value of the subsidies awarded by the National Housing Fund for the construction of such dwellings and the total proportion of the State budget allocated to housing. It would also be helpful to know whether health care was free in Paraguay and, if not, whether it was generally affordable. Lastly, he enquired as to the impact of the Sowing Opportunities poverty reduction strategy on the country's indigenous population.

35. **Mr. Lindgren Alves** asked whether the data collected as part of the 2012 census of indigenous peoples, according to which indigenous peoples accounted for only 1.8 per cent of the Paraguayan population, were based on self-identification. He noted with satisfaction that Guarani was one of the country's two official languages and that it was used as a working language during plenary sessions of the Parliament of the Southern Common Market (MERCOSUR).

36. Surprisingly, the State party's report had focused almost exclusively on the situation of indigenous peoples and made only scant reference to that of persons of African descent, despite the fact that they, too, were vulnerable to racial discrimination. He asked whether there were other population groups that were vulnerable to racial discrimination in Paraguayan society on account of their descent or origin.

37. The fact that Paraguay had co-sponsored Human Rights Council resolution 30/25 on promoting international cooperation to support national human rights follow-up systems stood as a testament to the country's commitment to acting upon the recommendations made by that body. However, that commitment did little to change the fact that the violation of indigenous peoples' rights by the State party continued to be the subject of many international complaints and cases before the Inter-American Court of Human Rights and that the bill intended to create a ministry for indigenous people's affairs that was currently before the Congress had still not been passed. Given the undeniable need for such a ministry, he would appreciate an update on the status of the aforementioned bill.

38. **Ms. Li Yandan**, noting that, according to article 137 of the Constitution, the treaties, conventions and international agreements approved and ratified by Paraguay, as well as the laws enacted by the Congress and other duly approved legal provisions of lesser rank, were part of the country's domestic legal framework, asked whether, consequently, the Convention could be directly invoked before the national courts and administrative tribunals without the need to adopt enabling legislation.

39. **Mr. Khalaf** said that, as the State party had no comprehensive law to combat racial discrimination, it was all the more important for the Committee to understand the hierarchical rank of the Convention in its domestic legal framework and whether it was directly applicable. He asked whether judges drew upon the provisions of the Convention when ruling on cases involving racial discrimination and whether the State party planned to adopt a comprehensive law to combat and punish racial discrimination that incorporated the definition of that phenomenon contained in article 1 of the Convention. He also wished to know why the Congress had rejected a bill intended to fill that legislative lacuna in 2014 and how the State party planned to fulfil its obligations under the Convention in the wake of that decision.

40. The information at the Committee's disposal pointed to marked inequalities in the area of landownership. He asked whether the State party planned to issue land titles to indigenous peoples who had been living on their ancestral lands prior to the establishment of the Paraguayan State but who still did not own them. It would also be useful to know whether the State party held prior consultations with and sought prior consent from indigenous peoples who were already in possession of a land title before proceeding to expropriate their land for large-scale public and private investment projects and whether those peoples were provided with compensation that would ensure their continued survival. He would also be interested to learn of the obstacles preventing the State party from giving

effect to the judgments handed down by the Inter-American Court of Human Rights in numerous cases involving the violation of the right of indigenous peoples to landownership. He asked whether an investigation had been launched into the death threats made against the indigenous rights defender Carlos Marecos, whose community had won its legal battle to return to its ancestral land, and, if so, what stage had been reached in that investigation. Lastly, he would appreciate an overview of the general measures taken to empower indigenous peoples and to involve them in decision-making processes.

41. **Ms. Hohoueto** said that the Committee needed to receive information on all the ethnic minority groups living in Paraguay, not just on indigenous communities, in order to gain a clearer understanding of the prevalence of racial discrimination in the country. She asked whether consultations on how best to give effect to the judgments handed down by the Inter-American Court of Human Rights were under way and why certain indigenous languages had been excluded from the list of languages contained in the 2012 census of indigenous peoples.

42. **Mr. Calí Tzay** asked what progress had been made in setting up mechanisms to facilitate the participation of indigenous peoples in the drafting of legislation affecting their interests, such as that regulating the acquisition of ancestral lands and activities causing deforestation in those lands, such as logging. He would also like to know what steps the State party had taken to give effect to the judgments handed down by the Inter-American Court of Human Rights in cases concerning the granting of land titles and to protect the collective ownership of ancestral lands in view of the frequent incursion of private entities into those lands. It would be helpful to hear more about the mandate of the Ombudsman and the proposed budget of the ministry for indigenous peoples' affairs.

43. **Mr. Avtonomov**, noting that the Indigenous Peoples Health Act was already in force, asked whether the State party had noted any positive developments in the health-care situation of indigenous communities following its enactment. Despite the efforts undertaken by the State party to combat extreme poverty, it seemed that the majority of indigenous families still had no access to drinking water or other essential services. Given that some 40 per cent of indigenous children suffered from chronic malnutrition, he would like to know more about the State party's strategy to address that deplorable situation.

44. He asked whether there was a mechanism in place for coordinating the efforts of the different governmental bodies responsible for indigenous affairs to give effect to measures intended to improve the situation of indigenous groups and whether indigenous groups themselves were involved in that process.

45. The Committee had received reports that persons of African descent and members of indigenous communities were often unable to access justice on an equal footing with the rest of the population. He invited the delegation to comment on those reports and to explain the obstacles that might account for such discriminatory treatment. Noting that customary law was recognized and could be used to resolve certain criminal matters, he wished to know whether it could also be used to resolve civil matters. Although it was preferable for indigenous peoples to settle disputes within their own communities, some disputes were better resolved within the formal justice system.

46. **The Chair** said that she would appreciate an update on the situation of the human rights defender Julia Cabello, who had been subjected to an administrative inquiry in Paraguay. She would also like to know more about how the State party guaranteed the active participation in Paraguayan society of women from groups vulnerable to racial discrimination. Due to time constraints, she invited the State party delegation to begin replying to the questions posed at the following meeting.

The meeting rose at 5.45 p.m.