



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined fourth to sixth periodic reports of Paraguay\*

1. The Committee considered the combined fourth to sixth periodic reports of Paraguay (CERD/C/PRY/4-6) at its 2458th and 2459th meetings (CERD/C/SR.2458 and SR.2459), held on 8 and 9 August 2016. At its 2477th and 2478th meetings, held on 22 August 2016, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the combined fourth to sixth periodic reports of the State party and expresses its appreciation for the open and constructive dialogue held with the high-level delegation of the State party and for the additional information provided after the dialogue.

#### B. Positive aspects

3. The Committee welcomes the State party's ratification of the 1961 Convention on the Reduction of Statelessness, on 6 June 2012, and of the 1954 Convention relating to the Status of Stateless Persons, on 1 July 2014.

4. The Committee also welcomes the legislative and institutional measures adopted by the State party during the period under review, in particular:

(a) The adoption of Act No. 5469/2015 on Indigenous Peoples Health, promulgated on 7 September 2015, which established the National Directorate for Indigenous Peoples Health and the National Council for Indigenous Peoples Health;

(b) The establishment of the National Council for Indigenous Peoples Education, in July 2016;

(c) The establishment, in 2014, of the system for monitoring the implementation of international recommendations issued by human rights bodies.

5. The Committee notes with satisfaction that the State party has extended an open, standing invitation for special procedures mandate holders of the Human Rights Council to

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\* Adopted by the Committee at its ninetieth session (2-26 August 2016).



visit the country. In that connection, the Committee welcomes the visit made by the Special Rapporteur on the rights of indigenous peoples in November 2014 and encourages the State party to ensure that all the recommendations contained in her report are duly implemented (A/HRC/30/41/Add.1, paras. 78-92).

6. The Committee commends the relationship of close cooperation that the State party has established with the Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights.

## **C. Subjects of concern and recommendations**

### **Demographic composition of the population**

7. While the Committee welcomes the information provided by the State party with regard to the national housing and population census conducted in 2012, it regrets that the information did not appropriately reflect the demographic composition of the State party's population and did not make reference to any human rights or socioeconomic indicators that could be used for assessing the progress made towards full realization of the rights set forth in the Convention. The Committee also regrets that the State party did not provide reliable disaggregated data on the Afro-Paraguayan population; as a result, it was not possible to fully assess that group's situation (art. 2 (1)).

8. **Recalling its general recommendation No. 4 (1973) concerning reporting by States parties (art. 1 of the Convention), with regard to the demographic composition of the population, and its previous recommendation (CERD/C/PRY/CO/1-3, para. 9), the Committee urges the State party to collect and provide to the Committee reliable, up-to-date and complete statistical data on the demographic composition of the population, in particular on the Afro-Paraguayan population, as well as human rights and socioeconomic indicators, broken down by ethnic origin, gender, age, region and location (urban vs. rural, including coverage of the country's remotest areas). The Committee wishes to remind the State party that this information is crucial for formulating public policies and programmes intended to protect vulnerable groups from racial discrimination and for assessing implementation of the Convention vis-à-vis the different groups in society.**

### **Structural discrimination**

9. The Committee is concerned by the ongoing structural discrimination against indigenous peoples and by the discrimination against and invisibility of Afro-Paraguayans, as seen in the gap between these groups' exercise of their human rights and the rest of the population (arts. 1, 2 and 5).

10. **The Committee recommends that the State party adopt a comprehensive national policy to combat racism and racial discrimination that promotes social inclusion and seeks to reduce the high levels of inequality and poverty prevalent among indigenous peoples and Afro-Paraguayan men and women. Bearing in mind its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee calls on the State party to take special affirmative action measures to eliminate structural discrimination against indigenous peoples and Afro-Paraguayans. In view of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee also recommends that the State party adopt a plan to acknowledge the Afro-Paraguayan population and give it greater visibility.**

### **Definition of racial discrimination**

11. The Committee remains concerned that the State party has not yet defined racial discrimination in the terms set forth in article 1 of the Convention and regrets that the Congress did not pass into law the bill on the prohibition of all forms of discrimination. The Committee notes with concern that neither acts of racial discrimination nor the acts listed in article 4 of the Convention have been defined in the State party's criminal legislation (arts. 1 (1) and 4).

12. **Bearing in mind its general recommendation No. 14 (1993) on article 1 (1) of the Convention, the Committee reiterates its previous recommendation (CERD/C/PRY/CO/1-3, para. 9) and urges the State party to expedite the adoption of legislation to prevent racism and racial discrimination that incorporates a definition of racial discrimination which encompasses all the elements under article 1 (1) of the Convention as well as acts of direct and indirect discrimination in all spheres of the law and of public life. In the light of its general recommendations No. 7 (1985) on the implementation of article 4 of the Convention and No. 15 (1993) on article 4 of the Convention, the Committee urges the State party to establish as offences all acts of racial discrimination and the acts described in article 4 of the Convention, taking into account general recommendation No. 35 (2013) on combating racist hate speech. In addition, it recommends that the State party ensure that race-related motivations be considered an aggravating circumstance when deciding on penalties for an offence.**

### **Office of the Ombudsman**

13. The Committee is concerned that no new Ombudsman has been named since 2008, when the incumbent's term came to an end. This undermines the independence, legitimacy and effectiveness of the State party's national human rights institution. The Committee also notes with concern that the Office of the Ombudsman has been placed in suspended accreditation status by the Global Alliance of National Human Rights Institutions (formerly the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights ) (art. 2 (1)).

14. **The Committee urges the State party to take immediate action to name an Ombudsman through a selection and appointment process that is transparent and participatory and in which the guiding principles are merit, ability and integrity. The Committee recommends that the State party adopt the legislative and administrative measures needed to ensure that the Office of the Ombudsman fully complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### **National Institute of Indigenous Affairs**

15. The Committee regrets that the State party has not taken the necessary steps to ensure the representation of indigenous peoples in the National Institute of Indigenous Affairs or to strengthen that body's institutional autonomy. In addition, it notes with concern that there has been a significant drop in the budget allocated to the Institute, which limits its ability to carry out its mandate effectively (art. 2 (1)).

16. **In the light of its previous recommendation (CERD/C/PRY/CO/1-3, para. 14), the Committee urges the State party to take all necessary steps to make the National Institute of Indigenous Affairs an autonomous body that represents indigenous peoples and has sufficient authority to formulate and coordinate all public policy relating to indigenous peoples. In addition, it recommends that the State party ensure that the Institute has adequate material, financial, technical and human resources to effectively carry out its tasks.**

**Prior consultation**

17. The Committee takes note of the information that the delegation provided during the dialogue with regard to the planned presentation, in the near future, of draft legislation on prior consultation and to the exercise of the right to prior consultation under the Secretariat for Social Action's protocol on providing services to indigenous communities. The foregoing notwithstanding, the Committee is concerned that prior consultation is not undertaken routinely, which means that indigenous peoples' right to prior consultation with a view to securing their free, prior and informed consent is not always respected in processes involving decisions that could affect them. The Committee notes with concern that environmental permits are reportedly being issued for farming, lumbering and oil prospecting activities without any prior consultation with the indigenous communities concerned (arts. 2 and 5).

18. **Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party:**

(a) **To launch a broad process of consultation and participation with indigenous peoples on the draft legislation on prior consultation, ensuring that it complies with international standards, in particular International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples;**

(b) **To take appropriate steps to ensure that, with a view to securing free, prior and informed consent, prior consultations are carried out systematically, in good faith, in a timely fashion and with the appropriate information being provided to the indigenous peoples concerned, while respecting the traditions and cultural characteristics of each people;**

(c) **To ensure that all projects for development or exploitation of natural resources and all legislative or administrative measures that could affect indigenous peoples are subjected to a process of prior consultation with a view to securing their free, prior and informed consent.**

**Indigenous lands, territories and resources**

19. While taking note that the Constitution recognizes indigenous peoples' rights over their territories and welcoming the efforts deployed to restore lands to indigenous peoples, the Committee is concerned that the State party does not yet have appropriate, effective mechanisms for the filing of claims and the restitution of ancestral territories and lands and that many indigenous peoples have no land of their own or have not yet obtained legal title of ownership. It is further concerned by the lack of effective mechanisms to protect the rights of indigenous peoples over their lands, territories and resources, owing in part to shortcomings in the land registry system and to widespread land-grabbing by private companies and individuals, which has resulted in social conflict and forced evictions of indigenous peoples from their lands or territories (art. 5).

20. **The Committee urges the State party:**

(a) **To establish an appropriate and effective mechanism for the filing of claims and the restitution of ancestral territories and lands, ensuring that adequate human, technical and financial resources are allocated for it to operate properly;**

(b) **To adopt the necessary legislative and administrative measures to ensure and protect indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources, including by way of legal recognition and protection in line with international standards;**

(c) **To take all necessary steps, including through early warning systems and urgent action procedures, to prevent members of indigenous populations from becoming the victims of illegal occupation or use of their lands, territories or resources by third parties and to ensure protection against forced eviction from their lands and territories.**

#### **Enforcement of judgments of the Inter-American Court of Human Rights**

21. The Committee welcomes the State party's efforts to abide by and enforce the judgments of the Inter-American Court of Human Rights in the *Yakye Axa, Sawhoyamaxa and Xákmok Kásek* cases. It remains concerned, however, that the judgments have not yet been fully enforced, as that is undermining the exercise of those communities' rights (art. 6).

22. **Recalling its previous recommendation (CERD/C/PRY/CO/1-3, para. 17), the Committee calls on the State party to redouble its efforts to promptly and effectively enforce all pending aspects of the judgments of the Inter-American Court of Human Rights in *Yakye Axa Indigenous Community v. Paraguay*, *Sawhoyamaxa Indigenous Community v. Paraguay* and *Xákmok Kásek Indigenous Community v. Paraguay*.**

#### **Impact of the exploitation of natural resources**

23. The Committee is concerned by the negative effects caused by some natural-resource exploitation activities, such as extensive soybean cultivation and logging activities, on indigenous peoples' living conditions, given the significant impact on those peoples' traditional forms of subsistence and the water resources located on their lands and territories (art. 5 (e)).

24. **Bearing in mind that the protection of human rights and the elimination of racial discrimination are a crucial part of sustainable economic development and recalling the roles of both the State party and the private sector in this regard, the Committee urges the State party:**

(a) **To take the necessary steps to control soybean cultivation and logging activities so that those practices do not have a detrimental impact on the living conditions of indigenous peoples;**

(b) **To assess the possible social and environmental impact of the exploitation of natural resources in indigenous peoples' territories with a view to protecting those peoples' traditional means of subsistence and water resources;**

(c) **To ensure that indigenous peoples affected by natural-resource exploitation activities in their territories receive compensation for losses or damage incurred and share in the profits generated by those activities.**

#### **Indigenous peoples in voluntary isolation or initial contact**

25. The Committee is concerned by the lack of appropriate measures to protect the indigenous peoples of the Chaco and Eastern regions who live in voluntary isolation or are at a stage of initial contact. The Committee is also concerned by the special situation of vulnerability of the Ayoreo Totobiegosode community because of the deforestation of its territories, as that is jeopardizing the community's physical and cultural survival (art. 5).

26. **The Committee recommends that the State party adopt, without delay, appropriate measures to protect the physical and cultural survival of indigenous peoples in voluntary isolation or initial contact and take the necessary steps to ensure that the measures are fully implemented, taking into account the guidelines for the protection of indigenous peoples in isolation or initial contact in the Amazonian, Greater Chaco and Eastern regions of Paraguay. Furthermore, it encourages the State**

party to fully abide by and enforce the precautionary measures ordered in support of the Ayoreo Totobiegosode people by the Inter-American Commission of Human Rights on 3 February 2016 in the matter of communities in voluntary isolation of the Ayoreo Totobiegosode people (PM 54/13).

#### **Participation in political life**

27. The Committee notes with concern the lack of adequate measures for promoting participation by indigenous peoples and Afro-Paraguayans in public decision-making processes. It is also concerned that the State party has not provided information on the representation of indigenous peoples at all levels of government (arts. 2 and 5).

28. **The Committee recommends that the State party take the necessary steps to ensure full participation by members of indigenous peoples and Afro-Paraguayans in government bodies, in particular with regard to decision-making positions, and that it take effective steps to ensure equal opportunities for members of indigenous peoples and Afro-Paraguayans to be present at all levels of government, national as well as local, such as to contribute to the design and implementation of public policies to safeguard their rights. The Committee also recommends that the State party take steps to make members of indigenous peoples and Afro-Paraguayans aware of the importance of being actively involved in public and political life.**

#### **Situation of human rights defenders and indigenous leaders**

29. The Committee is concerned by reports received of acts of retaliation, intimidation, threats and possible arbitrary acts by public authorities against human rights defenders, including indigenous leaders and defenders of the rights of indigenous peoples (arts. 2, 5 (b) and 6).

30. **The Committee recommends that the State party:**

(a) **Take all necessary steps to protect human rights defenders, including indigenous leaders and defenders of the rights of indigenous peoples, against all acts of harassment, intimidation, retaliation, threats and any arbitrary act by a public authority or private entity in response to a human rights defender's performance of his or her functions;**

(b) **Investigate all acts of harassment, intimidation, retaliation or threats against human rights defenders and ensure that perpetrators are punished appropriately;**

(c) **Conduct information and awareness-raising campaigns about the crucial work performed by human rights defenders, including indigenous leaders and defenders of indigenous peoples' rights, with a view to fostering a climate of tolerance in which they can perform their work free of any type of intimidation, threats or retaliation.**

#### **Working conditions**

31. The Committee continues to be concerned by reports of the precarious working conditions faced by many indigenous people, in particular on farms in the Chaco region, including reports that some are victims of labour exploitation (arts. 2 and 5 (e) (i)).

32. **The Committee reiterates its previous recommendation (CERD/C/PRY/CO/1-3, para. 16) and urges the State party to take immediate and effective action to ensure the full enjoyment of rights by the indigenous peoples of the Chaco region. The Committee also urges the State party to take action to prevent, investigate and duly prosecute all cases of discrimination and labour exploitation of indigenous labourers**

in the Chaco region, ensuring that victims have access to justice and receive adequate protection and redress and that the perpetrators are tried and punished in accordance with the seriousness of the crime. The Committee further urges the State party to take the necessary action to strengthen its labour inspection system and to include in its next periodic report information on investigations conducted under that system and the number and type of sanctions imposed, if any.

#### **Right to food and water**

33. While welcoming the State party's efforts to ensure indigenous peoples' right to adequate food and right to water, the Committee is concerned that there are still significant gaps in the enjoyment of those rights by members of the indigenous population and Afro-Paraguayans with regard to the rest of the population (art. 5 (e)).

34. **The Committee recommends that the State party step up its efforts to provide an effective response to the situation of food insecurity and child malnutrition that is especially prevalent among indigenous populations and that it ensure access to a secure supply of drinking water and sanitation services for indigenous peoples and Afro-Paraguayans, especially in remote, rural areas.**

#### **Access to health**

35. While welcoming the advances made in the preparation of the enabling legislation for the Indigenous Peoples Health Act, the Committee is concerned at the weak infrastructure, unavailability of medicines and poor quality and availability of health-care services in remote, rural areas inhabited mainly by indigenous peoples (art. 5 (e) (iv)).

36. **The Committee recommends that the State party take the necessary action, including allocating the necessary resources, for effective implementation of the Indigenous Peoples Health Act and its enabling legislation, as well as for the effective operation of the National Directorate for Indigenous Peoples Health and of the National Council for Indigenous Peoples Health. In addition, it recommends that the State party continue its efforts to ensure the accessibility, availability and quality of health care, taking into special consideration the needs, traditions and cultural specificities of indigenous peoples.**

#### **Access to education**

37. The Committee is concerned by the significant differences in access to education observed mainly among children of indigenous and Afro-Paraguayan populations. It is also concerned by the high rates of illiteracy among the indigenous and Afro-Paraguayan populations (art. 5 (e) (v)).

38. **The Committee recommends that the State party step up its efforts to eradicate illiteracy and to ensure the availability, accessibility and quality of education for indigenous and Afro-Paraguayan children, including in their mother tongue, through the formulation of cross-cultural curricula that seek to promote and preserve the cultural identity of indigenous peoples and Afro-Paraguayans. It also recommends that the State party continue its efforts to open schools in remote rural areas, which are home to higher concentrations of indigenous residents, and to enhance the quality and infrastructure of those schools.**

#### **Access to justice**

39. The Committee takes note of the State party's efforts to ensure access to justice for indigenous peoples, such as through the acknowledgement and harmonization of the State and indigenous criminal justice systems, but it is concerned that those actions have been

focused exclusively in the area of criminal justice. In particular, it is concerned by reports of racial discrimination against indigenous peoples based on attitudes that are deeply rooted in the judicial system (art. 6).

40. **The Committee, in the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, urges the State party:**

(a) **To step up its efforts to acknowledge and respect the traditional justice systems of indigenous peoples in keeping with international human rights standards;**

(b) **To take the necessary action to ensure access to justice for indigenous peoples, ensuring that their basic rights and guarantees of due process are respected;**

(c) **To eliminate racial discrimination within the judicial system, including by providing training to police officers, prosecutors, defence attorneys, judges and professionals in the judicial system on the rights of indigenous peoples and human rights.**

#### **Multiple forms of discrimination**

41. The Committee is concerned that Afro-Paraguayan women and indigenous women continue to face multiple forms of discrimination with regard to participation in decision-making processes and access to an adequate standard of living, education, work and health care, including in the area of sexual and reproductive health (art. 2 (2)).

42. **The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it include a gender perspective in all policies and strategies to counter racial discrimination as a way to address the multiple forms of discrimination that affect, in particular, Afro-Paraguayan and indigenous women. In addition, it urges the State party to formulate measures with a cross-cultural approach aimed at improving access to education, work, justice and health, including sexual and reproductive health, for indigenous and Afro-Paraguayan women.**

#### **Situation of asylum seekers**

43. While welcoming the information provided by the delegation on the State party's hosting of asylum seekers from the Syrian Arab Republic, the Committee is concerned at the lack of information on the measures taken to ensure those persons' protection (art. 2).

44. **Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take the necessary action to ensure the protection of asylum seekers and invites the State party to include information in that regard in its next periodic report.**

### **D. Other recommendations**

#### **Ratification of other treaties**

45. **Bearing in mind the indivisibility of the body of all human rights, the Committee urges the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; as well as the 2013 Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the 2013 Inter-American Convention against All Forms of Discrimination and Intolerance.**

**Declaration under article 14**

46. The Committee urges the State party to consider making the optional declaration provided for under article 14 of the Convention.

**Amendment to article 8 of the Convention**

47. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In that connection, the Committee recalls Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to the Convention to accelerate their national ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

**Durban Declaration and Programme of Action**

48. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party, when incorporating the Convention into its domestic legislation, bear in mind the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the outcome document of the Durban Review Conference, held in April 2009. The Committee calls on the State party to include, in its next periodic report, specific information on the action plans and other steps taken to implement the Durban Declaration and Programme of Action.

**International Decade for People of African Descent**

49. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed the International Decade for People of African Descent (2015-2024), and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. In addition, the Committee requests the State party to include, in its next periodic report, precise information on specific measures taken to that end, bearing in mind its general recommendation No. 34.

**Dissemination of reports and concluding observations**

50. The Committee recommends that the State party make its reports available to the public as from the time of their submission and that it disseminate the present concluding observations in both of the official languages as well as in other commonly used languages.

**Consultations with civil society organizations**

51. The Committee recommends that the State party engage in consultations and expand its dialogue with civil society organizations active in the sphere of protection of human rights, in particular with regard to combating racial discrimination, when preparing its next periodic report and in its follow-up to the present concluding observations.

**Follow-up to concluding observations**

52. In accordance with article 9 (1) of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information, within one year following the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 22 and 30 (b) above.

**Paragraphs of particular importance**

53. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 20 and 40 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

**Preparation of the next periodic report**

54. The Committee recommends that the State party submit its seventh and eighth periodic reports, combined into a single document, by 17 September 2018, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In accordance with General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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