



# **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

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## **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Sixteenth session**

### **Summary record of the 187th meeting**

Held at the Palais Wilson, Geneva, on Tuesday, 17 April 2012, at 10 a.m.

*Chairperson:* Mr. El-Jamri

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports submitted by States parties under article 73 of the Convention** (*continued*)

*Initial report of Paraguay* (continued) (CMW/C/PRY/1; CMW/C/PRY/Q/1 and Add.1; HRI/CORE/PRY/2010)

1. *At the invitation of the Chairperson, the delegation of Paraguay took places at the Committee table.*
2. **Mr. Buffa** (Paraguay) said that the current Government attached great importance to civil society, which participated in social and humanitarian projects and decisions relating to civil rights and political life in general. The private sector and the media also played active roles in consolidating democracy in the country. Civil society was constantly invited to take part in multisectoral groups that were building the new Paraguay with a view to bringing together all elements of society and eliminating inequalities in economic and social sectors. The Paraguayan authorities were adopting a new attitude to issues concerning the most vulnerable groups, especially migrant workers. Although there were some entrepreneurs among immigrants, particularly in the agriculture and farming sector, emigrants on the other hand, even if their educational standard was improving, tended to be unskilled and their presence in the host countries was due to economic reasons.
3. The question of the right to vote of Paraguayans abroad had required an amendment to the Constitution. The relevant bill had been approved by the two chambers before being submitted to referendum. The process begun in 2008 had involved the whole of civil society and, in particular, many Paraguayan organizations abroad, which had sent representatives to the congresses. Those organizations came in various forms, such as clubs, cultural centres or *casas de Paraguay*, which sometimes acted as real community centres, as was the case in Argentina, where whole neighbourhoods in some towns were Paraguayan. Those civil society groups also played a social role, by offering shelter to trafficking victims, assistance to persons who were ill or in difficulty or relief to members of the community in emergency situations.
4. Besides the issue of the vote, the congresses had raised various demands by Paraguayans living abroad in connection with problems of statelessness, dual nationality, the registration abroad of children of Paraguayan parents and the risk of losing their nationality, all issues which would require amendments to the Constitution. For the time being, only the voting rights of Paraguayans living abroad had given rise to a constitutional amendment since it was a long and costly process that involved the participation of all citizens. A solid yes response was given at the referendum organized on the issue and the first Paraguayans residing abroad had begun registering on electoral lists, starting with those in Spain, Argentina and the United States of America. It was not easy because Paraguayan migrants were generally very dispersed and were not always equipped with the necessary identity documents. Registrations would continue throughout 2012 in the run-up to Paraguay's general elections.
5. **Ms. Martínez** (Paraguay) explained that the National Commission for Refugees (CONAIRE), which she headed, comprised a number of State bodies and one NGO representative. To date, the Commission had issued some hundred or so residency permits to refugees seeking asylum, who were also given assistance by numerous NGOs. The 2002 Act on the establishment of CONAIRE granted refugees whose application had initially been refused the opportunity to appeal for the decision to be reviewed by the Commission. If the case was rejected, they could apply to the Ministry of Foreign Affairs and then, as a last resort, to the Supreme Court, at which stage they would be entitled to legal aid from NGOs and the Office of the Ombudsman.

6. **Mr. Buffa** (Paraguay) said that civil society and in particular immigrants' associations in Paraguay had also played an important role in the drafting and adoption of the new Amnesty Act, which had facilitated the registration of foreigners in Paraguay. The Act had also reduced the administrative fees paid for registration and greatly facilitated the issue of documents.

7. With regard to the question of indigenous peoples, Paraguay was one of the countries which had done most to preserve Guarani culture. The Guarani, who were originally a nomadic people, faced the threat of deforestation, however, as communities could no longer pursue their traditional system of rotation and their environment needed to be protected.

8. Thanks to its natural resources, Paraguay had been self-sufficient for a very long time and had experienced immigration only since the middle of the nineteenth century. The first wave of migration, which had brought very qualified workers, often specialized technicians from Europe, had been attracted by the country's industrialization drive between 1850 and 1865, the year in which the five-year war began in Paraguay. After the war immigration increased, as Paraguay had to restore its decimated population.

9. Paraguayan workers who decided to return to Paraguay after encountering failure abroad were supported by the National Secretariat for Paraguayan Returnees, which could pay for their transport and relocation costs. Besides furniture and transport, the assistance had been extended to professional equipment, to help businesses set themselves up again. Returnees were eligible for tax breaks to restart their businesses. They also received free assistance to obtain identity papers for their children, who were automatically eligible for Paraguayan nationality.

10. The remittances sent home by Paraguayans working abroad, most often to relatives in need, served to bolster the country's economy and were not subject to tax. An inter-institutional joint scheme had been launched among banks, private companies responsible for transferring the remittances and the Ministry of Trade and Industry with the aim of facilitating the process. It had been decided that the private companies should extend their services to more localities in Paraguay and should reduce their tariffs. In the event of a Paraguayan national dying abroad, the Secretariat for Paraguayan Returnees and Refugees covered the costs of repatriating the body for poor families.

11. The Government had implemented a programme to offer subsidized social housing to returning Paraguayans who lacked the necessary means. In addition, construction companies had built social housing, which was normally found in the capital, in border areas. The programme also enabled Paraguayans residing abroad to purchase housing on long-term credit in anticipation of their return. In the meantime, they could allow poor relatives to use the housing. The State then transferred the money arising from the credit to impoverished families. The programme thus had the double advantage of assisting vulnerable families and allowing Paraguayans working abroad to invest in housing that they could recover on their return.

12. Primary school was free and compulsory for all children, including the children of migrants, although education services did not cover the whole country. In the areas where Brazilian communities lived, which were inland or close to the border, private Brazilian schools providing instruction in Portuguese had been opened with the authorization of the Ministry of Education and Culture.

13. **Mr. García** (Paraguay) said that a mobile unit had been set up to regularize the situation of undocumented migrants in border areas where a large number of Brazilians had settled. A mobile team of 15 people prepared the registration of migrants, sent the relevant papers to Asunción, the capital, then received the permits back around 20 days later and distributed them to the migrants. In that way, 12,000 people had been able to regularize

their situation. Once regularized, migrants enjoyed access to all judicial guarantees, the right to education, the right to health-care services and the right to work.

14. The children of nationals of the Southern Common Market (MERCOSUR) countries enjoyed the same right to education, namely free compulsory primary education, and to health care as Paraguayan children, regardless of the migratory status of their parents. Teaching was given in Spanish throughout most of the national territory, in Portuguese in the private schools set up in areas with a large Brazilian population and, in certain regions, in Guaraní, with some lessons taught in Spanish.

15. **Ms. Martínez** (Paraguay) said that foreigners enjoyed the same access to justice as Paraguayans and were entitled to legal aid. Since January 2011, offices specializing in human rights questions had been set up, in addition to units dealing with foreign adolescents. The Secretariat for Women, which was responsible for dealing with issues related to domestic violence, was open to all women. Migrants could also approach various human rights organizations, such as the Committee of Churches, which handled applications for asylum and refugee status.

16. Paraguay had signed various bilateral agreements concerning migrant workers, the first in 1959 with Spain and the second in 1977 with Chile. Two agreements had also been signed with Brazil, one of which concerned health-care services and the other labour relations and social security. In 2001, an agreement had been signed with Argentina and, in 2007, an agreement concluded with Belgium had entered into force.

17. In addition, a multilateral agreement with the MERCOSUR countries concerning social security had been approved in 1997 and had entered into force in 2005. It guaranteed social security benefits to all persons having worked in a country that was a party to the agreement, as well as to the members of their families, and laid down the same rights and obligations for all nationals of the States parties. The multilateral Ibero-American social security agreement, which had been ratified in December 2010, would allow migrant workers to accumulate all the social security contributions they had paid in any country that was a party to that agreement. Lastly, a guide to labour relations, employment and social security in the MERCOSUR countries, which had been prepared by the labour ministries of the countries concerned jointly with employers' and workers' organizations for the benefit of migrant workers in the region, had been adopted.

18. **Mr. Buffa** (Paraguay) said that 10 to 15 diplomatic and consular officials were recruited each year by means of a competitive examination. They then completed two years of training at a diplomatic academy, which included instruction in human rights and migration. Those subjects were compulsory for all public servants seeking promotion. The training was supplemented by the officials' involvement in assisting migrant workers.

19. **Ms. Martínez** (Paraguay) said that the Paraguayan Labour Code set the minimum age of employment at 15 years in article 19 but that children could work in a family business from the age of 12. Work in vocational, State or private schools was permissible, provided that it was carried out in the context of vocational training. Minors aged between 12 and 15 years could not work more than 4 hours a day or more than 24 hours a week, while minors aged between 15 and 18 years could not work more than 6 hours a day or more than 36 hours a week. Minors who attended school and worked at the same time were not allowed to work more than two hours a day and could not combine more than seven hours a day of employment and schoolwork.

20. **Mr. Buffa** (Paraguay) said that the number of female migrant workers was increasing. They were contributing more and more to the country's economic activity by sending remittances back to their families in Paraguay. Programmes offering training on domestic employment had been introduced and had generated a lot of interest among women and, to a lesser extent, men. Those programmes were also aimed at providing

associations receiving migrants with information on opportunities for free training, which would help migrants to earn more, and on the importance of registering with the consulates in their host country.

21. **Mr. Sánchez** (Paraguay), providing additional information on the issue of expulsions resulting from a legal or administrative decision, said that the embassy or consulate of the country of origin of the person concerned were consulted as a matter of course in order to obtain all relevant information, such as any details of criminal records. However, expulsions were a very rare occurrence in Paraguay since the aim of Paraguayan migration policy was not to prosecute migrants but to regularize their situation. In practice, persons subject to expulsion proceedings had access to the services of an interpreter and of a lawyer should they wish to appeal a decision. In the event of an appeal, the Government was obliged to give its opinion on the legality of the expulsion. Once the decision had been taken to proceed with the expulsion, the relevant consulate was informed immediately and transport companies were obliged to assist in implementing the decision. When the proceedings were concluded, an administrative summary was produced.

22. **Ms. Martínez** (Paraguay) said that, as a State party to the Vienna Convention on Consular Relations, Paraguay applied article 5 of that instrument, which provided that the consulate of the national concerned had to be notified of any proceedings.

23. **Mr. Buffa** (Paraguay), commenting on the situation of Paraguayans abroad, said that a significant number were in detention, chiefly on charges of trafficking in persons and drug trafficking. Those individuals, who generally belonged to the most vulnerable social strata and who were largely uneducated, could, in certain cases, avail themselves either of the assistance of a lawyer who was automatically assigned through their consulate, or of direct legal aid from Paraguay. In the absence of consular representation in the country of detention, Paraguayans could still use the consular services of other MERCOSUR countries. In addition, consulates had access to a social fund dedicated to meeting the needs of families. All Paraguayans deprived of their liberty abroad were also placed on a register.

24. With regard to employment contracts, it should be noted that there were virtually no employment agencies or agreements in that area. Migration was spontaneous and, in many cases, migrant workers signed their contract on arrival in the destination country and went about regularizing their situation later. In Italy, where Paraguayan nurses were employed under contract, the regularization process was facilitated and the country had annual immigrant quotas. According to unofficial figures, 60 to 70 per cent of Paraguayan workers residing in Spain were in an irregular situation, which made them particularly vulnerable, especially in view of the high unemployment rate there.

25. In Argentina, the implementation of the “Patria Grande” programme had led to the regularization of around 250,000 Paraguayans. Nevertheless, large numbers of Paraguayans who had crossed the border unchecked were still in an irregular situation.

26. **The Chairperson**, referring to the Social Security Institute (IPS) mentioned in paragraph 43 of the country’s written replies (CMW/C/PRY/Q/1/Add.1), asked whether there was any mechanism in place to prevent information on workers whose situation was found to be irregular from being communicated to the immigration authorities. He also requested clarification on the disturbances that had taken place in 2011 and 2012 in the Ñacunday district.

27. **Mr. El-Borai** asked what form of identification Paraguayans living abroad had to present in order to exercise their right to vote, given that a passport was often rejected. He noted that the problem mostly affected second generation Paraguayans, who had been born to Paraguayan parents abroad, owing to the problem of nationality. Did consulates provide effective assistance to Paraguayan nationals? With regard to social security, he would like to know whether Paraguayan migrants who were not covered by a bilateral or multilateral

agreement abroad could still receive benefits. He also wished to receive information on the trade union rights of Paraguayan workers abroad.

28. **Mr. Tall**, referring to article 17 of the Convention, wished to know whether detained migrant workers were kept separate from convicted persons. He requested additional information on the arrests made by private security agents.

29. **Ms. Miller-Stennett** requested additional information on the procedure for identifying and assisting the unaccompanied minors mentioned in paragraphs 33 and 34 of the State party report (CMW/C/PRY/1). What services were available to the children and adolescents concerned once they had been identified as unaccompanied minors?

30. **Mr. Carrión Mena** asked about the situation of migrant workers in transit in Paraguay, if any.

31. **Mr. Nuñez-Melgar Maguiña** requested information on intermediaries acting in the labour market. Were there rules in place to protect migrant workers employed by private companies? What was the practice regarding temporary employment?

32. **Mr. Ibarra González**, returning to the question of the right to vote of Paraguayans abroad, wished to know what arrangements had been made in view of the upcoming elections in Paraguay. He commended Paraguay on the range of measures it had taken, particularly those concerning the repatriation of possessions acquired by Paraguayans abroad and the transfer of remittances by female Paraguayan migrant workers. He also welcomed the training and preparation given to Paraguayan public servants who were sent to work in consulates abroad.

33. **The Chairperson** requested clarification on the rights of Paraguayan migrant workers to a retirement pension if they had not paid the 40 years of contributions generally required.

*The meeting was suspended at noon and resumed at 12.25 p.m.*

34. **Mr. Buffa** (Paraguay) said that registering to vote whether in Paraguay or abroad was voluntary and had recently become automatic for young people of school age, but that the registration process could not be completed at a distance. Parliament was currently considering the possibility of introducing an electronic registration system abroad to cut costs. Since the opening of new registration offices following the referendum held on 9 October 2011, 20,000 people had registered abroad and more permanent offices should soon be set up. Paraguayan nationals living abroad could only register to vote upon presentation of a national identity card, even if it had expired. That form of identification was only issued by the identification authorities, which came under the Ministry of the Interior. For the 2013 elections, Paraguayans would be able to register until November 2012. There was unlikely to be a massive registration of Paraguayans living abroad over the intervening period, since registration for the 2013 elections would be physically possible only in countries with a large Paraguayan population. Nevertheless, the number of registrations should increase if it became possible to vote electronically.

35. **Mr. García** (Paraguay) said that the expulsion of the persons occupying two properties in Ñacunday in the department of Alto Paraná, who included foreign nationals, was conducted peacefully. In the case of property No. 2685, the expulsion order had been handed down by the judge of first instance of the court for civil, trade, labour and children's affairs in the city of Santa Rita, while the second order concerning property No. 3510 had been handed down by the judge of first instance of the first court for civil and trade affairs of the Ciudad del Este district. In the first case, the occupants had left the premises prior to the arrival of the police and had taken all their belongings with them, while in the second case the occupants had left the premises upon the arrival of the police. In neither case had the rights of foreign nationals been violated.

36. Paraguayan and foreign workers in a regular situation paid contributions amounting to 9.5 per cent of their income to the two branches of the Social Security Institute, namely health care and pensions. All workers were entitled to retire from the age of 60 after having paid 25 years of contributions and from the age of 55 after 30 years of contributions. Agreements signed with certain MERCOSUR countries allowed work carried out in any of the signatory countries to be taken into account when calculating the years of contributions paid. However, that provision did not apply to Paraguayans living in Europe since it was a question of bilateral and not multilateral agreements in that case.

37. The Ministry of Justice and Labour and the Social Security Institute were responsible for regulating labour relations and for ensuring that all companies registered their employees, including foreign workers, with the social security or face a penalty.

38. **Mr. Sánchez** (Paraguay) said that the Paraguayan mother or father of a child born abroad could apply for Paraguayan nationality for the child if the parents returned to take up permanent residence in Paraguay. The procedure was governed by Act No. 2193, which authorized the national police to issue a national identity card to the foreign spouse of a Paraguayan national and to children born abroad of a Paraguayan mother or father, free of charge.

39. All unaccompanied minors should be in possession of a permit issued by their home country in order to enter Paraguay. The MERCOSUR agreements provided that all migrants in transit in border areas could move freely within a 50 km radius but must be in possession of a cross-border transit card. A migrant in an irregular situation could not be detained for longer than 24 hours at the Directorate-General for Migration. Following the examination of their case, they could be transferred to the Public Prosecution Service if they were found to have committed a punishable act, and placed in detention for a maximum of 72 hours, during which period a ruling had to be given. The decision to place a migrant in temporary detention could only be taken by a judge and the migrant concerned had to be held in separate premises, apart from convicted persons.

40. The law made no distinction between Paraguayans and foreign nationals in a regular situation where the right to a retirement pension was concerned. Migrant workers could also withdraw the total amount of their contributions from the retirement centre.

41. **Ms. Martínez** (Paraguay) said that article 96 of the Constitution guaranteed freedom of association to all workers and that article 88 prohibited all forms of discrimination based on trade union membership. Furthermore, article 301 of the Labour Code provided that the act of registering a trade union accorded it the status of a trade union and all the concomitant legal effects.

42. **Mr. Sánchez** (Paraguay) emphasized that Paraguayans and foreign nationals in a regular situation enjoyed the same social security rights.

43. **Mr. Buffa** (Paraguay) said that the recruitment procedures of private companies were closely monitored with a view to penalizing those companies that, under the cover of excursions or trips abroad, actually offered work abroad, which, on occasion, could lead to trafficking or abuse. However, the State could not always exercise direct control over those practices since certain contracts abroad were transmitted by word of mouth only. Consequently, the State had published leaflets warning of the dangers of that type of recruitment and indicating the documents that Paraguayans must possess prior to leaving the country.

44. **Mr. García** (Paraguay) said that inspectors employed by the Ministry of Justice and Labour and the Social Security Institute did not have the right to arrest a person but could pass details of a case on to the competent authority.

45. **Ms. Martínez** (Paraguay) said that there was an error in the second footnote of paragraph 79 of the report and that only a public official could make an arrest.

46. **Mr. Buffa** (Paraguay) said that migrants were never placed in ordinary detention centres but could be temporarily held for the time it took for their case to be examined, for example, when they arrived at the airport. He thanked the Committee members for their patience and said that his delegation remained at their disposal for any questions on legislation and procedures concerning migration.

47. **Mr. Carrión Mena** thanked the delegation for its very detailed presentation and welcomed the fact that Paraguay had, in recent years, signed and ratified a large number of international human rights instruments. He noted with satisfaction that Paraguay had become aware of the magnitude of the migration phenomenon. However, it remained a complex issue that required the country to undertake greater efforts, especially as far as statistics were concerned. He said that the question of indigenous peoples in the context of temporary and permanent migration flows should be looked into more carefully and that national institutions should be strengthened.

48. **The Chairperson** thanked the high-level delegation for the quality of the discussion and recalled that the consideration of the initial report of Paraguay was only the first step in following up the question of migration with the Committee and its partners, which included the United Nations specialized agencies, the International Organization for Migration (IOM) and civil society.

*The meeting rose at 1.10 p.m.*