

*Translated from Spanish*



**UNITED NATIONS PERMANENT FORUM  
ON INDIGENOUS ISSUES**

**Mission to Paraguay**

**REPORT AND RECOMMENDATIONS**

## Acronyms

DGEEC	General Directorate of Statistics, Surveys and Censuses
FAO	Food and Agriculture Organization of the United Nations
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
INDI	Paraguayan Institute of Indigenous Affairs
NGO	Non-governmental organization
OAS	Organization of American States
UN	United Nations
UNDP	United Nations Development Programme

*Note:* Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses in this report have been kept anonymous. The United Nations wishes to express its appreciation of the efforts made by individuals and institutions who, by providing information, contributed to the Mission.

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## **Executive summary**

This report, undertaken under the mandate of the United Nations Permanent Forum and at the request of the Government of Paraguay, concludes that a system of forced labour exists in the Chaco region, along with grave violations of international instruments supported or ratified by Paraguay.

Because of these violations, as well as breaches of the Paraguayan Labour and Criminal Codes, the Government must, as a matter of urgency, resolve the situation of the Guaraní and other indigenous peoples in the Chaco region with regard to the following issues noted by the Mission:

- Existence of forced labour and servitude among indigenous men and women;
- Child labour;
- Inadequate working conditions;
- Land ownership/deprivation of lands and territories;
- Restrictions on freedom of association;
- Weak presence of the State, lack of access to health and other public services;
- The present critical situation of indigenous communities as regards food insecurity.

The conclusions of the Mission, officially submitted to the United Nations Permanent Forum on Indigenous Issues in New York on 28 May 2009 include recommendations in the following areas:

- Guarantees for the effective enjoyment of the right of free, prior and informed consent of indigenous peoples;
- Strengthening of State institutions in the Chaco region in matters including administration, labour issues, legal system, rural development, education and health;
- Financing for development initiatives of indigenous peoples that would enable them to live in freedom;
- Land reform, including food security and restoration of territorial and land rights for indigenous peoples in general;
- Promotion and application of the principle of non-discrimination in all spheres of life of indigenous peoples in order to guarantee the exercise of their rights;
- Review and regularization of land title deeds;
- Regional cooperation and cross-border strategies for the protection of indigenous peoples;
- Development of a national strategy/plan of action for the protection of indigenous peoples;
- Observance of international legal obligations;

- The need for the agencies of the United Nations system active in Paraguay to continue and strengthen their activities of support for the indigenous peoples of the Chaco focusing on areas in which they can cooperate.

The Mission of the United Nations Permanent Forum not only again confirms the existence of servitude, forced labour and abuses against indigenous peoples on the estates of the Chaco, previously reported by ILO, but also notes a very significant deterioration in the living conditions of the Guaraní and other indigenous peoples of the Chaco. The Mission therefore makes a pressing appeal to all national and departmental authorities, and to the international community, multilateral and bilateral organizations and NGOs, to collaborate as a matter of urgency to resolve the grave food crisis affecting indigenous communities and to put an end to violations of the rights of indigenous peoples in the Chaco.

## **I. Introduction**

1. In response to a request from the Government of Paraguay, the United Nations Permanent Forum on Indigenous Issues organized a multi-agency Mission to Asunción and Filadelfia in April 2009 to verify complaints regarding the practice of forced labour and servitude among communities of Guaraní peoples and to draw up proposals and recommendations to ensure that the fundamental rights of indigenous peoples are respected. The Mission was composed of the chairperson of the United Nations Permanent Forum on Indigenous Issues, Victoria Tauli-Corpuz; members of the Permanent Forum Lars Anders Baer, Bartolomé Clavero and Carlos Mamani; and Isabel Ortiz and Carol Pollack, officials of the United Nations Department of Economic and Social Affairs in New York. The Mission was accompanied by the following experts from other agencies: Veronique Gerard and Jorge Servin, from the United Nations Development Programme; Enrique Rodríguez, from the Food and Agriculture Organization; Bernardo Puente from the International Labour Organization in Paraguay, and Sanna Saarto from the Regional Office of the International Labour Organization in Lima (Peru).

2. The Mission's mandate was set by a recommendation of the United Nations Permanent Forum at its seventh session (May 2008) and confirmed by an official invitation from the Government of Paraguay on 30 October 2008:

*“The Permanent Forum has learned from indigenous peoples’ communications, which have been corroborated by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, that in the Chaco region there are Guaraní communities in a practical state of slavery. In accordance with the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, as well as articles 17, 26 and 28 of the United Nations Declaration on the Rights of Indigenous Peoples, the Forum strongly supports the efforts of the current Government of Bolivia and the commitment of the incoming Government of Paraguay to discontinue this enslaving practice and return indigenous lands to their lawful owners, the Guaraní themselves” (E/C.19/2008/13, para. 156).*

3. This report has been prepared by the United Nations Permanent Forum on Indigenous Issues, as represented by the chairperson of the Permanent Forum, Victoria Tauli-Corpuz, and

members of the Permanent Forum Lars Anders Baer, Bartolomé Clavero and Carlos Mamani. The report is based on interviews conducted by the Mission, inspections, data from the General Directorate of Statistics, Surveys and Censuses (DGEEC), official documents from the International Labour Organization, the United Nations Children's Fund (UNICEF), and materials from indigenous peoples' organizations and international and domestic non-governmental organizations. Although the Permanent Forum Mission centred on the situation of the Guaraní peoples, it also met with other indigenous communities and concludes that the problems encountered and the recommendations offered are relevant to several indigenous peoples in the Chaco region of Paraguay.

4. The Mission visited communities in the Chaco and met with representative indigenous organizations and representatives of the Rural Association of Paraguay, the Ministers/Vice-Ministers of Education and Culture, Justice and Labour, Foreign Affairs, Agriculture and Livestock, and the Environment, commissions of Congress on human rights and indigenous affairs, the Supreme Court of Justice and the Office of the Public Prosecutor. The full list appears in the annex. The United Nations is grateful for the trust placed in the Mission by individuals, organizations and institutions.

5. On Thursday, May 28, 2009, in a plenary session of the Permanent Forum on Indigenous Issue attended by indigenous participants from around the world, States, UN agencies, NGOs and other civil society organizations, participating Permanent Forum members orally presented the recommendations contained in this report. On the basis of the presentation, the Permanent Forum issued the following recommendation:

*The Permanent Forum notes the mission to Bolivia and Paraguay and thanks the Governments of both countries for their invitations. This mission came about following the Forum's recommendation regarding the situation of forced labour of Guaraní communities at its seventh session. The Permanent Forum welcomes the mission as a good practice and decides to publish the reports of the mission as official documents. The Forum urges United Nations country teams to follow up the recommendations of these reports and suggests to the relevant Governments that they report on the implementation of these recommendations at the ninth session of the Forum in 2010. (E/C.19/2009/14, para. 94).*

## **II. Legal context**

### **A. International law**

6. The State of Paraguay, by ratifying and supporting a series of international treaties and declarations of intergovernmental bodies such as the United Nations, the Organization of American States (OAS), and United Nations agencies such as the International Labour Organization (ILO), has undertaken to use its power to protect and give effect to human rights.<sup>1</sup> This means not only ensuring that its officials comply with human rights standards but also acting with “due diligence” to address abuses committed by non-State authorities and individuals. When a State or a legally constituted authority knows or should know that violations of human rights are being committed and fails to take appropriate steps to prevent them, it shares with the perpetrators responsibility for those violations. The principle of “due diligence” includes the obligation to prevent human rights violations, investigate them and punish them when they occur.<sup>2</sup>

7. *The Human Rights of Indigenous Peoples*: The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007, sets out minimum standards for the recognition and protection of the rights of indigenous peoples in various contexts throughout the world. It includes the following provisions:

- Indigenous peoples have the right to self-determination, which is exercised through autonomy (arts. 3 and 4);
- Indigenous peoples have the right to own their lands and to recover their territories (arts. 8.2 (b), 25, 26 and 28);
- Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law (art. 17, para. 1);

<sup>1</sup> See, for example, article 2 of the International Covenant on Civil and Political Rights.

<sup>2</sup> See, for example, General Comment No. 31 of the Human Rights Committee, which is the expert body responsible for monitoring States’ implementation of the International Covenant on Civil and Political Rights.

**Table 1**  
**International instruments supported/ratified by Paraguay**

- √ United Nations Declaration on the Rights of Indigenous Peoples (United Nations General Assembly resolution 61/295)
- √ Declaration on the Rights of Indigenous Peoples
- √ ILO Convention No. 169 on Indigenous and Tribal Peoples
- √ ILO Convention No. 29 on Forced Labour
- √ ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize
- √ ILO Convention No. 138 on the Minimum Age of Admission to Employment
- √ ILO Convention No. 182 on the Worst Forms of Child Labour
- √ ILO Convention No. 111 on Discrimination (Employment and Occupation)
- √ ILO Convention No. 95 on Protection of Wages
- √ International Covenant on Civil and Political Rights
- √ International Covenant on Economic, Social and Cultural Rights
- √ International Convention on the Elimination of All Forms of Racial Discrimination
- √ United Nations Convention on the Elimination of All Forms of Discrimination against Women
- √ United Nations Convention on the Rights of the Child
- √ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
- √ American Convention on Human Rights

- States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment (art. 17, para. 2);
- Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary (art. 17, para. 3).

8. The Declaration recognizes that indigenous peoples have the right to be free from any kind of discrimination (art. 2); and the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions (art. 23); and the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. It establishes that States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (art. 26, paras. 1 and 3).

9. ILO Convention No. 169 recognizes that indigenous and tribal peoples have a wide range of rights, including rights to land and territory, access to natural resources, health, education, vocational training, conditions of employment and contacts across borders. Articles 11 and 20 of the Convention give special attention to the protection of freedom of work, including an explicit prohibition of servitude and forced labour.

10. *Forced labour.* Article 4 of the Universal Declaration of Human Rights, article 8 of the International Covenant on Civil and Political Rights and article 6 of the American Convention on Human Rights declare slavery and servitude to be proscribed. ILO Convention No. 29 prohibits all forms of forced or compulsory labour. Details concerning the definitions and evidence referred to by the Mission are provided below.

## **B. Domestic law**

11. The Constitution of Paraguay prohibits slavery, personal servitude and trafficking in persons<sup>3</sup> and establishes that “everyone has the right to protection of their freedom and security. No one shall be compelled to do what is not ordered by law or be prevented from doing what is not prohibited by law”. The Labour Code establishes that “work is a right and a social duty and enjoys the protection of the State. It may not be regarded as a commodity. It demands respect for the freedoms and dignity of those who perform work and shall be carried out in conditions that ensure life, health and an economic level consonant with the responsibilities of the working father or mother. No discrimination shall be exercised against workers for reasons of race, colour, gender, religion, political opinion or social standing”.<sup>4</sup> As

<sup>3</sup> National Constitution, art. 10.

<sup>4</sup> Labour Code, art. 9.

regards forced labour, the Labour Code stipulates that “all work must be paid” (art. 12), that a contract will be void if it establishes a wage lower than that paid to another worker in the same enterprise for work of equal effectiveness or if sets a wage lower than the legal minimum; if it requires one day of work more than is permitted by the Labour Code; or if entails a direct or indirect obligation to buy goods or food from a store, business or place determined by the employer (art. 47). However, as is shown in this report, the situation of indigenous peoples in the Chaco reveals serious violations of both domestic laws and international treaties signed/ratified by Paraguay.

### **III. Existence of forced labour in indigenous communities in the Paraguayan Chaco: a decade of documentation**

12. According to the General Directorate of Statistics, Surveys and Censuses of Paraguay,<sup>5</sup> there are 108,308 indigenous people in the country, belonging to 20 ethnic groups and five language families. The fact that they represent 2 per cent of the population is probably one of the reasons why indigenous peoples are the most marginalized and excluded group in Paraguay. However, in the western region they represent 31 per cent of the population. This region is comprised largely of the Chaco – the “last frontier” of the Americas – a region of late development where the lands were parcelled out to religious groups, primarily Mennonites from Europe; the lands were “given” with the indigenous communities still living on them and those communities were subsequently used as low cost labour on the new ranches. There are 13 different ethnic groups in the Chaco, representing all of the five indigenous language families of Paraguay.

13. The existence of forced indigenous labour in the Chaco region has been previously documented. The pioneering work of Stephen Kidd and Anti-Slavery International (1997),<sup>6</sup> in particular, drew the attention of the International Labour Organization, which in July 2005 issued a report on debt bondage and marginalization in the Paraguayan Chaco, according to which some 8,000 indigenous people are in a situation of servitude in both rural and urban settlements. The report of the ILO concluded that: *“The work of temporary and permanent workers on the ranches is systematically underestimated and their only remedy is to accept overpriced food and supplies which they are forced to buy in the ranch store. At the end of a ‘changa’ – a short-term field-clearing and harvesting job – temporary workers, after deduction of the price of supplies from the store, have little or no monetary income after several weeks or months of work. For permanent workers, generally employed as what are known as ‘playeros’ for menial work, and for domestic staff, this process often leads to debt creation, which may directly or indirectly cause the worker to be kept on against his will. Temporary and permanent workers alike, although to a different degree and for different periods of time, may thus be subjected to that type of forced labour known as debt bondage. So long as the debt remains, it is difficult for*

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<sup>5</sup> DGEEC (2008). *Survey of indigenous homes*. Asunción; DGEEC (2002). *Second National Indigenous Population and Housing Census*. Asunción.

<sup>6</sup> Stephen Kidd (1997), “The working conditions of indigenous people in the Chaco”, in *Enslaved Peoples in the 1990s: indigenous peoples, debt bondage and human rights*. Copenhagen, Anti-Slavery International.

*the worker to find work on another ranch or to obtain loans on an open modern credit market (non-existent in the area).’’<sup>7</sup>*

14. In 2006, Anti-Slavery International published a further study,<sup>8</sup> which was followed in July 2008 by a brief follow-up report on violations of ILO Convention No. 29 on forced labour and the lack of change in the situation in the Chaco.<sup>9</sup> Anti-Slavery International found that: “*Workers are supposed to receive their salary after one month, but the public prosecutor’s office in Filadelfia noted that it is ‘normal’ to find workers who have worked three or four months without receiving any payment. During this time workers will buy food and other essential provisions at the estate shop where prices are inflated. This means that most, if not all, of their salary will be used to pay off their outstanding debts ... The long working day, the distance of the estates from the nearest town, the lack of money to pay transportation costs ... makes it impossible for [indigenous workers] to get their provisions from alternative sources. Interviews [were carried out] with former estate workers in which several testified that they were not given any days off at all and had to ask permission to leave the estate.*” The ILO study shows that the prices of sugar, rice and other basic items which, according to article 169 of the Paraguayan Labour Code, workers should get free are sold for between 14 and 81 per cent above the normal price at nearby settlements.

15. In June 2008, the Government of Paraguay was called on to give explanations before the Committee on the Application of Standards of the International Labour Conference regarding systematic non-compliance with ILO Convention No. 29, following repeated comments by the Organization’s monitoring bodies. The Committee again urged the Government to put an end to debt bondage among the indigenous communities of the Paraguayan Chaco and other parts of the country that may be affected.

16. Several development agencies are carrying out projects to improve the living conditions of indigenous peoples in the Chaco region. However, the structural problem of servitude persists. In October 2008, the Government of Paraguay sought the assistance of the United Nations Permanent Forum. In early 2009, the Government of Paraguay took a significant step to address the issue by forming an inter-agency commission on fundamental rights and forced labour, which seeks to eradicate violations of fundamental rights in the labour sector.

17. Violations of indigenous peoples’ rights in their ancestral lands have also attracted international attention. For example, in 2005-2006, the Inter-American Court of Human Rights ruled, in the case of the Yakye Axa and Sawhoyamaxa communities,<sup>10</sup> that the Government should return the ancestral lands to the aforesaid communities within a maximum period of three years, establish a fund for development projects in the communities, and provide access to education, health and food during the three-year transitional period. However, the

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<sup>7</sup> Bedoya, E. and Bedoya, A. (2005), *Servidumbre por deudas y marginación en el Chaco de Paraguay*. Geneva, International Labour Office.

<sup>8</sup> Kaye, M. (2006), *Contemporary forms of slavery in Paraguay*, Anti-Slavery International, London.

<sup>9</sup> Anti-Slavery International (2008). *Information on Paraguay: compliance with ILO Convention No.29 on forced labour (ratified in 1967)*, London, Anti-Slavery International.

<sup>10</sup> Inter-American Court of Human Rights: *Case of the Indigenous Community of Yakye Axa v. Paraguay* (19 June 2005) and *Case of the Indigenous Community of Sawhoyamaxa v. Paraguay* (Judgment of 29 March 2006).

Government has not yet granted the communities title deeds to the lands in question. With regard to the lands of the Yakye Axa, in 2008, President Lugo submitted a legislative bill for the return of their traditional lands. No concrete measure has been taken concerning the return of the traditional lands of the Sawhoyamaya.

#### **IV. Findings of the Mission**

*“We are unable to have access to our ancestral territories, since everything is private property and so it is very difficult to recover it. Our traditional territory has been split up and destroyed through cattle farming ... Non-indigenous society imposes projects and plans on us without consultation, although we are talking about ancestral territory ... Traditional culture is also affected, including indigenous religious practices and beliefs, which were already completely overrun and not respected at all. In the communities there are also representatives of other religions who do not let the shamans work. There is practically no health service available ... We need access to education, but Government support is lacking and not all the communities have schools. The Government and its agencies do not communicate with the communities or ask their opinion and do not respect the distinctive form of our organization ... In addition, we are very poorly paid for the work we do.”*

Interview with the indigenous leader of the Chaco, April 2009

*“Once we went to work for 800,000 guaranies. We thought that we would have a lot of money to live with, but I got nothing. The ‘provista’ (basket of food and basic items) never lasted till the end of the month so we had to go for a few days without food. If we fell sick, we couldn’t go out, we were like prisoners.”*

Interview with an indigenous man in the Chaco, April 2009

*“The Guaraní were the original settlers of these lands, and now you see we are the most marginal. Before we Guaraní were free, we were rich, and now we are treated like dogs.”*

Interview with an indigenous teacher in the Chaco, April 2009

*“My family has been in the Chaco for a hundred years. We have seen great change. The Indians are no longer hunter-gatherers, now they are workers, they get a wage, they like their shoes, their telephones. We have seen a rapid evolution, from the Stone Age to the twenty-first century.”*

Interview with a Mennonite ranch owner, April 2009

*“Why do the Mennonites put the indigenous to work? Because they are docile, they don’t know the law, they don’t demand social security. If an indigenous person complains, they fire him. There are many more indigenous people. And when they grow old and slow, they are thrown out without compensation, and then they can hire someone younger.”*

Interview with a Government official, April 2009

18. The indigenous communities of the Chaco are deprived of land and resources in their own territory. They live in extreme poverty and are compelled to support themselves by working for the Mennonite colonies and Paraguayan estates in precarious conditions, with no guarantee of stability, for low wages, without health coverage when they stop work and with no trade union

rights. This situation is due in part to the weak presence of the State in the Chaco, together with the development model and the considerable power of the Mennonite communities in the area. As a result, indigenous servitude is entrenched in the Chaco, masked by the local and national authorities.

19. The Paraguayan State is a State reduced to the bare essentials on account of its manifest lack of resources. Paraguay is one of the few places in the world where income tax, the main mechanism for redistributing wealth, does not exist, and for this reason the State is unable to develop public policies for the bulk of its citizens. There is no land registry in Paraguay, which has made it easier for settlers to expropriate the land of indigenous communities.

20. Paraguay is among the countries of Latin America where land ownership is in the fewest hands: 95 per cent of property belongs to the big estates. The Paraguayan development model is strongly based on farm exports. Paraguay continues to be a highly rural country, and the greater part of its economy is based on four agricultural products (cotton, soy, meat and timber). As domestic agricultural and livestock production is concentrated among a relatively small number of producing estates, in the hands of a few families, the result is a “low quality of economic growth”, with very limited positive social synergies, according to reports from the United Nations Development Programme (UNDP) in Paraguay. This model offers few job opportunities for the great majority of the population and leaves profits in the hands of the highest-income groups, with no significant distribution policy. This has created strong pressure on many peasant and indigenous families to leave the rural areas and settle precariously in the shantytowns around the cities.<sup>11</sup>

21. The Mennonite communities began moving into the Chaco region in 1920, establishing colonies in indigenous territory. The understanding between the Mennonite community and the Government of Paraguay was underpinned by the assumption that the presence of the Christian religion would be instrumental in civilizing “a savage land”. The Government brought in the Mennonites to civilize and Christianize the area, mainly in order to gain sovereignty over the Chaco.<sup>12</sup> The Mennonites were building an economy based on agriculture and cattle breeding. As their farms expanded they became interested in using the indigenous population as a low cost source of labour. The result of this process was that the indigenous people were deprived of land and resources, leaving them with no better alternative than to accept the jobs offered by the Mennonite colonies. This was accompanied by the provision of some limited social services (addressed in more detail below) by the Mennonites, so as to ensure minimum productivity, with the approval of previous Governments, which lacked the capacity to provide services for its inhabitants. Observing the thriving activities of the Mennonites, other Paraguayan ranchers move to the Chaco, continuing the tradition of expropriating indigenous communities and exploiting indigenous labour.

22. Indigenous peoples were not recognized in the Constitution until 1992, when a new Constitution identified indigenous peoples as “ethnic groups whose culture existed before the formation and constitution of the State of Paraguay” (art. 62). Articles 63 and 64 of the Constitution stipulate that

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<sup>11</sup> UNDP (2005). *Objetivos de Desarrollo del Milenio. Informe de Paraguay*. Sistema de las Naciones Unidas de Paraguay. UNDP, Asunción.

<sup>12</sup> Gerhard Ratzlaff, *Mennonite Historian. Director of the Mennonite Archive of Paraguay (2008)*.

*“The right of the indigenous peoples to preserve and develop their ethnic identity in their respective habitat is hereby recognized and guaranteed. They also have the right to apply freely their systems of political, socioeconomic, cultural, and religious organization, and voluntarily to observe customary practices in their domestic coexistence so long as they do not violate the fundamental rights established by this Constitution. Indigenous customary rights shall be taken into account in jurisdictional conflicts. Indigenous peoples have the right to community ownership of land, of sufficient expanse and quality for them to preserve and develop their particular ways of life. The State shall freely provide them with such land, which shall be immune from seizure, indivisible, inalienable and indefeasible and may not be used as collateral for contractual obligations or be leased; it shall also be exempt from tax”. Article 66 provides that “The State shall respect the cultural specificities of indigenous peoples, especially as regards formal education. The State shall also protect them from demographic decline, environmental degradation and pollution, economic exploitation and cultural alienation”.*

23. In spite of such provisions, official figures continue to reveal an alarming situation, marked by a high illiteracy rate, affecting 40 per cent of the indigenous population, with an average of three years’ schooling for indigenous children aged 10 and over, as compared to eight years for the non-indigenous population. The problem is more acute in rural areas (53.3 per cent) than in urban areas (29.2 per cent); Guaraní communities have the worst illiteracy rates (45.5 per cent). Children under the age of 14 account for 50 per cent of the indigenous population, and with so many dependents there is an acute need for families to find an income. The fertility rate is high, with each woman having an average of 6.3 children. Most indigenous people live typically in a modest earth-floor building with a straw or corrugated iron roof, wooden or adobe walls, with a small patch of land on which they grow food for themselves. Only 3.5 per cent of the indigenous population have a brick house. The poor quality of housing is a major medical problem: the incurable chagas disease which affects half the indigenous population is transmitted by an insect that lives in this kind of housing. Only 5.9 per cent of indigenous homes have a bath or access to drinking water; only 21 have electric light, most of them being lit by candles.<sup>13</sup> The social marginalization of the indigenous communities must be brought to an end.

#### **A. Forced labour of indigenous men and women**

*“I went to work for a Mennonite colony because I needed work. When I got there they told me straightaway that they needed me because there was a Brazilian foreman who was very expensive and they wanted an indigenous person. The Brazilian was herding the animals and he told me that the boss didn’t want to pay and that I should be careful, that I should talk with the boss. All day long we worked with the animals and the next day I stayed on as foreman. Then I talked with the boss and he said that he would pay me 18,000 guaranies a day, and if I fell sick he would look after it. I worked really hard every day in a very large corral, on foot, without a horse. I was completely alone there. Sometimes other Mennonites turned up, also some Paraguayans, asking where they could find the boss’s house. One day the boss came by, all*

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<sup>13</sup> DGEEC (2008). *Survey of indigenous homes*. Asunción; DGEEC (2002). *Second Nacional Indigenous Population and Housing Census*. Asunción; UNICEF (2009). *Situation of indigenous children in Paraguay*. Asunción.

*angry, because they had been to his house and he didn't want them to go there. I said I was sorry and that I wouldn't do it again. Towards the end of my second month I asked for what I was owed. The boss answered that he didn't know anything about that and I told him that I couldn't go on like that... I stood my ground and asked him to pay me. But he didn't pay up. I worked for two months and I left."*

Interview with an indigenous man in the Chaco, April 2009

*"I worked in [place name omitted]; I was in great need and I drove a tractor for two months. After the first month, I was already in debt. I got paid only 450,000 guaranies a month."*

Interview with an indigenous man in the Chaco, April 2009

*"The employers bring the indigenous workers to their lands and promise them work for a year or two, but when sometimes they work for six months without being paid, as the communities don't have enough food to eat, the Guarani go on working for the employer"*.

Interview with a Government official, April 2009

*"The indigenous don't work, they just do what they like, they don't understand our hours or the concept of time, and they never understood the concept of work because they lived off the land ... How can we speak of forced labour when they're not even capable of working?"*

Interview with an official of the national judicial system, April 2009

*"The Chaco landowners need to understand that the problem of poor working conditions has to be solved. The Mennonites are enterprising, devoted to their work, they can understand this very well. For example, years ago, when we had the terrible problem with foot-and-mouth disease, if a cattle farmer didn't vaccinate his herds, he hurt all the others. The Mennonites were quick to see this and acted against the poorer landowners who were reluctant to vaccinate their livestock. The same thing goes for the ill-treatment and exploitation of workers: the Mennonites can act against those who violate indigenous rights."*

Interview with a Government official, April 2009

24. *Definition.* The National Constitution prohibits slavery (art. 10) and article 47 of the Labour Code stipulates that contracts that set a salary below the minimum wage or directly or indirectly involve obligations to buy food or essential items provided by the employer are illegal. Articles 231 and 176 of the Paraguayan Labour Code specify that only 30 per cent of the salary can be paid in kind (known as the "*provista*") and that the items provided must have the same value as in nearby urban centres. ILO Convention No. 29 on forced labour defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (art. 2.1). The pronouncements of the ILO monitoring bodies shed light on the meaning and scope of this definition as follows: *menace of any penalty* may be understood as the deprivation of some right or advantage; it may take extreme forms, such as physical violence, but it may also be expressed in subtle ways, for instance by holding on to identification papers, threats of exclusion from future employment, or threats of being reported to the authorities. *Not offering oneself voluntarily* implies absence of consent: this may arise from the beginning of the work relationship, but also for instance as a consequence of induced indebtedness (through rigging of accounts, inflated prices, lowering the value of the goods or services produced, or charging excessive interest), or by way of deceit or false promises concerning the kind and conditions of work or the retention or

non-payment of wages. A free labour relationship can thus be turned into a forced labour situation through the various mechanisms employed.

25. *Findings.* In 2008, 84.5 per cent of Guaraní people worked in agriculture.<sup>14</sup> Only 27.4 per cent of Guaraní peoples are wage earners; the majority, 72.6 per cent, consider themselves “independent workers”, in other words, they have no stable employment. According to the General Directorate of Statistics, Surveys and Censuses, the average monthly income of the indigenous population in 2008 was 778,000 guaranies, as against 1,193,000 guaranies for the non-indigenous population.<sup>15</sup> In other words, when they get paid, indigenous people get paid about half the minimum wage of 1,341,775 guaranies. Female domestic staff usually earns much less than men. Moreover, the Mission received reports that it is the usual practice is for their work not to be paid in money on the ranches.

26. In Paraguay, forced labour comes into being in two ways. One way is when work that has been done is not paid for: this is a direct case of forced labour, and the Mission received many reports to that effect. Another way is “*empatronamiento*” (being treated as part of the employer’s property), servitude or “*enganche*” (improper hiring practices) of families or individuals based on accommodation on the ranch or on debts. Wages are very low and do not cover the basic needs of the families of indigenous workers, who live in extreme poverty. The indigenous people contract debts with their employers, who advance them their pay to meet the cost of building or fixing up a modest home, sending children to school, or simply food and clothes. The Mission also received allegations of such cases. The situation is reportedly particularly bad for women in domestic service: the private sphere in which they perform their long days’ work is often a world of subjection and abuse, frequently without any monetary compensation, merely board and bed. The United Nations Permanent Forum once again confirms the allegations of forced labour on the estates and ranches of the Chaco, previously reported by other organizations like ILO.

## **B. Child labour and other violations of the rights of indigenous children**

*“Child labour is so widespread that in rural areas it seems normal to people that children work by doing menial tasks. For example, if women have no one to look after their children, they take them out into the fields, and the children help them all day long, but it isn’t seen as work. Children are only considered to work when they get paid.”*

Interview with a United Nations official, April 2009

27. *Definition.* Paraguay has ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and No. 182 on the Worst Forms of Child Labour. When it ratified Convention No. 138, it fixed the minimum age for admission to employment at 14 years. The Paraguayan Childhood and Adolescence Code contains a chapter on adolescent workers which, *inter alia*, provides for a register of adolescent workers and sets a limit on hours of protected work for that population group. The Convention on the Rights of the Child recognizes the following basic rights for children: the right

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<sup>14</sup> For reference, 70.5 per cent of all the indigenous people of Paraguay work in agriculture/the primary sector. See DGEEC (2008). *Survey of indigenous homes*. Asunción.

<sup>15</sup> The minimum wage is 1,341,775 guaranies (Decree 11.137/2007). See DGEEC (2008), *Survey of indigenous homes*. Asunción; DGEEC (2002) *Second National Indigenous Population and Housing Census*. Asunción.

to survival, to full development, to protection from violence, ill-treatment and exploitation, and to full participation in family, social and cultural life.

28. *Findings.* According to the Second Indigenous Census,<sup>16</sup> 20 per cent of indigenous children and youth between the ages of 10 and 11 work, as do 31 per cent of indigenous children and youth between the ages of 12 and 14, and 51 per cent between the ages of 15 and 19. The number of boys is twice that of girls. The ILO reports that in 2007, 53 per cent of indigenous and non-indigenous children aged between 5 and 17 were working, mainly in domestic service and agriculture. The same report notes situations of forced labour among girl servants, and of prostitution. In March 2005, the Government adopted a list of dangerous work activities not suitable for minors under the age of 18, including work with cattle, horses or mules, work involving exposure to great heat, work with agrochemicals and child domestic work, including the persistent ancestral practice of *criadazgo* (board and bed in exchange for work as servants). ILO, UNICEF and the Inter-American Development Bank have established public information campaigns and Government support programmes in an attempt to eliminate such child labour practices, but greater efforts are needed.

### C. Labour conditions

*“I was in Boquerón for four years. First they paid us 310,000 guaranies, then they went down to 210,000. We worked as tractor drivers. We couldn’t demand more because then they wouldn’t want to give us work. Normally, they like to pay us the minimum, they pay us what they want, but there’s nothing we can do about it here. The bosses are always looking for new tractor drivers, then they themselves teach them the job, because they don’t want to pay the right amount.”*

Interview with indigenous man in the Chaco, April 2009

*“The bosses don’t want to give us a day off or even to make the necessary arrangements. Not long ago a Guaraní worker asked for a day off and he was fired. He milked the cows; the milkmen never get a day off.”*

Interview with an indigenous man in the Chaco, April 2009

*“The Guaraní in [place name omitted], we get jobs in a number of fields, but in none do we get the minimum wage”.*

Interview with an indigenous man in the Chaco, April 2009

*“I’ve been a driver since 1979, but my seniority isn’t recognized. I’ve been working for 30 years and I still don’t get the minimum wage. For seven years I’ve been working for the same boss, but my money’s never gone up.”*

Interview with an indigenous man in the Chaco, April 2009

*“There was a time in the past when it was very difficult for the landowners, as they couldn’t farm out day work to Paraguayans because of ‘social laws’. So they started to work with the Indians, because of labour market constraints.”*

Interview with a Mennonite landowner, April 2009

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<sup>16</sup> DGEEC (2002), Second National Indigenous Population and Housing Census. Asunción.

29. *Definition.* Working conditions range from minimum wage and maximum number of working hours per day to social security contributions and workplace safety. ILO Convention No. 95, ratified by Paraguay, guarantees secure, rapid and full payment of wages, while ILO Convention No. 111 on Discrimination (Employment and Occupation) and the United Nations Convention on the Elimination of all Forms of Discrimination against Women prescribe equal wages and, more broadly, equal working conditions.

30. *Findings.* The average monthly income of the indigenous population in 2008, some 778,000 guaranies,<sup>17</sup> was far below the minimum wage of 1,340,775 guaranies. The Mission received many allegations to that effect, demonstrating the continuing existence of prejudice and discrimination against indigenous peoples, particularly indigenous women, which is an obstacle to the social development of Paraguay.

31. Paraguayan law establishes a 48-hour working week, with one day of rest; between 12 and 30 days of vacation; annual extra pay equivalent to one month of work, and social security including medical coverage and retirement pension. Most of the indigenous interviewees said that their employers did not comply with the law: some reported that they did not have rest days and the idea of extra pay, vacations and retirement pension was practically unknown to them given that the majority of indigenous people are hired on a temporary basis and sometimes by the day. It was reported that female domestic workers, in particular, usually have 12-hour working days. Unlike other Latin American countries, which rely on non-contributory pensions that play a significant role in relieving the conditions of old age, in Paraguay senior citizens only receive a pension if they have managed to make regular contributions. Indigenous old people generally find themselves in a very vulnerable situation, with no pension, and when they reach old age, employers no longer hire them and they remain with no income.

32. It is necessary to increase the number of labour inspections in order to combat violations of the Labour Code. This would require a substantial increase in the budget of the Ministry of Justice and Labour, which has up to now been kept to a minimum. In the Chaco there is only one office of the Ministry, established in September 2008, and, because of the very small number of staff (two persons) and the lack of a budget for transport, no inspections are conducted. Ideally, labour inspections should be carried out by officials based in the Chaco and also by external inspectors, in view of the risk of pressure and threats from the landowners. The Mission recommends that the Government should make a serious effort to support the activities of the Ministry of Justice and Labour.

#### **D. Freedom of association**

*“We would like to organize the Guaraní workers into trade unions, but the authorities are against it, for fear of the Chaco being contaminated by ideas from outside. Once there was a strike, and the employers fired the organizers. They also tried to set up a trade union for workers in the frozen meat industry, and the employers fired them all.”*

Interview with a Government official, April 2009

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<sup>17</sup> DGEEC (2008). Survey of indigenous homes. Asunción; DGEEC (2002). Second National Indigenous Population and Housing Census. Asunción.

33. *Definition.* Freedom of association, including freedom to join a trade union, is a human right guaranteed by the Constitution and Labour Code of Paraguay, as well as by international conventions including the International Covenant on Civil and Political Right and ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, which Paraguay ratified in 1962.

34. *Findings.* The Mission received allegations of abuses of freedom of association, including reports that the organization of indigenous workers has time and again been the target of repressive action, ranging from strong words and threats to the dismissal of persons seeking to form a trade union. It was reported that associations of indigenous persons, such as the Coordinating Body for the Self-Determination of Indigenous Peoples (CAPI, founded in 1994), have likewise not been well received by landowners. In addition, there exist domestic legal rules that do not respect the principles of freedom of association, and the ILO monitoring bodies have for many years called upon the Government to take the necessary steps without delay to bring its national legislation into line with Convention No. 87.

## **E. Land**

*“We have many problems in getting food. We are not allowed to hunt on many estates where there is a bit of woodland. We look for work and many Mennonite and Paraguayan employers take us to their estates, but few of them treat their workers well. If our people fall sick, they don’t look after them, they just leave them to their fate. They don’t feed us properly and they don’t pay us much either. Some get work with the missionaries, and others live by trying to do something with the little plots of land given to us by the Government. But our lands are steadily shrinking and they don’t return the territory they stole from us, which by our laws is ours. We feel cornered in on these small properties surrounded by the big cattle ranches owned by rich and powerful bosses.”*

Interview with an indigenous man in the Chaco, April 2009

*“The lives of cattle and the Indigenous peoples are lived behind wire fences”.*

Interview with a Government official, April 2009

*“Act No. 904 of 1981 laid down that each indigenous family was to receive a minimum of 100 hectares, but it didn’t happen”.*

Interview with a Government official, April 2009

35. *Definition.* The indigenous peoples of the Chaco region have organized on the basis of several claims that seek to secure the return of their ancestral territory. Act No. 904/1981, which was a first step towards land awards, stipulates that each family must be allotted a minimum of 100 hectares. The right to land is also supported by chapter V, article 64, of the Constitution and by Act No. 43/89, which establishes procedures for the regularization of indigenous settlements.

36. *Findings.* According to the Indigenous Census, there are 412 indigenous communities in Paraguay, of which 185, or 45 per cent, do not yet have a legal, permanent settlement. Ownership of the land occupied by the 185 landless indigenous communities breaks down as follows: 85: INDI/Institute of Rural Welfare (IBR)/Office of the Public Prosecutor; 3: NGOs; 59: estates/

enterprises; 13: the Church; 17: others; and eight communities did not know.<sup>18</sup> The major difficulty seems to be the slowness of the State, lack of funds to buy land and the unacceptable fact that there is still no cadastre or system for registering and recognizing ownership of land in Paraguay. The establishment of such a registry is necessary and will provide a basis for reviewing these severe political constraints on land awards for indigenous people.

37. *Act No. 904/81* establishing the *Statute of Indigenous Communities* set up the Paraguayan Institute of Indigenous Affairs (INDI), an official Government institute entrusted with implementation of indigenous policy, which consists of the official policy for indigenous people, not the policy agreed by or with them. It also establishes the administrative procedure for the processing of territorial claims before this body and the Institute of Rural Welfare (IBR), now known as INDERT. Act No. 43/89, which sets out rules for the regularization of indigenous settlements, contains important provisions regarding the protection of claimed areas, forbidding owners affected by indigenous claims from making improvements therein so long as the claims are pending. This is one of the most significant clauses of the Act and is directly linked to the administrative processing of indigenous land claims. The current Agrarian Statute, Act No. 1863/02, refers to indigenous peoples, setting the normative treatment of the indigenous land issue within the framework of the provisions of ILO Convention No. 169.

38. In the *case of the Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Court of Human Rights ruled that it was “... *necessary for the State to guarantee effective exercise of the rights set forth in its Constitution and in its legislation, pursuant to the American Convention. Therefore, the State, within a reasonable term, must adopt in its domestic legislation, pursuant to the provisions of Article 2 of the American Convention, such legislative, administrative and any other measures as may be necessary to create an effective mechanism for indigenous peoples’ claims to ancestral lands, such that it makes their right to property effective, taking into account their customary law, values, practices, and customs.*” The judgments of the Inter-American Court of Human Rights in the *cases of the Yakye Axa and Sawhoyamaya Communities v. Paraguay* have still not been implemented. The State of Paraguay is required to establish a community development fund in support of land claims, but so far it has not made any progress in that regard. The living conditions of these communities have basically not changed since these two judgments. The Mission urges the State of Paraguay to put them into effect.

#### **F. Weak presence of the State, lack of access to health and other public services**

*“The first time I came to the city, I came because my son was sick. I took him to the hospital and we couldn’t get back home because we didn’t have enough money. They told us to get him treated in Asunción, but we didn’t have that option. The doctor gave us some basic remedies for my son and we went back to our community as best we could.”*

Interview with an indigenous man in the Chaco, April 2009

*“It’s been two years since a doctor has come to the community. My brother died in my arms because we couldn’t get him to a doctor.”*

Interview with an indigenous man in the Chaco, April 2009

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<sup>18</sup> DGEEC (2002), *Second National Indigenous Population and Housing Census*. Asunción.

*“They make us pay health insurance [AMH: mutual hospital aid] because the Institute of Social Insurance does not extend this far. But it’s very expensive. If we don’t pay, it ends in just a month. If you lose your job, in a month you no longer have healthcare. The old folk die without medical care or drugs.”*

Interview with an indigenous man in the Chaco, April 2009

*“The truth is that the Indians’ education is of poor quality. They end up being hardly able to read or write. There is a huge need for education grants, but nobody wants to give them. Many suffer from chagas disease. Some Indians come and ask for help, but they don’t even know how to ask properly; many are alcoholics.”*

Interview with a Mennonite man, April 2009

39. *Definition.* The United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 recognize a wide range of rights, in particular to: land and territory, access to natural resources, and public services such as health, education and vocational training.

40. *Findings.* Of the 164 indigenous communities that live in the Departments of Boquerón and President Hayes, 46 per cent have regular access to a health professional. Medical research on indigenous communities carried out in 2008-09 reveals a high prevalence of malnutrition among children and adolescents as well as a high incidence of pulmonary tuberculosis and chagas disease. There is also a high presence of ectoparasites and of scabies and pyodermitis among the indigenous groups. Specific studies on chagas disease in the Chaco region (2003), among both indigenous and non-indigenous people, reveal an incidence of this serious affliction bordering on 52.3 per cent, in other words, seven times the national rate.<sup>19</sup> Despite this high incidence of disease, 87.8 per cent of the indigenous population have no access to medical services. Only 2 per cent are covered by public medical insurance (IPS), and the remaining 10 per cent by another type of insurance, like AHM.<sup>20</sup>

41. Act No. 3050/2006 established the *Ayuda Mutual Hospitalaria* (AMH), a contributory insurance for indigenous people with discriminatory effects. This is an ineffective health scheme that leaves unattended the medical needs of the indigenous population while being expensive in terms of the limited benefits it offers. Article 6 of Act No. 3050/2006 states that the insurance “remains valid for up to 30 days after the last registered contribution”, in other words, the right to assistance and even contributions are forfeited when work ceases, so that neither the unemployed nor the elderly can receive medical care. Children are only covered until the age of 16, and only so long as the responsible adult continues to pay contributions. This is the age when the system pushes young people to enter the labour market. Many services are excluded, such as dentistry and ophthalmology (art. 16). Despite its name, AMH is only a private insurance. It is financed by a contribution from the employer and deductions from workers’ wages (the Government contributes nothing).<sup>21</sup> The funds are managed by the

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<sup>19</sup> ABC, 15 March 2009; Biancardi, M. et al (2003). *Seroprevalencia de la Enfermedad de Chagas*. MEDICINA (Buenos Aires) 2003; 63: 125-129.

<sup>20</sup> DGEEC (2008), *Survey of indigenous homes*, Asunción; DGEEC (2002), *Second National Indigenous Population and Housing Census*, Asunción.

<sup>21</sup> The employer contributes 10 per cent of the gross salary paid to his employee; the employee contributes 5 per cent of the gross salary received; self-employed producers and buyers of indigenous handicrafts pay 15 per

Mennonite colonies, to which the Paraguayan Government has assigned this and other functions, thereby strengthening the dominant situation of employers. The United Nations Mission recommends that AMH should cease immediately and that health care provided to indigenous people is consistent with that available to all other Paraguayans, expanding the national insurance cover of the Institute of Social Insurance.

42. As regards education, of the 164 indigenous communities living in the Departments of Boquerón and President Hayes, 19 per cent do not have access to primary school. Only 3 per cent of schools provide middle education. Schools are in Mennonite hands: either the Ministry pays the teachers in Mennonite schools or Mennonite NGOs build and run the schools, in the absence of an adequate public policy for the reasons mentioned earlier. While 58 per cent of teachers are indigenous, only 30 per cent of them have primary education. The Mission recommends that the efforts of the Ministry of Education, including the development of educational material in indigenous languages, should be continued as a matter of priority. However, not all the problems are ones of institutional supply; the lack of demand for education must also be addressed. The most frequently cited reasons for the non-enrolment of indigenous children in schools are: the parents' work (24 per cent), unwillingness of children to attend (14 per cent), lack of interest of parents (12 per cent) and lack of infrastructure (8 per cent).<sup>22</sup> Overall, 45.5 per cent of Guaraní are illiterate. There is a pressing need to provide study grants for the indigenous population.

#### **G. The critical situation of indigenous communities in the Chaco**

*"Now, because of the drought, there is no harvest, so many indigenous people have to emigrate, and employers take advantage of their vulnerability".*

Interview with a Government official, April 2009

*"We are defenceless when we want to market our products. They always pay us what they like in the colony, for our sesame, for our cows."*

Interview with an indigenous man in the Chaco, April 2009

*"We want to work as a women's organization. Before we grew yams at home, but now we can't, and we have nothing to feed our children. Years ago we asked for help, but no one helps us. We produce handicrafts, but we can't sell them."*

Interview with an indigenous women in the Chaco, April 2009

43. *Findings.* There are more than 800,000 undernourished people in Paraguay, representing 14 per cent of the total population.<sup>23</sup> Chronic malnutrition affects 11 per cent, which represents some 645,000 persons, and acute malnutrition 5 per cent. Paraguay has a high capacity for food production; however, the problem of malnutrition has been aggravated by a forsaking in the past decade of the traditional diversified production system of small farmers, which ensured their food security, by the low returns from the cash crops traditionally grown by such farmers and by the problem of water shortage.

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cent of their income.

<sup>22</sup> UNICEF (2009). *Situation of indigenous children in Paraguay*. Asunción.

<sup>23</sup> FAO (2004) *The state of food insecurity in the world*, FAO, Rome. Ferretti, G.L. (2005) *Seguridad alimentaria en los países miembros del MERCOSUR*, FAO.

44. The Government is considering the reform and expansion of the Paraguayan Institute of Indigenous Affairs (INDI), attaching it to the presidency and giving it a mandate for inter-ministry coordination. A food security programme, PLANAL, has also been launched, coordinated across several departments (agriculture, social action, education, health) of national scope, which requires the joint and coordinated action of all stakeholders, public and private that work in relation to the agricultural sector, as well as those who depend on it. The Ministry of Agriculture therefore has an agrarian outreach office in the Chaco, with three technicians. Both the reform of INDI and PLANAL seem to be the necessary and right steps to support the indigenous communities and must be implemented as a matter of urgency in view of the severe food crisis.

## **RECOMMENDATIONS OF THE UN PERMANENT FORUM**

### **A. Free, Prior and Informed Consent**

1. All branches of the government of Paraguay –legislative, executive and judicial– and all its constitutional agencies, such as the Ombudsman Office, must take full responsibility for ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.
2. All recommendations included in this report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

### **B. Institutional Strengthening**

#### *Governance in the Chaco Region*

3. In accordance with its constitutional jurisdiction, the Government of Paraguay must ensure the adequate presence of State institutions in the zones affected by forced labour and child labour practices, including through strengthening the presence of the District Attorney, the Ombudsman, the Ministries of Justice and Labour; Education and Culture; and Public Health and Wellbeing. This includes increasing the number of well-trained technical persons (including indigenous individuals) under the various Ministries, ensuring that public services are provided to indigenous communities, and ensuring adequate budgetary allocations on a sustained basis.
4. All such Government endeavours must be implemented on the grounds of free, prior and informed consent of indigenous peoples through the reformed INDI (as below) or otherwise. The Government of Paraguay must ensure that local authorities and institutions in the Chaco region do not make decisions on indigenous peoples' issues without their due consent.

*The Ministry of Justice and Labour: Labour Inspections*

5. The existence of forced labour practices involving indigenous peoples in Paraguay has been well documented. The Government must urgently gather data identifying the employers involved in such practices for all legal purposes, including criminal liabilities.
6. The Government of Paraguay must provide sufficient resources to the Department of Labour to carry out adequate and timely labour investigations within the Chaco region. Resources provided must include salaries for inspectors, computers and internet access, vehicles and equipment.
7. Labour Inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the UN Declaration on the Rights of Indigenous Peoples. UN agencies in Paraguay should offer technical support and training in this regard.
8. The Ministry of Justice and Labour of Paraguay must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.
9. The Government of Paraguay must ensure the safety of labour inspectors and their free access to all lands.
10. The Government of Paraguay should create an accessible system for complaints regarding labour abuses.
11. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.
12. The Ministry of Justice and Labour should modify the composition of tripartite commissions, currently comprised of public administration, labour organizations, and employer organizations. Such commissions must also include indigenous representation in accordance with the requirements of ILO Convention 169 and UN Declaration on the Rights of Indigenous Peoples.
13. The Ministry of Justice and Labour must ensure that indigenous workers are not paid below the minimum wage and enjoy the social services and benefits on an equal footing with non-indigenous workers.
14. It should be considered that the final will of indigenous peoples who are submitted to forced labour may not be to become hired workers in the *haciendas*, but to recover their land and resources.

*Law Enforcement: Police, Prosecutors and Judges*

15. In accordance with their constitutional jurisdiction, the Government of Paraguay must ensure the integrity of law enforcement agencies, prosecutors and courts through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Police forces in the Chaco region should be led by officers that will remain neutral in carrying out their official duties.
16. The Government of Paraguay should ensure that members of the police, prosecutors and judges in the Chaco region are provided training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the UN Declaration on the Rights of Indigenous Peoples. UN agencies in Paraguay should offer technical support and training in this regard.
17. Indigenous communities must have access to legal services to protect and defend their interests on a collective basis.
18. Prosecutors should vigorously prosecute cases of human rights abuses, including labour abuses, against indigenous peoples and their defenders, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of the abuse.
19. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and human rights international law.

*National Institute of the Indigenous people (INDI)*

20. The structure and the performance of the Paraguayan Institute of Indigenous People (INDI) should be reformed to be in compliance with international instruments on the human rights of indigenous peoples, and particularly with regard to the right to free, prior and informed consent set out by the UN Declaration on the Rights of Indigenous Peoples. The reformed INDI should not be located within a Governmental Ministry, but rather placed within the office of the Presidency or should be autonomous institution with the authority to influence the policies of all the Ministries. This institutional reform should be designed with all involved stakeholders specially taking into account IP views on the matter. The Mission is encouraged by the plan of the Government of Paraguay to undertake such reforms and urges Congress to support this through adoption of necessary legislative amendments.
21. Once reformed, INDI and the newly formed Commission to Eradicate Forced Labour should, in cooperation and consultation with indigenous peoples, formulate and promote a Plan of Action on Forced Labour, with the capacity to address the root causes of forced labour, especially these that refer to land tenure.

22. The in-depth reform of INDI must not pre-empt or thwart the freedom of indigenous organizations and peoples to act and make decisions exclusively by themselves. Their right to free, prior and informed consent must always be respected.

### **C. Financing**

23. The Congress and the Government of Paraguay must ensure adequate public funding and budgetary allocations to implement the recommendations contained in this report.

24. The United Nations system should direct aid assistance to indigenous issues in Paraguay, including addressing the abolition of forced labour.

25. The Mission calls for the donor community and bilateral aid to support all efforts and initiatives towards the implementation of these recommendations in Paraguay.

### **D. Land Reform and Food Security**

26. The Government of Paraguay should create a land registry for the Chaco region. The registry should be undertaken as a matter of urgency, with an established deadline for its completion, and should be reviewed to assess the legitimacy of existing land titles, particularly in cases of land that is claimed by indigenous communities.

27. As lands have been taken from indigenous peoples with neither consent nor compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

28. The return of lands to indigenous peoples, and particularly to communities that have no land or only small parcels of land, should be part of judicial processes consistent with indigenous peoples' right to the recovery of their land. Additionally, negotiations with the Mennonite society and organizations of cattle farmers of the region carried out by the Government together with indigenous representatives are advisable. Negotiations should be undertaken based on principles of human rights and equality with the conviction that it is possible to create an intercultural society that is more just, in which all citizens, including indigenous and non-indigenous peoples, can develop peacefully.

29. The Government of Paraguay should implement the decisions of the Inter- -American Court on Human Rights regarding the situations of the Yakyé Axa and Sawhoyamaxa indigenous communities who, since being displaced from their traditional lands, have been living in precarious conditions with irregular water and food supplies and inadequate medical care. The Mission recognizes that President Lugo has taken initial steps with regard to implementation of the Yakyé Axa case, but calls for full and immediate implementation of the decisions.

30. Agrarian reform should be based on integrated and participatory management at local, regional and national levels and should be undertaken jointly with the National Plan of Sovereignty and Food and Nutrition Security (PLANAL) Chaco, elaborated with the support of FAO. In accordance with the PLANAL initiative, the reform should seek to guarantee sustainable processes for beneficiary populations, including through the provision of capacity development programs and by ensuring permanent access to basic services, including food, water and education.

#### **E. Development, including water and health**

31. The drought in the Chaco is a cyclical phenomenon that has worsened in the last few years, leaving both indigenous peoples and smallholders with insufficient access to food and water. Even though a state of emergency has been declared yearly since 2004 for drought in the Chaco region, it is recommended that the government of Paraguay prepare a contingency plan, specially addressing indigenous peoples, to be activated prior to the dry/drought season so as to ensure potable water and food for the affected population of the Chaco. The Government of Paraguay should see this plan as a jumping off point for ensuring drinking water and food security for the indigenous and poor people of the Chaco on a permanent bases, using PLANAL as their starting point.

32. In accordance with their constitutional jurisdiction, both the Government of Paraguay and the relevant Department's Governors should support the development of viable alternatives to obtain incomes and the creation of sustainable productive and commercial activities for indigenous peoples, including indigenous women, affected by forced labour practices.

33. The Mission notes that the Ministry of Education and Culture is undertaking important initiatives to improve education opportunities for indigenous children. The Government of Paraguay must also address the barriers that indigenous children face in enrolling in and attending school, expand education services, and provide adequate budgetary allocations to ensure education for all.

34. In accordance with their constitutional jurisdiction, both the Government of Paraguay and the relevant Department's Governors should expand coverage of health care and social security. Mobile brigades could be established and adequately funded to provide such services to indigenous communities that would otherwise lack access.

35. The *Ayuda Mutual Hospitalaria* (AMH) law, which creates a special medical insurance system that applies only to indigenous peoples in the Chaco region, must be repealed or reformed.

36. Mennonite boards should not have any jurisdiction on social services and health care systems for indigenous people.

37. In accordance with their constitutional jurisdiction, both the Government of Paraguay and the relevant Department's Governors should prioritize capacity building for indigenous organizations, as well as the development of leadership and professional skills. Indigenous women must be included in such programs.
38. The Government of Paraguay should improve communications infrastructure in the Chaco region, including by providing indigenous peoples of the region with access to radio and telephone communications.
39. The Mission supports the efforts of the Secretararia de Ambiente to prevent deforestation in the Chaco Region and calls upon the Secretararia to continue its efforts in this regard with the free, prior and informed consent of indigenous peoples of the Chaco.

#### **F. End Discrimination on the Basis of Indigenous Status**

40. The Government of Paraguay should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples.
41. The Government of Paraguay must repeal all discriminatory laws and practices, including, as mentioned in Recommendation 35, the Ayuda Mutual Hospitalaria (AMH).
42. The Government of Paraguay must put an end to segregation of social services, including schools and health care facilities.

#### **G. Regional Cooperation and Cross-border strategies**

43. The Governments of Paraguay and Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border program for the protection of indigenous peoples of the Chaco region should be considered.
44. The UN and bi-lateral aid agencies should share relevant good practices they have gathered from their experiences in different countries and should finance cross-border programs.

#### **H. Development of a National Strategy/Action Plan**

45. Working in cooperation and consultation with indigenous peoples, the Government of Paraguay and its newly formed Commission to Eradicate Forced Labour, should create a national action plan on forced labour. The plan should address discrimination as the root

cause of forced labour and should establish a monitoring process to ensure its implementation.

46. The Government of Paraguay should consider hosting a national conference on indigenous peoples to increase the visibility of indigenous issues within Paraguay and to improve the coordination among government and UN agencies and indigenous peoples' organizations.

#### **I. Comply with Obligations under International Law**

47. All branches of the government of Paraguay –legislative, executive and judicial– and all its constitutional agencies, such as the Ombudsman Office, should comply with their obligations under international laws and conventions.
48. The Mission reminds the Government of Paraguay that, in seeking to eliminate the root causes of forced labour of indigenous peoples, it should be guided by international instruments and, in particular, the UN Declaration on the Rights of Indigenous Peoples, for which Paraguay voted in the General Assembly, and ILO Convention 169 Concerning Indigenous and Tribal Peoples, which was ratified by Paraguay. The Mission supports the Government's intention to implement ILO Convention 169.
49. The Mission requests the Government to take urgent action to ensure that the labour rights of indigenous peoples are respected and protected, especially the ILO's core labour standards related to freedom of association, elimination of forced labour, elimination of child labour and equal opportunities without discrimination, as well as the international labour standards related to social security and wages.
50. The Supreme Court of Justice and, in particular its Constitutional Chamber, should pay greater attention to treaties and other international human rights instruments, particularly the Declaration on the Rights of the Human rights and ILO Convention 169. The Court should also be receptive to the constitutional challenges with regard to laws that respect the right of consultation of indigenous peoples.
51. The Supreme Court of Justice and, in particular, its Constitutional Chamber, should also pay greater attention to the rulings set out by the Inter-American Court of Human Rights concerning indigenous peoples beyond the above mentioned cases directly concerning Paraguay.

#### **J. Additional Follow-Up for the United Nations**

52. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in Paraguay. The goal of the dialogue should be the application of the UN Declaration and the implementation of the recommendations of the Permanent Forum by the relevant agencies, as well as other relevant international conventions.

53. The Permanent Forum should encourage development agencies to provide assistance to indigenous peoples of the Chaco region, including by supporting efforts to combat forced labour and efforts to develop improved access to water and food, as well as other basic social services, such as health care and education.
54. The Mission urges UN agencies to support the Ministries of Labour and Statistics in their continuing efforts to generate data on working conditions among indigenous populations.
55. The UN agencies in Paraguay should work closely together to address indigenous issues, including forced labour. UN agencies should also coordinate their efforts in support of the emergency facing the peoples of the Chaco due to drought and should support the government in the building of a strategy for the more sustainable development of the fragile Chaco region and its Indigenous peoples, starting with support for PLANAL.

## **Annex : Meetings of the Mission**

### **Government of Paraguay**

Ministry of Foreign Affairs  
Supreme Court of Justice  
General Directorate of Statistics, Surveys and Censuses  
Secretariat for Social Welfare  
Ministry of Agriculture and Stockbreeding  
Ministry of Education and Culture  
Ministry of Justice and Labour  
Office of the Public Prosecutor  
Secretary of the Environment  
Governorate of Boquerón  
Lieutenant Irala Fernández and President Hayes Regional Office of the  
Ministry of Justice and Labour  
Regional Directorate of Education and Culture

### **Indigenous peoples' organizations in the Chaco and Asunción**

ACAUC  
ACIGAR  
Asociación de Comunidades Indígenas Mbya Guaraní de Itapúa (ACIDI – Itapúa)  
Comisión de Pueblos y Comunidades Indígenas del Chaco  
Comunidad Emaús  
Coordinadora por la Autodeterminación de los Pueblos Indígenas (CAPI)  
Federación de Asociaciones de Comunidades Indígenas Guaraníes de la Región  
Oriental Paraguay  
Federación Regional Indígena del Chaco Central (FRICC)  
Liga Nativa por la Autonomía, Justicia y Etica (LINAJE)  
Organización del Pueblo Enxet Norte (OPEN)  
Organización de los Pueblos Guaraníes (OPG)  
Organización del Pueblo Ñandeva (OPÑ)  
Organización Payupie Ichadie Ayoreo Totobiegosode (OPIT)  
Pueblo Guaraní Occidental  
Unión de Nacionalidades Ayoreo del Paraguay (UNAP)  
Unión de Nativos Ayoreo del Paraguay (UNAPI)

### **Non-governmental organizations in the Chaco and Asunción**

Altervida  
Asociación de Servicios de Cooperación Indígena Mennonita (ASCIM)  
Asociación Esperanza Chaqueña  
Asociación Indigenista del Paraguay (AIP)  
Asociación Rural de Paraguay (ARP)

Comité de Iglesias para Ayudas de Emergencia (CIPAE)  
Coordinadora Nacional de Pastoral Indígena (CONAPI)  
Fundación Desde el Chaco  
Gente, Ambiente y Territorio (GAT)  
OGUASU  
Pro Comunidades Indígenas (PCI)  
Radio Pa'í Puku  
TEKOHA  
Tierra Viva a los Pueblos Indígenas del Chaco  
Vicariato Apostólico del Paraguay

**Pesempoo Community, the Chaco**

Indigenous representatives of the Northern Enlhet people, Loma Plata, Boquerón

**Mariscal Estigarribia Community, the Chaco**

Indigenous representatives of the Guaraní people, Canaan Community,  
District of Mariscal Estigarribia, Boquerón

**United Nations**

United Nations Children's Fund (UNICEF)  
United Nations Development Fund for Women (UNIFEM)  
United Nations Population Fund (UNFPA)

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