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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

**Доклад Специального докладчика по вопросу о
свободе религии или убеждений Хайнера Билефельдта**

Добавление

Миссия в Парагвай**Резюме*

Специальный докладчик по вопросу о свободе религии или убеждений посетил Парагвай с 23 по 30 марта 2011 года. В настоящем докладе он дает обзор международных стандартов прав человека, национальных правовых норм, касающихся свободы религии или убеждений, и религиозной демографии Парагвая. Он привлекает внимание к подмандатным ему вопросам положения в области прав человека в Парагвае; нормативных гарантий и проблем реализации права на свободу религии или убеждений; элементов государственной религии в светском государстве, свободы религии и убеждений и школьной системы; положения коренных народов в Парагвае, а также права на отказ от воинской службы по соображениям совести.

В своих выводах и рекомендациях Специальный докладчик с удовлетворением отмечает приверженность правительства правам человека, в том числе свободе религии или убеждений, а также обстановку открытости и толерантности в обществе в целом. Вместе с тем он отмечает сохраняющиеся проблемы правоприменения, которые могут негативно повлиять на фактическое осуществление свободы религии или убеждений людьми, находящимися в особо уязвимом положении.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на испанском языке.

В этой связи Специальный докладчик рекомендует правительству

- a) обеспечить неукоснительное и систематическое применение принципа недискриминации по признаку религии или убеждений, в том числе в вопросах субсидирования конфессиональных институтов, например университетов, принадлежащих какой-либо одной религиозной общине,
- b) пересмотреть и реформировать действующие ныне требования о ежегодной регистрации не католических религиозных или идейных общин;
- c) и впредь поддерживать Межрелигиозный форум, организованный в 2009 году, наряду с обеспечением открытого и транспарентного участия в нем всех заинтересованных групп и слоев общества, в том числе коренных народов,
- d) всесторонне рассмотреть вопрос о де-факто монопольном положении на местах конфессиональных школ одной определенной религиозной общины, особенно в сельских районах, где мало государственных светских школ;
- e) провести критический обзор существующих правил, касающихся официальных церемоний в полиции, армии и других государственных учреждениях, чтобы исключить де-юре или де-факто обязательное участие служащих в религиозных церемониях против их воли;
- f) уделять более систематическое внимание структурной уязвимости коренных народов, особенно в сельской местности, и
- g) по-прежнему признавать де-юре и де-факто право на отказ от военной службы по мотивам совести, в том числе путем обеспечения независимого функционирования недавно созданного Национального совета по делам об отказе от военной службы по соображениям совести, обеспечения справедливой и прозрачной процедуры и недопущения какой-либо карательной направленности альтернативной невоенной общественной службы.

Annex

Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, on his mission to Paraguay (23 - 30 March 2011)

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I. Introduction

1. The Special Rapporteur on freedom of religion or belief undertook a visit to Paraguay from 23 to 30 March 2011. The purpose of his visit was to identify both good practices and possibly existing or emerging obstacles to the full enjoyment of freedom of religion or belief in the country, pursuant to Human Rights Council resolutions 6/37 and 14/11.

2. First and foremost, the Special Rapporteur would like to express his gratitude to the Government of Paraguay for having invited him as part of the standing invitation to all thematic special procedures mandate holders. The Special Rapporteur met with representatives of the Government, including the Minister for Foreign Affairs, the Minister for the Interior and the Vice-Minister for Worship, as well as high-ranking officials from the Ministry of Justice, the Ministry of Defence and the Ministry of Education and Culture. The Special Rapporteur also held meetings with the Human Rights Network of the Executive chaired by the Ministry of Justice; the Prosecutor General; the President of the National Institution for Indigenous Populations; the Ombudsman; and with provincial authorities in Ciudad del Este and Filadelfia (Chaco region). He also met with the United Nations agencies, funds and programmes present in Paraguay.

3. During his visit, the Special Rapporteur had meetings with representatives of a broad range of civil society organizations, members of different religious groups and representatives of indigenous peoples. In Asunción, Ciudad del Este and Filadelfia, he held talks with, inter alia, Adventists, Anglicans, Atheists, Buddhists, Candomblé communities, Evangelicals, Jehovah's Witnesses, Jews, Lutherans, Mennonites, Muslims, Protestants, Roman Catholics, Russian Orthodox Christians and Ukrainian Orthodox Christians.

4. In his meetings and discussions, the Special Rapporteur encountered a high degree of open and frank dialogue in diverse settings, and he greatly appreciated the precious input provided by the various stakeholders. The Special Rapporteur is also very grateful for the excellent support provided throughout his visit by the United Nations system in Paraguay, in particular by the team of the Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights and the staff members of the United Nations Development Programme and the Resident Coordinator's Office.

II. International human rights standards

5. The right to freedom of religion or belief is enshrined in various international human rights instruments.¹ These include articles 2, 18 to 20 and 26 and 27 of the International Covenant on Civil and Political Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights; article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 2, 14 and 30 of the Convention on the Rights of the Child; and article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Paraguay has ratified all of the other above-mentioned human rights treaties, as well as Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

¹ See E/CN.4/2005/61, paras. 15-20, and E/CN.4/2006/5, annex. See also the compilation of excerpts from reports on the mandate by the mandate holder, available from www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf.

6. The Special Rapporteur is furthermore guided in his mandate by other relevant declarations, resolutions and guidelines of various United Nations bodies, including those issued by the Human Rights Committee, the General Assembly, the Commission on Human Rights and the Human Rights Council. Of these instruments, of particular relevance for the mandate are articles 2, 18 and 26 of the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Special Rapporteur also takes into account human rights instruments adopted at the regional level containing provisions relating to the freedom of religion or belief, for example articles 1, 12 and 13 of the American Convention on Human Rights, as well as related jurisprudence of the Inter-American Court of Human Rights.

III. Domestic legal framework on freedom of religion or belief

7. The Constitution of Paraguay, adopted in 1992, recognizes in its article 24 the right to freedom of religion, worship and ideology without any restrictions other than those established in the Constitution and the law. Article 24, paragraph 1, also provides that no religion enjoys official status. At the same time, article 82 explicitly recognizes the predominant role of the Catholic Church in the historical and cultural shaping of the nation, and article 24, paragraph 2, stipulates that relations between the State and the Catholic Church are based on independence, cooperation and autonomy. Article 24, paragraph 3, guarantees the independence and autonomy of all churches and religious denominations, with no limitations other than those laid down by the Constitution and by law. Pursuant to article 24, paragraph 4, no one may be harassed, investigated or obliged to testify because of his or her beliefs or ideology. Article 25 guarantees ideological pluralism in the country.

8. Articles 46 and 47 of the Constitution guarantee non-discrimination and recognize that all persons are equal. Article 88 of the Constitution stipulates that no discrimination is permitted between workers on ethnic grounds or on the basis of sex, age, religion, social status and political or trade union preferences.

9. Article 63 of the Constitution recognizes and guarantees the right of indigenous peoples to preserve and develop their ethnic identity in their respective habitat, as well as the right to freely apply their systems of political, socioeconomic, cultural and religious organization and to voluntarily observe customary practices that regulate their communal life, provided that such systems are not at variance with the fundamental rights laid down in the Constitution.

10. Pursuant to article 74 of the Constitution, freedom to teach is also guaranteed with no requirements other than appropriateness and ethical integrity, as well as the right to religious education and ideological pluralism.

11. While article 37 of the Constitution recognizes the right to conscientious objection in general on ethical or religious grounds, article 129 of the Constitution establishes compulsory military service. Those who declare their conscientious objection to military service should offer their service in the benefit of the society through social centres under civil jurisdiction designated by law. Article 129 of the Constitution also provides that the regulation and exercise of this right should not be done in a punitive way and should not impose a cost higher than that established for military service.

12. Law No. 4.013, as promulgated on 18 June 2010, regulates the right to exercise conscientious objection to military service and establishes the option of undertaking alternative service for the benefit of society. Pursuant to its article 4, objectors have a maximum delay of 20 days to establish their objection from the time of notification to enrol in the army. Article 7 establishes the composition of the National Council for Conscientious

Objection to include the Ombudsperson, the President of the Permanent Commission on Human Rights of the Senate, the President of the Permanent Commission on Human Rights of the Congress, a representative of the Ministry of Defence and a representative of the objectors who will be chosen through a ballot of those who have presented their objection in the past five years. Article 20 provides that those who do not duly comply with alternative service will still be subject to article 129 of the Constitution establishing compulsory military service. Pursuant to article 21, those who declared their objection before Law No. 4.013 was promulgated may choose between providing alternative service or paying a fine equal to the salary of five days of work. Article 23 states that, in the event of national defence or situation of international armed conflict, alternative service will necessarily comprise activities of civil defence.

13. The Penal Code also includes several articles that refer to religious issues. For example, article 158 of the Penal Code provides that anyone who damages totally or partially an object of religious significance belonging to a religious society recognized by the State or an object intended for the exercise of religious worship is punishable by up to three years of imprisonment or a fine. Article 162 of the Penal Code considers a theft to be aggravated, with possible imprisonment of up to 10 years, when the culprit steals from the interior of a church or any other closed building dedicated to religious worship any object intended for the exercise of worship or religious adoration. Furthermore, article 233 of the Code provides that anyone who, in a manner likely to upset the harmony of relations among people, insults another person on account of his or her beliefs at a public meeting or through publications is punishable by imprisonment for a maximum term of three years or by a fine.

14. The 2006 National Police Regulation of Ceremonies and Protocol also refers to religious ceremonies. Pursuant to article 97 of the Regulation, all solemn acts arranged with the participation of members of the National Police, according to the ritual of the Catholic Church, are interpreted as religious ceremony. Article 99 provides that, in ceremonies where there is no need to stand to attention, persons are required to remain with bare heads and to follow the Catholic ritual.

15. Article 91 of the Civil Code states that churches and religious denominations are legal persons. For official registration with the Vice-Ministry of Worship, religious communities are required to submit, on an annual basis, a form in which they request the processing of registration for entities; attached to the form, a note requesting an official annual certificate of documentation for entities; details of the persons officially in charge of the congregation (name and last name, identity document number, position in the congregation with indication of the dates of tenure); a completed annual questionnaire for entities; a form with complete personal data of those officially in charge of the congregation; a completed form for the registration of authorized signatures of those officially in charge of the congregation; a copy of the announcement of the celebration of the General Assembly of the entity officially recognized by public notary; a copy of the publication in a main newspaper of the celebration of the General Assembly recognized by public notary; a copy of the minutes of the General Assembly of the entity officially recognized by public notary; a copy of the legal statutes of the entity officially recognized by public notary; and a copy of the documents that establish the legal personality of the entity officially recognized by public notary.²

² See www.mec.gov.py/vmc/entradas/206242 (in Spanish).

IV. Religious demography

16. According to information provided by the Ministry of Education and Culture, Paraguay has altogether about 470 denominations historically identified, 220 of which have been formally registered. The vast majority of the population is Christian.

17. Data from the most recent official census (2002) indicate that 89.6 per cent of the people in Paraguay aged 10 years or older are Roman Catholic. In addition, 6.8 per cent of the population adhere to post-sixteenth-century Christian denominations, including the Assemblies of God, the Maranatha Baptist Church, the Pentecostal Church, the Seventh-Day Adventists, the Church of Latter-Day Saints and Jehovah's Witnesses. Furthermore, believers of the branches of the Orthodox, Anglican, Lutheran, Presbyterian and Mennonite churches that had emerged by the end of the sixteenth century constitute 0.54 per cent of the population.

18. Indigenous religions account for 0.6 per cent. Other religious minorities include Baha'is, Buddhists, Hindus, Jews, Muslims and practitioners of Reiyukai and Shintoism. Around 2 per cent of the population either has no religion or did not respond to the relevant question in the 2002 census. The next official census is scheduled to be conducted in 2012.

V. Mandate-related issues

A. General observations on the human rights situation

19. During his visit, the Special Rapporteur was repeatedly confronted with the country's history of dictatorship. A number of interlocutors from the State administration and civil society identified themselves as former members of the resistance movement against the authoritarian regime of Alfredo Stroessner (1954-1989). Some referred to their personal experiences of torture and other human rights abuses. They expressed their conviction that public awareness of the country's awkward political legacy had a significant role to play for any credible human rights policy and human rights education in Paraguay. The Special Rapporteur was particularly impressed by the long-term commitment shown by members of Comité de Iglesias para Ayudas de Emergencia and other civil society organizations to document human rights abuses that occurred during the dictatorship.

20. Today, Paraguay is a liberal democracy bound by human rights that are guaranteed by the 1992 Constitution, as well as by the State's ratification of most international human rights treaties. The Special Rapporteur witnessed many examples of the Government's good will and serious commitment to respect, protect and further promote human rights, including the rights of indigenous peoples. The prospects of an effective human rights culture are further enhanced by civil society organizations, some of which pursue a broad human rights agenda, while others focus on specific issues, such as gender discrimination or the rights of different minorities. The Special Rapporteur appreciates the degree of professionalism that civil society organizations have obviously achieved. Another positive element is the initiation of two national plans of action by the Government. While the decision to develop a national human rights plan of action had only been made shortly before the visit, another plan, on human rights education, had already moved on to the stage of public consultations. In general, national plans of action provide an excellent opportunity for bringing together all interested stakeholders, with a view to critically identify common objectives and existing shortcomings, as well as to strengthen implementation mechanisms.

21. Although the Special Rapporteur generally noticed a strong human rights commitment in the State and society, virtually all interlocutors from Government and civil society agreed that many challenges remain to be addressed. A major problem broadly

affecting the situation of human rights in Paraguay seems to be the weakness of implementation mechanisms. Given the enormous social inequalities in such areas as distribution of wealth, access to public or private education, political influence, ethnic and linguistic minority status and gender-related differences, the weak presence and poor capacity of State institutions render certain sectors of the population structurally vulnerable to possible human rights abuses, including in the field of freedom of religion or belief. This problem seems to be even more pronounced outside the capital, especially in remote areas. A number of interlocutors stated that, in certain remote regions, the State is virtually absent, with the result that human rights guarantees and policies in those areas are rarely effective. This can have serious consequences for, for instance, members of indigenous peoples, but also for other individuals in situations of particular vulnerability, including members of ethnic, religious or sexual minorities, women, children and people living in poverty.

22. While finding broad consensus on many human rights topics and challenges, the Special Rapporteur also became aware of certain politically contentious issues relating to his mandate. Open tensions that came up repeatedly during discussions concerned problems where education met anti-discrimination policies, especially in the field of gender- and sexual orientation-related discrimination. The Pedagogical Regulating Framework (*Marco Rector Pedagógico*), a Government initiative recently prepared with the involvement of civil society and the support of the United Nations system in Paraguay aiming to provide population sectors at risk, for example young people and pregnant women, with information and education on sexual and reproductive health, had elicited strong opposition from advocates of traditional family values. The opposition against the initiative apparently received much support from religious groups across different denominations and some Congress members. A similar political controversy, which was also reflected in many discussions held during the country visit, concerned the role of anti-discrimination principles in the school curriculum. In this context, the Special Rapporteur learned that anti-discrimination legislation had been repeatedly shelved as a result of opposition in Congress and in certain religious and conservative groups.

B. Normative guarantees and challenges of implementation for the freedom of religion or belief

23. At the normative level, the 1992 Constitution protects freedom of religion, worship and ideology. With a view to effectively provide freedom of religion or belief for everyone in a non-discriminatory manner, the Constitution has abandoned the concept of a State religion. Whereas prior to 1992 Catholicism had the status of official State religion, Paraguay is now “secular” in the sense that the State no longer identifies itself with one religion at the expense of equal treatment of members of other denominations. Moreover, the Constitution also guarantees the right to conscientious objection to mandatory military service.

24. The above-mentioned normative provisions are not empty promises. Indeed, the Special Rapporteur received the clear impression that the Government is committed to human rights and respects freedom of religion or belief, both de jure and de facto. The State does not directly or indirectly indoctrinate people in questions of religion or belief, nor does it impose undue restrictions on public manifestations of different religious and non-religious convictions. This positive assessment was also shared by interlocutors from religious or belief minorities, including people with non-religious convictions.

25. Despite the traditional dominance of the Catholic Church, whose followers currently make up some 90 per cent of the entire population, religious pluralism is a tangible feature of today’s society, at least in urban areas. People generally seem to accept manifestations of religious diversity in a rather relaxed manner, by regarding pluralism as a normal feature of

modern society. This includes new religious movements, small denominations and, to a certain degree, non-religious convictions that are, however, reportedly still seen as something quite unusual by parts of the population.

26. The Government contributes actively to the society's atmosphere of openness and religious tolerance by promoting interreligious communication. One example is the Permanent Interreligious Dialogue Forum (Foro Permanente de Diálogo Interreligioso), set up in 2009 by the Ministry of Education and Culture and which includes adherents of about 115 different denominations. The Forum, which meets four times a year, can also informally advise the Government. According to information received from the Ministry of Education and Culture, participating groups range from the Catholic Church to religious minority groups, as well as atheists and agnostics.

27. During meetings held outside the capital, the Special Rapporteur received positive comments by members of religious communities on the initiative to establish the Permanent Interreligious Dialogue Forum. Nevertheless, for those in the regions, it is unclear how the Forum functions, and there is little awareness about its work and functioning.

28. Despite the tangible and credible human rights commitment of the Government and the general atmosphere of religious tolerance in society, the problems posed by the implementation of human rights in Paraguay also have a bearing on the situation of freedom of religion or belief. As mentioned above, many of these problems originate from a combination of extreme inequalities in power in society on the one hand, and insufficient human rights implementation mechanisms on the other. As a result, members of minorities receive little protection against social pressure or discrimination in situations of structural vulnerability. This can lead to infringements of the right to manifest one's religious or belief conviction and even to situations where people find themselves exposed to religious indoctrination by comparatively powerful social agents. This problem is apparently even further compounded in remote areas where State institutions are largely absent. The situation of indigenous people in this regard warrants special attention (see paragraphs 45 to 53 below).

C. Elements of State religion in a secular State

29. Although Paraguay is now constitutionally a secular State, some elements of the tradition of Catholicism as religion of the State have apparently survived. For instance, in the police and the military, some official ceremonies continue to be based, *de facto* and *de jure*,³ on the Catholic faith. According to information provided by the National Ombudsman, few if any complaints have been lodged against this practice. Nonetheless, it seems plausible that members of the police or the military may feel under pressure to participate in ceremonies based on a religion that is not their own.

30. Members of civil society organizations also reported on incidents of pressure being put on school students to participate in religious practice during school ceremonies. In some cases, this allegedly even included the expectation of an active performance of religious rites, such as the taking of Holy Communion by non-Catholic pupils. Moreover, the presence of religious symbols in classrooms of public schools seems to be a widespread reality. Again, formal complaints apparently have never been lodged, which makes it difficult to assess the overall situation.

31. The Special Rapporteur would like to reiterate in this context that freedom of religion or belief also includes the "negative" right not to be pressured, especially by the

³ See National Police Regulation of Ceremonies and Protocol (noted in paragraph 14), arts. 97 and 99.

State or in State institutions, to participate in religious practices. Against a possible misunderstanding, he wishes to clarify that “negative” freedom of religion or belief does not mean a right to be free from any confrontation with religious symbols or other manifestations of religious faith or practice in the public domain. Such demands would obviously imply a State policy of purging the public sphere of all religious symbols, which would clearly run counter to the human right to publicly manifest one’s religion or belief, either individually or in community with others. Instead, the purpose of the “negative” side of freedom of religion or belief is to make sure that no one is exposed to any pressure, especially by the State, to confess or practice a religion or belief against one’s own convictions. State institutions, such as the police, military and public schools, in which authority is exercised, require special safeguards in this regard.

32. Some members of Protestant denominations complained about unequal treatment with regard to financial subsidies for denominational universities. Whereas the traditional Catholic university benefits from financial support by the State, a recently established Protestant university apparently does not receive comparable State subsidies. The Special Rapporteur reiterates that States are not obliged under international human rights law to fund schools that are established on a religious basis; however, if the State chooses to provide religious schools with public funding, it should make this funding available without any discrimination.⁴

33. The prison system is a State institution in which the Catholic Church had a monopoly of presence and participation until recent times. The Special Rapporteur received reports about the beneficial work that Catholic prison chaplains have carried out with the humanitarian purpose of alleviating the difficult situation of prison inmates. He notices with appreciation that efforts are reportedly under way to include chaplains from other denominations, especially Protestant chaplains, within the prison system. Some changes in this regard had indeed already been implemented. The Special Rapporteur encourages the authorities to pursue an inclusive approach in accordance with the Standard Minimum Rules for the Treatment of Prisoners.⁵ Rule 41 provides that a qualified representative of a religion should be appointed or approved if the institution contains a sufficient number of prisoners of that religion. Furthermore, this representative should be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times. While access to a qualified representative of any religion should not be refused to any prisoner, his or her possible objection to such a visit should also be fully respected. The Special Rapporteur appreciates the information provided by the Government that Catholic chaplains no longer hold a monopoly in the armed forces.

34. A controversial topic that repeatedly came up during group discussions concerned the annual registration of religious or belief communities with the Vice-Ministry of Worship. The fact that only the Catholic Church is exempted from this requirement appears to constitute privileged treatment. Members of non-Catholic religious groups indeed expressed some frustration about feeling discriminated in this regard. Moreover, some complained about the process being burdensome and increasingly bureaucratic. One example mentioned in this context was the requirement to present a good behaviour certificate from the police, which some members of minorities considered to be insulting. While the enjoyment of freedom of religion or belief per se is apparently not made dependent on registration with the State, some important status questions, such as tax

⁴ See A/HRC/16/53, para. 54, and Human Rights Committee communication No. 694/1996, *Waldman v. Canada*, para. 10.6.

⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII).

privileges and having legal personality status, actually rely on official registration, which does have a practical impact on the rights of religious communities. Even those interlocutors who voiced criticism of the requirement of annual re-registration, however, did not suspect the State of pursuing an authoritarian control agenda in this regard. At the same time, some expressed their fear that, under different political auspices, the mandatory registration procedure could possibly be turned into an instrument of control.

35. The Special Rapporteur would like to reiterate the fact that registration with State agencies does not constitute a precondition for practicing one's religion or belief individually or in community with others.⁶ Moreover, any registration procedure concerning religious associations should be transparent, including with regard to the time frame of the process. Such registration procedures should be simple, quick and not depend on reviews of the substantive content of the belief. Furthermore, they should not discriminate against certain religions or beliefs, and provisions that are vague and grant excessive governmental discretion in giving registration approvals should not be allowed.

36. The Special Rapporteur observed that, in debates about the secular nature of the State of Paraguay, not surprisingly, very different concepts of secularity came to the fore. Some interlocutors expressed the opinion that, in the face of the continuing predominance of Catholicism in public and political life, the State is only nominally secular. Others in turn expressed their fear that the secular State could pursue an anti-religious agenda advocating for so-called "secular values", especially in the sensitive field of education. A third position appreciated the existing constitutional arrangements and pointed to the need for the State to be secular in order to be fair and inclusive to people across different religions or beliefs. The Special Rapporteur shares the third position. He appreciates the secularity of the State as a normative principle aiming at a non-discriminatory implementation of freedom of religion or belief for all citizens and residents, whatever their convictions.

D. Freedom of religion or belief and the school system

37. According to information received from various stakeholders, the public school curriculum in Paraguay no longer includes mandatory religious instruction, which was abolished in 2008. Instead, public school education provides general information about different religious traditions with the aim of broadening pupils' understanding. This sort of information is, however, no longer intended to instruct pupils on the tenets of one particular faith. While some members of religious communities regretted this recent development, in which they saw as a sign of the decline of religion in public life, other interlocutors believed that public education de facto continues to be largely based on Catholicism owing to its traditional predominance in society. Representatives of religious minorities expressed their wish that the teaching material used in schools should become more inclusive by also giving fair and substantive information on religious groups outside Christian mainstream churches.

38. The Special Rapporteur emphasizes that school education has a crucial role to play in the continuous efforts to eliminate the stereotypes and prejudices that often hamper the flourishing of an open and pluralistic society. Taking the self-understanding of different religions and beliefs into account by inviting representatives of respective groups to participate in the processes of drafting curricula and establishing teaching material could be one way to overcome stereotypical ascriptions. Training programmes for teachers could also help to improve interreligious understanding. If school education includes religious instruction on the basis of one particular religious tradition – which is currently not the case

⁶ See E/CN.4/2005/61, paras. 56-58, and A/65/207, paras. 21-23.

in the public school system – non-bureaucratic opt-out possibilities must be provided to ensure that no one receives such instruction against their will or, in the case of minors, against the will of their parents or guardians.

39. In Paraguay, besides public schools, a great variety of private schools exists, including many denominational schools, such as Catholic and Protestant schools, as well as a few Islamic schools. Private schools can accommodate more specific educational interests or needs of parents and children, including in matters of religion or belief. Private schools that have a specific denominational profile can thus be particularly attractive to adherents of the respective denomination, but potentially also for parents or children with other religions or beliefs. Indeed, many private schools in Paraguay apparently enjoy a good reputation as “quality schools”. Moreover, according to information received from the Ministry of Education and Culture, quite a number of denominational schools show an admirable commitment to take care of the needs of poor families and their children.

40. Problems may, however, arise when private schools with a specific religious orientation have a de facto monopoly in a particular locality or region. In such situations, some parents and pupils might have no option but to avoid school education based on a denomination different from their own religious or philosophical convictions. This, however, would amount to an infringement of their freedom of religion or belief.

41. When visiting Filadelfia, in the Chaco region, the Special Rapporteur actually learned that the vast majority of schools in that district were run by the Mennonites, who generally place great importance on biblical teachings as part of their school education. In other regions, Catholic schools may be predominant to a degree bordering on a de facto monopoly. In such situations, it is up to the State, as guarantor of human rights, to ensure that the freedom of religion or belief of everyone is effectively respected in the private school sector; this includes the right of pupils not to be exposed to religious instruction against their will, as well as the right of parents or legal guardians to ensure a religious and moral education of their children in conformity with their own convictions. Again, the Special Rapporteur did not receive information about any concrete complaints in this regard. Nonetheless, he would like to encourage the Government to pay systematic attention to situations of particular vulnerability, which can develop through regional de facto monopolies of denominational schools, and to establish appropriate safeguards.

42. In discussions about school education, the Special Rapporteur was repeatedly witness to highly emotional exchanges over the Pedagogical Regulating Framework (see paragraph 22 above) initiated by the Government with the purpose of providing, as part of the mandatory school curriculum, information on sexual and reproductive health. Whereas interlocutors from specific Government sectors, civil society organizations, women’s organizations and representatives of sexual minorities strongly supported the initiative, some vocal members of Christian churches and other religious groups mostly expressed reservations or even harsh opposition. Advocates of the Framework put the initiative into the context of the ongoing fight against gender-based discrimination. Opponents in turn saw it in sharp contradiction to their own religious or moral convictions, and felt that their concerns had not been taken seriously. This bitter controversy led not only to a blockage within Parliament and to divisions in society at large, but also had a negative impact on school life. According to allegations received from civil society, certain religious organizations directly targeted young-age school children in the context of public campaigns by urging them to sign petitions against the Framework. The Special Rapporteur also received credible information about acts of intimidation and harassment by the part of religious groups opposing the Framework, which, in some instances, have been close to physical violence and led to the cancellation of public information meetings about the initiative.

43. The Special Rapporteur does not see himself in a position to make a comprehensive analysis of the complex conflict around the Pedagogical Regulating Framework, nor to give concrete advice on how to act. However, he received the clear impression that communication between the opposing camps had partly broken down, leading to bitterness, mistrust and lack of mutual understanding. In this context, he regards any act of intimidation and harassment as unacceptable, and would like to recall that the Human Rights Council has, on many occasions, advocated for a holistic understanding of human rights, all of which should be seen as mutually reinforcing one another. This also includes the relationship between freedom of religion or belief and rights to be free from discrimination on grounds like gender or sexual orientation. According to the formulation of the Vienna Declaration and Programme of Action, agreed upon at the World Conference on Human Rights, held in Vienna in 1993, “all human rights are universal, indivisible and interdependent and interrelated”.⁷ In addition, with regard to the rights to life, health and education, the Special Rapporteur refers to the relevant recommendations made by the Committee on Economic, Social and Cultural Rights,⁸ the Committee on the Elimination of Discrimination against Women⁹ and the Special Rapporteur on the right to education.¹⁰

44. From the above perspective, it would seem that synergies between different human rights should always be sought, even in situations of seemingly or factually conflicting rights claims. Obviously, this is not an easy task and there can be no guarantee of a positive outcome. At any rate, it would be wrong to assume that there is an inherent contradiction between freedom of religion or belief on the one hand and gender-related rights on the other. Instead, the human right to freedom of religion or belief itself can serve as a form of empowerment, for instance for women, to participate actively in the (re-)interpretation of religious sources and tradition with a view to overcome traditional justifications of patriarchal structures. On this occasion, the Special Rapporteur would like to quote the previous mandate holder, that “it can no longer be a taboo to demand that women’s rights take priority over intolerant beliefs that justify gender discrimination”.¹¹

E. Situation of indigenous peoples in Paraguay

45. Indigenous peoples in Paraguay have a long history of suffering from discrimination, neglect, harassment and economic exploitation. An indigenous leader of the Chaco summarized the challenges they faced in an interview with the Permanent Forum on Indigenous Issues in 2009:

⁷ A/CONF.157/24 (Part I), chap. III, part I, para. 5.

⁸ “The Committee strongly encourages the State party to take the necessary legislative steps to address the problem of female mortality caused by clandestine abortions, and recommends that school curricula openly address the subjects of sex education and family planning in order to help prevent early pregnancies and the spread of sexually transmitted diseases. It also recommends that it adopt a law on sexual and reproductive health that is compatible with the provisions of the Covenant. The State party should also continue its efforts to reduce maternal and infant mortality.” (E/C.12/PRY/CO/3, para. 32).

⁹ “The Committee urges the Government to strengthen the implementation of programmes and policies aimed at providing effective access for women to health-care information and services, in particular regarding reproductive health and affordable contraceptive methods, with the aim of preventing clandestine abortions.” (CEDAW/C/PRY/CC/3-5, para. 33).

¹⁰ “In light of these conclusions, the Special Rapporteur recommends that the Government of Paraguay should: [...] (g) Include a cross-cutting gender plan in education policy in order to encourage the introduction of sex education into the curriculum.” (A/HRC/14/25/Add.2, para. 82).

¹¹ A/65/207, para. 69.

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.¹²

46. The Committee on the Rights of the Child, in its concluding observations on Paraguay of January 2010,¹³ expressed concern at the limited enjoyment of rights by indigenous children and, in particular, their limited access to education and health and disproportionately high malnutrition rate, and relevant infant and maternal mortality rates. The Committee recommended that Paraguay should take all necessary measures to protect the rights of indigenous children against discrimination and guarantee their enjoyment of the rights enshrined in domestic law and in the Convention on the Rights of the Child.

47. Reports from and discussions with representatives of different indigenous peoples conducted by the Special Rapporteur in Asunción, Ciudad del Este and Filadelfia revealed that the imposition of religious doctrines and practices against their will seems to persist to a certain degree today. This critical assessment was corroborated by the Chairman of the National Institution for Indigenous Populations (Instituto Paraguayo del Indígena), as well as by other experts working in this field.

48. Interlocutors from indigenous peoples mostly agreed that the general attitude towards their traditional beliefs and practices had become more respectful in recent years. While in the past traditional cultural or religious practices, such as shamanist healing rituals, were denounced as “satanic” by some Christian missionaries, such attitudes have fortunately become rather exceptional. Moreover, efforts to recapture the cultural, linguistic and spiritual heritage of indigenous peoples can now count on the political and financial support of major streams in Christian churches in Paraguay and internationally. The Catholic Church in particular seems to have largely abandoned its former paternalistic attitude for active solidarity with indigenous peoples in their struggle for better living conditions. Such positive examples were also cited with regard to Protestant churches.

49. In spite of such encouraging developments, however, members of indigenous peoples also reported on persisting practices or policies of religious paternalism that may violate their freedom of religion or belief. For example, they mentioned a number of instances in which material benefits or jobs given to indigenous individuals were made dependent on their compliance with religious norms. This problem was particularly tangible during the Special Rapporteur’s visit to Filadelfia, a town in the Chaco region established three generations ago by Mennonite settlers. The Mennonites are a Protestant community, with roots in the Netherlands and Germany, who themselves endured centuries of religious persecution. The ancestors of many of those now living in Filadelfia fled from the former Soviet Union, where Mennonites were exposed to harsh discrimination and political persecution, including deportation and killings. Since settling in the Chaco from the late

¹² Permanent Forum on Indigenous Issues, Mission to Paraguay, available from www.un.org/esa/socdev/unpfii/documents/UNPFII_Mission_Report_Paraguay_EN.pdf, p.11.

¹³ CRC/C/PRY/CO/3, paras. 79-80.

1920s onwards, the Mennonites have increasingly become a socially and economically powerful community. They now run large agro-industrial companies in large parts of the Chaco. As a consequence of the Mennonites' impressive economic success, however, members of the indigenous population traditionally inhabiting the same region often find themselves in a situation of unilateral economic dependency. This situation in turn renders them vulnerable to the imposition of religious norms and practices, sometimes against their will. Indeed, some Mennonites implicitly corroborated such allegations made by indigenous individuals by expressing their convictions that moral trustworthiness, which they strongly linked to the observance of Christian values, could be a legitimate criterion for employing – or not employing – an indigenous person.

50. Moreover, some missionary groups, such as the “People of God” or the “New Tribes Mission”, are alleged to have exerted psychological pressure on members of indigenous communities to completely abandon traditional religious rituals by threatening harsh punishments in the hereafter. The aggressive methods reportedly used by those groups were strongly criticized by representatives of indigenous peoples as well as by the National Institution for Indigenous Populations.

51. The Special Rapporteur reiterates in this context that missionary activities per se clearly fall within the scope of freedom of religion or belief. According to article 18 of the International Covenant on Civil and Political Rights, individuals deserve respect and protection in their freedom to have or adopt a religion or belief of their own choice. Having a choice in questions of religion or belief, however, obviously depends on the possibility of communicating one's own religious or non-religious convictions, receiving information and trying to persuade others. Freedom of religion or belief thus has a marked dimension of a communicative right, which includes personal or organized missionary activities. At the same time, it is equally clear that missionary activities must never amount to a de facto imposition of convictions or norms against the will of targeted individuals or groups, for instance by exploiting their economic vulnerability. The Government bears responsibility for providing effective protection against such practices. In its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, the Human Rights Committee emphasized that article 18, paragraph 2, “bars coercion that would impair the right to have or adopt a religion or belief” and that “the same protection is enjoyed by holders of all beliefs of a non-religious nature”.¹⁴

52. Interlocutors from State institutions, civil society organizations, religious groups and indigenous peoples largely agreed that the main problem in this regard was the lack of efficient implementation mechanisms. This was particularly tangible in the Chaco region, and is most likely even further exacerbated in remote areas more or less completely outside of State control, including where the indigenous communities have chosen to remain in isolation.

53. In this context, in the draft Guidelines on the protection of indigenous peoples in voluntary isolation and in initial contact of the Amazon basin and El Chaco,¹⁵ it is noted that:

... it is necessary to adhere to the international and regional obligations undertaken by the region's Governments and to apply, as a dispute settlement mechanism, the parameters established by the Inter-American Court of Human Rights in judgements such as *Yakye Axa Indigenous Community v. Paraguay* or *Sawhoyamaxa Indigenous Community v. Paraguay*, according to which the relationship that indigenous peoples

¹⁴ *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40* (A/48/40), vol. I, annex VI, para. 5.

¹⁵ A/HRC/EMRIP/2009/6, para. 45.

in isolation and in initial contact maintain with their land and territories, and their situation of vulnerability, mean that their territorial rights can take precedence over economic interests and interests defined by the State.

Furthermore, the Inter-American Court of Human Rights has underlined that the close relationship of indigenous peoples with the land must be acknowledged and understood as the fundamental basis for their culture, spiritual life, wholeness, economic survival, and preservation and transmission to future generations.¹⁶

F. Right to conscientious objection

54. The Special Rapporteur welcomes the fact that the right to conscientious objection on ethical or religious grounds is explicitly recognized in article 37 of the Constitution. Furthermore, the relatively high number of conscientious objectors in Paraguay demonstrates that the constitutional guarantee of conscientious objection to compulsory military service is currently respected in practice. Nonetheless, the Human Rights Committee regretted, in its concluding observations on Paraguay of October 2005, that access to information on conscientious objection appeared to be unavailable in rural areas and recommended proper dissemination of information about the exercise of the right to conscientious objection to the entire population.¹⁷

55. Law No. 4.013, as promulgated on 18 June 2010, established a new procedure on the recognition of conscientious objectors and provides for an alternative civilian service. Whether this law will lead to infringements of the right to conscientious objection – a fear voiced by some civil society organizations – remains to be seen. Several provisions of Law No. 4.013 have been identified as problematic by certain stakeholders, including by associations of conscientious objectors. For example, it is unclear what would happen if objectors did not meet the deadline, pursuant to article 4, of 20 days to establish their objection since notification of conscription into the army. Civil society organizations questioned the impartiality of the composition of the National Council for Conscientious Objection, given the participation of a representative of the Ministry of Defence. Furthermore, the formulation of article 20 is unclear and may imply that those who do not duly comply with alternative service might be obliged to do military service. In addition, article 21 was criticized as unconstitutional since it may retroactively apply to those who declared their objection before Law No. 4.013 was promulgated, thus possibly having a punitive effect, which would be contrary to the spirit of article 129 of the Constitution. Furthermore, article 23 of Law No. 4.013 on “civil defence” in a state of national defence or situation of international armed conflict might be interpreted as implying that conscientious objectors would be required to participate in activities of a military nature.

56. The Special Rapporteur would like to reiterate that conscientious objectors should be exempted from combat but could be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection.¹⁸

¹⁶ See *Case of the Mayagna (Sumo) Awas Tingni Community*, judgement of 31 August 2001, Series C No. 79, para. 149; *Case of the Plan de Sánchez Massacre*, judgement of 19 November 2004, Series C No. 116, para. 85; and *Case of Yakye Axa Indigenous Community*, judgement of 17 June 2005, Series C No. 125, paras. 131 and 135 (“The culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.”).

¹⁷ CCPR/C/PRY/CO/2, para. 18.

¹⁸ See E/CN.4/1992/52, para. 185, and A/HRC/6/5, para. 22.

They could also be asked to perform alternative service useful to the public interest, which may be aimed at social improvement or at the development or promotion of international peace and understanding. The decision concerning their status should, when possible, be made by an impartial tribunal set up for that purpose or a by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities, and the conscientious objector should be granted a hearing, be entitled to legal representation and be able to call relevant witnesses. With regard to strict time limits for applying for conscientious objector status, the Special Rapporteur recalls that conscientious objection may develop over time, sometimes even after a person has already participated in military training or activities; strict deadlines should therefore be avoided.¹⁹ The Special Rapporteur appreciates the clarification made by the Government that the new alternative service will have no punitive purpose or effect.

VI. Conclusions and recommendations

57. Under international human rights law, the State is obliged to guarantee human rights in a comprehensive manner. There is now a general agreement that State obligations include the three levels of (a) respecting human rights within the policies and institutions of the State itself; (b) protecting rights from possible infringement by third parties; and (c) promoting the actual enjoyment of human rights by contributing to a sustainable culture of human rights in society at large.

58. Concerning the first obligation of the State, namely, to respect the human right to freedom of religion or belief, Paraguay is certainly a positive example. The Government shows a clear commitment to human rights, including in questions of freedom of religion or belief, a human right enshrined in the Constitution and further strengthened by the ratification of relevant international human rights treaties. Even though some aspects of the tradition of State religion appear to have survived in certain institutional settings, including the police, military and public schools, Paraguay officially sees itself as a secular State aspiring to implement freedom of religion or belief in an inclusive and non-discriminatory manner. To date, Paraguay has respected conscientious objection to military service, and it is to be hoped that this practice will continue under Law No. 4.013.

59. At the same time, there is room for improvement. The Special Rapporteur recommends that the Government consider revising the registration and annual re-registration requirements for non-Catholic religious or philosophical groups, which in the opinion of members of those groups have become increasingly burdensome and unnecessarily bureaucratic.

60. More important deficiencies relate to the second obligation of the State, namely, to efficiently protect human rights in society at large, given the general situation of weak implementation mechanisms compounded by pronounced inequalities in power in society. The most obvious example is the lack of an efficient State presence in areas such as the Chaco region, where many indigenous peoples live.

61. Even though the question concerning the extent to which indigenous peoples still suffer from the undue imposition of religious doctrines against their will remains controversial, there can be no doubt that their structural vulnerability should trigger

¹⁹ See E/CN.4/2006/5/Add.1, para. 138.

proactive State intervention. From a human rights perspective, it is very clear that the possibility of pursuing missionary activities falls within the scope of freedom of religion or belief, which naturally includes the right to publicly disseminate one's beliefs and to try to persuade others. It is equally clear, however, that situations of structural vulnerability must never be exploited in the context of missionary activities. The State of Paraguay is under the obligation to do its utmost to reduce related risks, for instance by providing information, mediation and possibilities of judicial redress and outreach, especially to the indigenous population.

62. Attention should also be paid to situations of regional de facto monopolies of denominational schools, which imply the structural risk that freedom of religion or belief, especially for students and parents from minorities, are infringed upon. Moreover, the Special Rapporteur encourages the Government to develop further its anti-discrimination legislation, which would constitute a crucial step to protect human rights against possible violations from third parties. The current draft law on all forms of discrimination received the express support from the Committee on the Rights of the Child (CRC/C/PRY/CO/3, para. 25) and within the context of the universal periodic review (A/HRC/17/18, para. 85.26). Also regarding the protection of rights from possible infringements by third parties, the reported acts of intimidation or harassment in the context of the public discussions about the Pedagogical Regulating Framework should be rejected. All parties should be able to exercise all human rights, including freedom of opinion and expression and freedom of religion or belief, without pressure of any kind.

63. The third level of State obligation concerns the promotion of a human rights culture in society. Naturally, human rights education, which has the purpose of dispelling stereotypes against religious or belief minorities, but also against other minorities and women, plays a major role in this regard. Another possibility of promoting a human rights culture is by facilitating communication between religions and beliefs. The Permanent Interreligious Dialogue Forum organized by the Ministry of Education and Culture is a positive example in this regard.

64. Against the background of these general observations, the Special Rapporteur encourages the Government:

(a) To ensure that the principle of non-discrimination on the grounds of religion or belief is implemented in a thorough and systematic manner, including in questions of financial subsidies for denominational institutions, such as universities run by one particular religious community;

(b) To reconsider and reform the existing requirement of annual registration of non-Catholic religious or philosophical communities; a registration procedure, if deemed necessary, should be rapid, transparent and non-discriminatory, and it should also be clear that registration does not affect the enjoyment of freedom of religion or belief as such;

(c) To continue to support the Permanent Interreligious Dialogue Forum while ensuring the open, transparent participation of all interested groups and sectors of society, including indigenous peoples, as well as appropriate awareness-raising among the communities concerned about its work and operations;

(d) To pay systematic attention to possible regional de facto monopolies of denominational schools run by one particular religious community, especially in rural areas with a lack of public, non-denominational schools. While appreciating the positive contributions of denominational schools, the Government should at the same time ensure, by means of appropriate regulations, that students are not de facto urged

to attend religious instruction or religious practices against their will or that of their parents;

(e) To critically review existing regulations concerning official ceremonies in the police, the military and other State institutions with a view to ensure that no member of those institutions is urged, de jure or de facto, to attend religious practices against his or her will;

(f) To pay more systematic attention to the structural vulnerability of members of indigenous communities, especially in rural areas. Even though freedom of religion or belief naturally includes the freedom to engage in missionary activities, the Government should ensure – by means of clarification, mediation, judicial redress and other appropriate measures – that indigenous individuals are not pressured to attend religious ceremonies or to otherwise engage in religious activities as a de facto precondition for job opportunities or for receiving important material benefits;

(g) To continue to recognize the right to conscientious objection in law and in practice; this includes the independent functioning of the newly established National Council on Conscientious Objection, ensuring fair and transparent procedures while maintaining non-punitive principles for alternative non-military civilian service.

65. The Special Rapporteur appreciates the initiation of the Human Rights National Plan of Action and of the National Plan of Action on Human Rights Education. In general, national plans of action provide an excellent opportunity to bring together all interested stakeholders with a view to critically identifying common objectives and existing deficiencies, as well as strengthening implementation mechanisms. This will also provide space for discussing issues related to the freedom of religion or belief. Obviously, there is still much room for improvement with regard to more effective implementation of human rights, particularly in terms of non-discrimination. At the same time, the openness witnessed by the Special Rapporteur at both the governmental and social levels induces him to believe that the national plans of action will prove a success.
