

PUBLIC

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UA 147/09 Legal concern/ Harsh conditions

PARAGUAY Members of the Yakye Axa Indigenous community

The Paraguayan Congress is at risk of jeopardizing the Paraguayan State's compliance with a legally binding judgment by the Inter-American Court of Human Rights (IACtHR). Congress is currently studying a bill which, if rejected, could seriously undermine a significant positive national and international precedent for collective land rights for Indigenous Peoples.

The Paraguayan state failed in July 2008 to meet a three-year deadline to return traditional land to the Yakye Axa Indigenous community. Continued failure to comply with the IACtHR ruling is endangering the lives of community members who are living on a narrow strip of land on the side of a busy highway unable to rely on traditional forms of subsistence. They are forced to survive in deplorable and degrading conditions with severely limited access to water, sanitation, healthcare, education and other services. This is despite the state being obliged to provide these services until they return to their land. Since the judgment was passed in June 2005 nine people have died from preventable diseases. Last week, 21 year old José Carlos Ramos Valdón reportedly died from tuberculosis, a preventable disease. Between November 2008 and May 2009, the Yakye Axa Indigenous community only received one delivery of food (in February 2009), which was only half the size of the normal monthly ration.

In November 2008 President Lugo signed a bill declaring the 15,963 hectares of land claimed by the Yakye Axa "of social interest". The bill ordered that the land be expropriated, a process which would allow the state to take ownership of the land and return it to the Yakye Axa, paying the landowner compensation for the loss of his land.

Four congressional commissions are currently studying the expropriation bill. According to information received by Amnesty International it appears that one key commission, the Agrarian Reform and Rural Welfare Commission, is likely to recommend that Congress reject the bill. There are also concerns that the other key commission, the Treasury, Budgets and Accounts Commission, may also adopt a similar position. Without their favourable opinions it is unlikely the expropriation bill will be approved by Congress.

BACKGROUND INFORMATION

The Court also ruled on a similar case, involving the nearby Sawhoyamaxa community, in 2006. According to government authorities they are still trying to negotiate directly with the owner of the traditional land claimed by the Sawhoyamaxa, although three years have passed and no results from any of this process have been made public. The deadline to return their land passed on 19 May 2009. Since the Sawhoyamaxa judgement was passed in 2006, 22 members of the community, the majority of them children, have died from preventable diseases. Between December 2008 and January 2009, six members of the Sawhoyamaxa died, among them four infants, after suffering from diarrhoea and vomiting (see UA 40/09, 16 February 2009, AMR 45/006/2009). Following the recent deaths, serious concerns regarding insufficient medical attention and insufficient and sporadic provision of clean water and food supplies remain.

Both judgements set significant international precedents for collective land rights for Indigenous Peoples, making it all the more important that the Paraguayan state take every possible opportunity to demonstrate, both nationally and internationally, its willingness to abide by international law and honour the legal commitments it voluntarily entered into. Paraguay ratified the American Convention on Human Rights nearly two decades ago, and in 1993 accepted the jurisdiction of the Inter-American Court of Human Rights. Failure to comply with the judgements would send a message to Indigenous Peoples in Paraguay that despite the fact that the current government promised to address important issues regarding their human rights, it has yet to turn these promises into reality. Similarly, failure to comply undermines its standing within the Inter-American system and internationally.

In addition to the Inter-American Court judgement, the Paraguayan Constitution also recognizes the right of Indigenous Peoples to hold communal property and requires the state to provide such lands to them free of charge (article 64).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Spanish or your own language:

- Expressing concern that despite the expiry of the three-year deadline established by the Inter-American Court to return the land to the Yakye Axa, the community continue to live in deplorable conditions on the side of the Pozo Colorado-Concepción highway;
- Urging members of the Agrarian Reform and Rural Welfare Commission and the other three commissions studying the bill (No. 00538) to give the bill their approval, in line with their obligations set out in the Inter-American Court judgement, and with the rights of Indigenous Peoples clearly enshrined in the Paraguayan constitution.
- Reminding the Congress that by approving this bill and returning the land to the Yakye Axa, land which has a cultural, historical and spiritual significance for the community, would not only comply with an international legal obligation, but also demonstrate their commitment to ensuring that Paraguay's Indigenous Peoples live with dignity.

APPEALS TO:

President of Commission on Agrarian Reform and Rural Well-being

Silvio Adalberto Ovelar Benítez

Presidente de la Comisión de Reforma Agraria y Bienestar Rural

Honorable Cámara de Senadores

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Salutation: Dear Senator/Estimado Senador

President of Senate

Enrique González Quintana

Presidente de la Honorable Cámara de Senadores

de la República del Paraguay

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Salutation: Dear President of the Senate /Estimado Sr. Presidente de la Cámara de Senadores

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and to diplomatic representatives of Paraguay accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 24 July 2009.