

# PARAGUAY

SUBMISSION TO THE UN  
COMMITTEE ON  
ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS, 54<sup>TH</sup>  
SESSION (23 FEBRUARY- 6  
MARCH 2015)

**AMNESTY**  
INTERNATIONAL



**Amnesty International Publications**

First published in 2015 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: AMR 45/001/2015  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# I. INTRODUCTION

Amnesty International is submitting this briefing to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) ahead of its examination in February 2014 of Paraguay's fourth periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant).

This briefing is an updated version of the document<sup>1</sup> shared with the Committee on the occasion of the pre sessional Working Group meeting to draft the list of issues in relation to the Paraguay's report. Amnesty International provides information on the enforceability of economic, social and cultural rights in Paraguay and on the effectiveness of the State's legislation in protecting the rights of Indigenous peoples in relation to articles 1, 2, 12 and 15 of the Covenant. This briefing also covers the enforceability of sexual and reproductive rights in relation to articles 3 and 12. The briefing is not an exhaustive review of the implementation of the Covenant in Paraguay; it instead highlights specific concerns regarding cases and thematic issues taking into account the list of issues adopted at the pre sessional Working Group.

## II. NON DISCRIMINATION (ART. 2)

### ANTI DISCRIMINATION LEGISLATION (QUESTION 6 OF THE LIST OF ISSUES)

According to the Paraguayan Constitution discrimination is prohibited and the state has the duty to remove all obstacles that contribute to it (Articles 46-48). However, no concrete measures have been put in place to effectively implement this constitutional provision. In fact, Paraguay does not yet have specific legislation aimed at overturning discriminatory practices and customs, and thus no legal framework for either taking proactive measures towards promoting equality, or for requiring that any de-facto discrimination is addressed.<sup>2</sup>

A draft anti-discrimination law was tabled in the Senate almost eight years ago, in May 2007.<sup>3</sup> The draft law was prepared in coordination and with the input of a number of civil society organizations and defined what constitutes discrimination in line with international human rights standards. In November 2014 the text was finally under discussion and rejected by the Senate. According to information received by Amnesty International, a new

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<sup>1</sup> See <http://www.amnesty.org/en/library/info/AMR45/002/2014/en>

<sup>2</sup> In April 2013 the UN Human Rights Committee expressed concern about the lack of legislation to combat discrimination. Concluding Observations on the third periodic report of Paraguay, adopted at the 107th session (11–28 March 2013), CCPR/C/PRY/CO/3, 29 April 2013, para. 9.

<sup>3</sup> Draft law 74805, see [http://www.senado.gov.py/silpy/main.php?pagina=info\\_proyectos&paginaResultado=info\\_tramitacion&idProyecto=1163](http://www.senado.gov.py/silpy/main.php?pagina=info_proyectos&paginaResultado=info_tramitacion&idProyecto=1163).

draft law will be submitted before the Paraguayan Congress in 2015.

**In view of this delay, Amnesty International recommends that the Paraguayan State:**

- Take immediate steps to ensure the prompt adoption and implementation of an anti-discrimination law that adheres to international human rights standards. Ensure the law includes provisions guaranteeing non-discrimination and the prevention and punishment of discrimination on all grounds, including sexual orientation and gender identity.

## III. RIGHTS OF INDIGENOUS PEOPLES (ARTS. 1, 2, 12, 15)

### DISCRIMINATION AGAINST INDIGENOUS PEOPLES (QUESTION 6 IN THE LIST OF ISSUES)

Official figures suggest that there are around 108,600 Indigenous People in Paraguay – around 1.7 per cent of the population though this is likely to be a significant underestimate of the true figure. There are 17 different Indigenous groups, with five linguistic sub-groups.<sup>4</sup>

Paraguay's national legal framework for the protection of Indigenous peoples' rights is enshrined in Law 904/81, the Statute of Indigenous Communities (*Estatuto de las comunidades indígenas*),<sup>5</sup> passed in 1981, and subsequently amended in 1996.<sup>6</sup> The recognition of Indigenous peoples whose culture and land is entitled to protection in the 1992 Constitution<sup>7</sup> has not yet been translated into comprehensive policies to protect their rights and address the structural discrimination members of Indigenous communities face.

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<sup>4</sup> For details on Amnesty International's concerns with regards to discrimination against Indigenous peoples in Paraguay see *Paraguay: Briefing to the UN Committee on the Elimination of Racial Discrimination*, AMR 41/001/2011, 8 July 2011, <http://www.amnesty.org/en/library/info/AMR45/001/2011>.

<sup>5</sup> Art. 1 sets out a framework for the "...social and cultural preservation of Indigenous communities, defence of their heritage and traditions, improvement in their economic conditions, their effective participation in national development processes, and their access to a legal framework that guarantees their land ownership and other productive resources through equality of rights with other citizens" [unofficial translation]. "...la preservación social y cultural de las comunidades indígenas, la defensa de su patrimonio y sus tradiciones, el mejoramiento de sus condiciones económicas, su efectiva participación en el proceso de desarrollo nacional y su acceso a un régimen jurídico que les garantice la propiedad de la tierra y otros recursos productivos en igualdad de derechos con los demás ciudadanos."

<sup>6</sup> Law N° 919/96.

<sup>7</sup> Constitution, Chapter V, article 62

The absence of specific legislation to eliminate discriminatory practices considerably affects Indigenous peoples in Paraguay, who have historically been marginalized and subjected to grave and systematic abuses.<sup>8</sup> In August 2011 the UN Committee for the Elimination of Racial Discrimination (CERD) expressed concern at the lack of statistics and reliable disaggregated data about the demographic composition of the population, particularly in the case of Indigenous peoples and Afro-descendants communities in Paraguay, which makes the planning and implementation of policies and programmes aimed at addressing discrimination more difficult.<sup>9</sup>

In 2010 the UN Permanent Forum on Indigenous Issues (UNPFII) drew attention to the lack of access to health and education services by Indigenous groups in the Chaco area.<sup>10</sup> In a November 2014 visit to Paraguay, the Special Rapporteur on the rights of Indigenous peoples also expressed concern at that lack of adequate social services for most of the indigenous communities, including limited access to water, education and health services.<sup>11</sup>

In 2008 the Truth and Justice Commission in Paraguay – which investigated abuses committed during the military regime of General Stroessner (1954-1989) and the transition to democracy up to 2003 – documented a series of violations of the rights of Indigenous peoples, including access to land and the impact on other rights as a consequence.<sup>12</sup> In 2011, the CERD expressed concerns about the lack of measures to comply with the recommendations of the Truth and Justice Commission to address racial discrimination against Indigenous People in Paraguay. The CERD also raised concern about the absence of a

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<sup>8</sup> In 1996 this Committee recommended Paraguay to “take energetic measures to eliminate the forms of discrimination to which the Indigenous peoples are subjected in the enjoyment of their economic, social and cultural rights” Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR) on Paraguay, E/C.12/1/Add.1, 28 May 1996, para. 21. See also UNICEF data documenting high levels of infant and maternal mortality among Indigenous peoples, <http://www.unicef.org/paraguay/spanish/unicef-datos-informesalud.pdf>

<sup>9</sup> See Concluding observations on Paraguay, UN Doc. CERD/C/PRY/CO/1-3, 12 September 2011, para. 8, [http://www.un.org/ga/search/view\\_doc.asp?symbol=CERD%20C/PRY/CO/1-3](http://www.un.org/ga/search/view_doc.asp?symbol=CERD%20C/PRY/CO/1-3).

<sup>10</sup> UNPFII, Summary and recommendations of the report of the mission to Paraguay, Recommendations, 18 January 2010, UN Doc. E/C.19/2010/5, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/C.19/2010/5](http://www.un.org/ga/search/view_doc.asp?symbol=E/C.19/2010/5). This report says that according to studies carried out by the General Directorate of Statistics, Surveys and Censuses of Paraguay in 2008 and 2002, Indigenous peoples represent 2 per cent of the overall population of Paraguay and 31 per cent of the population in its western region, which includes the Chaco.

For further concerns and recommendations on the situation and systematic abuses suffered by Indigenous peoples in Paraguay see also the Report by the Special Rapporteur on rights of Indigenous peoples, James Anaya, 15 September 2010, UN Doc. A/HRC/15/37/Add.1, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/15/37/Add.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/15/37/Add.1), pp. 131-146.

<sup>11</sup> See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15361&LangID=E>

<sup>12</sup> Truth and Justice Commission [Comisión de Verdad y Justicia], Final Report [Informe Final/Anive haguã oiko], Conclusions, August 2008.

comprehensive policy and insufficient institutional capacity to guarantee the rights of Indigenous Peoples, highlighting in particular the vulnerable situation of Indigenous women, suffering from multiple and intersectional forms of discrimination.<sup>13</sup> Amnesty International believes that concerns and recommendations made by the CERD have not yet been addressed.

## **VIOLATION OF THE RIGHT TO CULTURE AND ENJOYMENT OF LAND AND RESOURCES (QUESTION 4 IN THE LIST OF ISSUES)**

The right to traditional lands is crucial to Indigenous peoples in Paraguay, as elsewhere. It is a vital element of their sense of identity, livelihood and way of life. The Committee has stated that the communal dimension of Indigenous Peoples' cultural life is indispensable to their existence and that it includes the right to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired.<sup>14</sup> Similarly, in its General Comment on Article 27 of the International Covenant on Civil and Political Rights the UN Human Rights Committee (HRC) recognized that the right of members of Indigenous peoples to the enjoyment of their culture is often closely associated with the use of land and its resources.<sup>15</sup>

Paraguay has ratified ILO Convention 169 on Indigenous and Tribal Peoples and endorsed the UN Declaration on the Rights of Indigenous peoples, which require recognition of Indigenous peoples' rights to ancestral lands. In addition, the 1992 Constitution establishes Indigenous peoples' right to hold communal property, and the state's responsibility to provide such lands free of charge.<sup>16</sup>

However, statistics regarding land titling and individual cases demonstrate that these rights have not yet been fulfilled. The 2002 Census of Indigenous Peoples calculated that 45 per cent of Paraguay's Indigenous Peoples did not enjoy definitive legal ownership of their land.<sup>17</sup> Moreover, the ILO Committee of Experts noted that "in the region of Chaco where the Indigenous population represented 60 per cent of the population, land that officially belonged to the Indigenous Peoples constituted 1.8 per cent."<sup>18</sup>

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<sup>13</sup> CERD/C/PRY/CO/1-3, para. 12.

<sup>14</sup> CESCR, General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a)), E/C.12/GC/21, 21 December 2009, para. 36.

<sup>15</sup> HRC, General Comment No. 23(50), The rights of minorities, Article 27, CCPR/C/21/Rev.1/Add.5, 26 April 1994, para. 3.2 and 7.

<sup>16</sup> Constitution, Art.64.

<sup>17</sup> DGEEC, *II National Indigenous Census of Population and Housing, 2002, (II Censo Nacional Indígena de Población y Vivienda, 2002)*, p.19.

<sup>18</sup> See, International Labour Conference: Observations and information concerning particular countries, 91<sup>st</sup> session, 2003, provisional record. Amnesty International is not aware of further detailed updated figures for the Chaco region. However, since that time, there have been no appropriate measures and plans to effectively deal with Indigenous' land titling.



The state's failure to accord Indigenous people's legal recognition and protection to their lands, means that Indigenous peoples often do not have access to and cannot use and control ancestral lands and resources. This prevents them from sustaining their traditional activities such as hunting or fishing, or their cultural and spiritual practices. According to recent preliminary findings of the Special Rapporteur on the rights of Indigenous peoples, one of the foremost concerns of Indigenous peoples in Paraguay is the lack of the security of their rights to their lands, territories and resources.<sup>19</sup>

In 2011 Paraguay supported a number of recommendations under the Human Rights Council's Universal Periodic Review (UPR) process, which called for concrete measures to strengthen the rights of Indigenous peoples to their ancestral lands.<sup>20</sup> In August 2012, in its written responses to the HRC in the context of its review, the authorities repeated their commitment to address the persistent violations of the rights of Indigenous peoples, making land rights a "priority issue".<sup>21</sup>

While welcoming the commitments, Amnesty International believes that actions taken by the authorities to ensure that Indigenous peoples can enjoy their right to traditional land remain insufficient. Domestic legal and administrative measures for addressing Indigenous land claims in Paraguay remain inadequate and ineffective, which has already been criticized by this Committee and by other international human rights bodies scrutinizing Paraguay's record on Indigenous Peoples' rights.<sup>22</sup>

The Inter-American Court of Human Rights (the Court) has stressed the need for a specific national land claims mechanism in order to address this fundamental issue, and for this mechanism to be established with the full participation of Indigenous peoples. The Court has ordered Paraguay to adopt in its domestic system, "[...]the legislative, administrative, and any other kind of measures that may be necessary to create an effective mechanism for indigenous peoples to claim ancestral or indigenous land, a mechanism that allows for the

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<sup>19</sup> See footnote 11 above.

<sup>20</sup> See Report of the Working Group on the Universal Periodic Review – Paraguay, UN Doc. A/HRC/17/18, 28 March 2011, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/17/18](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/17/18), paragraphs 84.16, 84.20, 84.42, 84.44-46, 85.61-72, and 86.2, 86.5.

<sup>21</sup> Responses by the Paraguayan government to the list of issues to be taken up in connection with the consideration of the third periodic report of Paraguay to the Human Rights Committee (*Respuestas del Gobierno de Paraguay a la lista de cuestiones que deben abordarse al examinar el tercer informe periódico de Paraguay*), CCPR/C/PRY/Q/3/Add.1, August 2012, page 5, available at: [http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1\\_sp.doc](http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-PRY-Q-3-Add1_sp.doc).

<sup>22</sup> CESCR Concluding Observations on Paraguay, E/C.12/PRY/CO/3, 4 January 2008, para. 23 (b); UNPFII Report on the mission to Paraguay, E/C.19/2010/5, 18 January 2010, Recommendations (section D); ILO Committee of Experts on the Application of Conventions and Recommendations: Individual Observation concerning Indigenous and Tribal Peoples Convention, 1989 (No. 169) 2010, p.3; CERD Concluding Observations on Paraguay, CERD/C/PRY/CO/1-3, para. 15, 1 September 2011; HRC Concluding Observations on Paraguay, CCPR/C/PRY/CO/3, para. 28, 29 April 2013.

fulfilment of their right to property.”<sup>23</sup>

## FULL COMPLIANCE WITH INTERNATIONAL JUDGMENTS OVER INDIGENOUS PEOPLES' LAND CLAIMS

The Court has ruled on three occasions that Paraguay has violated the rights of Indigenous Peoples with regards their ancestral land. In fact, Paraguay is the only country in the Americas region against which the Court issued three judgments of this kind.

In 2005 and 2006, in two different judgments, the Court ordered Paraguay to return the ancestral land to the Enxet Indigenous communities of Yakye Axa and Sawhoyamaxa, respectively. For over 20 years, the two communities have been forced to live in temporary homes on a narrow strip of infertile, inhospitable land by the side of the Pozo Colorado-Concepción highway because private landowners moved in and took over their lands. The communities were dependent upon irregular food and water supplies and concerns remain about adequate healthcare and education.<sup>24</sup> On another similar case, in August 2010 the Court also ruled in favour of members of the Xákmok Kásek indigenous community.<sup>25</sup>

In its judgments, the Court found that the rights to judicial protection, the right to property and right to life of members of the three communities had been violated.<sup>26</sup> In the case concerning the Sawhoyamaxa and Yakye Axa indigenous communities, the Court also ordered the implementation of a development fund for the communities and the provision of supplies and services for their survival including medical care, food and clean drinking water, for as long as the communities remained landless. The three-year deadline established by the Court for the state to formally and physically convey to the Indigenous communities their traditional

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<sup>23</sup> See *Xákmok Kásek*, Operative Paragraph 25. Also, *Yakye Axa*, para. 225 “[...] 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”, and *Sawhoyamaxa*, para. 235, “[...] the legislative, administrative and other measures necessary to provide an efficient mechanism to claim the ancestral lands of indigenous peoples enforcing their property rights and taking into consideration their customary law, values, practices and customs.”

<sup>24</sup> Amnesty International, “*We’re only asking for what is ours*”, *Indigenous peoples in Paraguay - Yakye Axa and Sawhoyamaxa*, (Index: AMR 45/005/2009), March 2009, <http://amnesty.org/en/library/info/AMR45/005/2009/en>.

<sup>25</sup> Case *Xákmok Kásek Indigenous Community Vs. Paraguay*, judgment of 24 August 2010, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf). See Amnesty International Public Statement: *Paraguay condemned for the third time by the Inter-American Court of Human Rights for violating the rights of Indigenous peoples*, 29 September 2010. <http://www.amnesty.org/en/library/info/AMR45/006/2010/en>.

<sup>26</sup> In the judgements, the Inter-American Court found that the State was responsible for a number of preventable deaths. In the case of the Sawhoyamaxa, the Inter-American Court held the authorities responsible for the deaths of 18 children because of their failure to provide regular medical care and appropriate medicines. Case *Sawhoyamaxa Indigenous Community Vs. Paraguay*, judgment of 29 March 2006, para.178

lands has passed (for the Yakye Axa on 13 July 2008 and for the Sawhoyamaxa on 19 May 2009).<sup>27</sup> As for the Xákmok Kásek, the deadline was September 2013.

In its periodic report to the Committee, the government argued that the Inter-Institutional Commission for the Compliance with the International Judgments (*Comisión Interinstitucional para el Cumplimiento de las Sentencias Internacionales, (CICSI)*) which coordinates the state's compliance with international judgments, including the three judgments related to Indigenous land claims, has achieved important results towards the compliance of the judgments.<sup>28</sup>

Contrary to this view, Amnesty International considers that the CICSI has been ineffective in securing the traditional lands to the communities affected. Indigenous communities have expressed concerns that for many years the Commission has prioritized pursuing alternative land proposals without first exhausting with due diligence other options such as conducting serious negotiations with the current owners of the ancestral lands.<sup>29</sup>

In December 2012, the Vice President of the Government was appointed President of the CICSI and the Minister of Justice and Labour assumed the coordination of the plans and programmes of the institutions and governmental bodies that are part of the CICSI, replacing the General Prosecutor.<sup>30</sup> This reform was perceived by national and international organisations as a positive move towards the strengthening of the mechanism, since it potentially provides more political power to ensure compliance with international decisions. It is vital that plans and actions adopted by the CICSI are carried out with the full participation of the communities affected and with free, prior and informed consultation in line with international human rights obligations on this matter.

In its report to the Committee, the Paraguayan state mentioned the implementation of the Policy on Quality of Life and Health Equity (*Políticas Públicas en Calidad de Vida y Salud con Equidad*) (2008-2013) and the National Indigenous Health Policy (*Política Nacional de Salud Indígena*), which aim at ensuring access to health to traditionally segregated communities.

In the case of the communities mentioned in this briefing (see below), Amnesty International received information that until June 2012 a specific programme aimed at providing health to

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<sup>27</sup> Case Yakye Axa indigenous Community Vs. Paraguay, judgment of 17 June 2005; Case Sawhoyamaxa Indigenous Community Vs. Paraguay, judgment of 29 March 2006.

<sup>28</sup> State's response, para 8. The Commission was created in February 2009 and is formed by different governmental bodies including the General Prosecutor's office. In January 2013 the Decree 10.449 restructured the CICSI and in March 2013 another Decree (10.744) extended its role to include the supervision of the implementation of recommendations given by international supervisory bodies. See also <http://www.mjt.gov.py/interna.php?id=347&sec=noticias>

<sup>29</sup> Amnesty International interviews with the communities and Tierraviva, the NGO that represents the communities, in November 2012 and follow up conversations with Tierraviva.

<sup>30</sup> Presidential Decree 10.449, 28 December 2012.

the communities was put in place in President Hayes department, where the communities are located. However, since then the office in charge of implementation lost autonomy – including budget- with the consequence of having less capacity to continue providing the service.

*Update on the Sawhoyamaya case*

On 21 May 2014 the Paraguayan Lower Chamber (*Cámara de Diputados*) passed a bill to expropriate 14,404 hectares of traditional land in an area on the eastern side of the Chaco region and return it to the Sawhoyamaya Indigenous community. The bill included a payment to the landowner. The expropriation bill was subsequently enacted (*promulgada*) by the President of Paraguay in June 2014.<sup>31</sup>

The passing of the bill has been an important and historical step towards the restitution of Sawhoyamaya traditional land as ordered by the Court almost ten years ago.

The Sawhoyamaya Indigenous community, formed of 146 families, lived in harsh conditions on a narrow strip of land by the side of a busy road for over 20 years. In March 2013, after negotiations between the State and the private owner failed, the community decided to return to a portion of the land and pursued the compliance of the international judgment through the expropriation bill finally passed in May 2014.

In September 2014 a constitutional action filed by the private land owner to revoke the expropriation law was rejected by the Supreme Court. The titling process in favor of the community was ongoing at the time of writing.

*Update on Yakye Axa case*

In January 2012 an agreement between Paraguayan authorities and a land owner in the country's central region opened the door for the Yakye Axa to move to 12,000 hectares of land within the ancestral territory of the Enxet ethnic group in the Chaco region.<sup>32</sup> The agreement also included the state's commitment to construct a road to allow direct access to the land from a main highway. Since the construction of this road has not yet been possible, the 90 families comprising the community accepted for an alternative road to be cleared so that they are able to move to the land without further delays.

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<sup>31</sup> Amnesty International, Paraguay: Celebrations as law will return ancestral land to indigenous community after two decades of destitution, 11 June 2014

<sup>32</sup> In October 2009 the Paraguayan Senate rejected a bill for the expropriation of the ancestral lands of the Yakye Axa. Alongside negotiations with the current owners of the land, expropriation is the other legal means by which the Paraguayan State can achieve the return of the lands to the communities. Given the rejection of the bill and the difficulties of pursuing negotiations with the current owners, the Yakye Axa accepted alternative lands as second-best solution to their land claims. The land accepted is also part of the traditional territory of the Enxet ethnic group.

However, efforts to clear up the alternative road were cancelled during the first months of 2012 due to adverse weather and intense flooding in the area. The community complained that the Ministry of Public Works (*Ministerio de Obras Públicas*) – in charge of the task – did not resume the works afterwards until end of 2012. In January 2013 the Minister of Justice met with community representatives to discuss a plan for the cleaning of the alternative road. At the time of writing, this alternative road has not yet been cleared. With regard to the road that would allow direct access –and which was part of the original agreement– representatives of the community have informed Amnesty International that an agreement with the landowners whose lands would affect this road, has not yet been reached. In summary, to December 2014, Yakye Axa cannot yet move into their land due to the lack of access to it.

The Yakye Axa Indigenous community is also waiting for the authorities to set up a US\$950,000 fund aimed at community development as the Court had ordered. The fund is destined towards educational, housing, agricultural and health projects, as well as the provision of clean drinking water and sanitation.

#### *Update on the Xákmok Kásek case*

According to official statistics from 2008, the Xákmok Kásek consists of some 60 families. It has a claim over 10,700 hectares of land situated within the confines of a private ranch in the Paraguayan Chaco. At the time of writing, concrete measures were still pending to solve the community's claims in line with the judgment.

#### *Ayoreo Totobiegosode Indigenous people*

In October 2014 the Ayoreo Totobiegosode Indigenous people filed a complaint before the Public Ministry because the owner of a neighbouring estate, a cattle ranching company, was building a fence in the land they claim as part of their traditional territory. This particular piece of land was registered in 1997 as property Registration Number RO3 236 of the Ayoreo Totobiegosode, in the department of Puerto Casado, Alto Paraguay, Chaco,

According to information received by Amnesty International, in 2012 a licence was given by the Ministry of Environment (Secretaría del Ambiente, SEAM) allowing the company to exploit an extension of land that included part of the Ayoreo property Registration Number RO3 236, and that is larger than the land legally owned by the firm. This situation puts the Jonoine–urasade, a group of the Ayoreo Totobiegosode who live in voluntary isolation, in a particularly serious danger given the risk of unwanted contact, further deforestation and irreversible degradation of their natural territory. This puts their livelihoods and cultural and physical survival at risk.

Three formal complaints were also presented in 2013 to the Public Prosecutor, denouncing a similar situation. No satisfactory response from the authorities has been received so far.<sup>33</sup>

According to the report *The Case of the Ayoreo* published in 2009 by the Union of Ayoreo Natives of Paraguay (*Unión de Nativos Ayoreo de Paraguay, UNAP*), in Paraguay the majority

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<sup>33</sup> Paraguay: Indigenous peoples' survival at risk, AMR 45/010/2014 Paraguay, 10 November 2014

of Ayoreo Indigenous people were contacted and deported from their territory in the forest over the last 50 years. Today they live in 19 settlements in the north of the country. Two of those settlements are made up of the local group Totobiegosode, whose contact with non-Indigenous society is more recent and they are therefore in a more vulnerable situation. Within the traditional territory of the Ayoreo people at least six groups, one of them belonging to the Totobiegosode, live in voluntary isolation and continue to practice their traditional nomadic way of life.

### THE RIGHT TO CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT (QUESTION 3 IN THE LIST OF ISSUES)

There is no legislation in Paraguay that incorporates into domestic law standards on consultation and free, prior and informed consent with Indigenous Peoples over reforms and projects that affect them.

Amnesty International welcomes the commitment of the Paraguayan authorities to adopt measures to ensure the fulfilment of the right of Indigenous Peoples to consultation with the aim to obtain their free, prior and informed consent.<sup>34</sup> In 2010 the National Institute for Indigenous Affairs (INDI) passed a resolution on consultation. Amnesty International believes that that resolution is an inadequate response to address this crucial issue. The resolution establishes that the INDI shall intervene in all consultation processes with Indigenous communities. Consultation processes done without the INDI inspection and evaluation are not considered valid by the institution.<sup>35</sup>

The requirement that the INDI – as an external institution which is not seen as a representative institution by many communities<sup>36</sup> – play a lead role in scrutinizing and evaluating consultation processes is problematic as it could undermine the obligation to consult to obtain free, prior and informed consent through representative institutions as required by the UN Declaration on the Rights of Indigenous Peoples.<sup>37</sup> The resolution is also problematic because it establishes that the role of the INDI is to define the parameters of the consultation without mentioning the need to consult and agree on these with the affected communities.

From mid-2013 a regional effort to pass a resolution to ensure participation at the level of local government was developed in Presidente Hayes department with the participation of Indigenous peoples. The resolution was finally approved in April 2014 and established the

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<sup>34</sup> See Responses by the Paraguayan Government to the list of issues for the Human Rights Committee, CCPR/C/PRY/Q/3/Add.1, page. 5 August 2012.

<sup>35</sup> INDI, Resolution No.2039/10, 11 August 2010, available in [http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Spanish/Orientaciones-Basicas-para-el-trabajo-del-Funcionario-Publico-con-Pueblos-Indigenas\\_Paraguay.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Spanish/Orientaciones-Basicas-para-el-trabajo-del-Funcionario-Publico-con-Pueblos-Indigenas_Paraguay.pdf);

<sup>36</sup> Amnesty International interviews with communities and Tierraviva. This concern has also been highlighted by the Committee on the Elimination of Racial Discrimination, Concluding observations on Paraguay, para 14.

<sup>37</sup> Article 19 of the UNDRIP

creation of the Indigenous peoples Council in Presidente Hayes (*Consejo de Pueblos Originarios del departamento Presidente Hayes.*) According to information received, at the time of writing the council still had not met.

**Amnesty International recommends that the Paraguayan State:**

- Adopt an effective national land claim mechanism to ensure the rights to culture and ancestral land of Indigenous Peoples with their full participation as required by the Inter-American Court of Human Rights.
- Ensure that the National Institute for Indigenous Affairs works as an autonomous institution that represents the interests of Indigenous Peoples, with sufficient funds and with the mandate to assist other government institutions in ensuring full compliance with international obligations and standards with regard to Indigenous Peoples' rights.
- Ensure the titling of the traditional lands to the Sawhoyamaya Indigenous community following the expropriation bill passed by the Paraguayan Congress in 2014.
- Guarantee the restitution of the ancestral land to the Xámok Kásek as imposed on Paraguay by the Inter American Court of Human Rights in its judgment of 2010.
- Ensure that the Yakye Axa Indigenous community is able to move to their land without further delays and that a community fund is set up as the Inter-American Court of Human Rights had ordered.
- Take appropriate measures to protect the territories legally owned by the Ayoreo Totobiegosode, and take the necessary steps to give legal recognition and protection to the rest of their ancestral lands, territories and natural resources.
- Take immediate measures to prevent the entry of any person or group in the territory where Indigenous peoples in voluntary isolation live, and to prevent any modifications to their natural resources.
- Incorporate standards on consultation and free, prior and informed consent into laws and policies following consultation with Indigenous, including by ensuring that communities' traditional decision-making procedures are respected.
- Adopt and publish an action plan to ensure full compliance with past and future recommendations by UN treaty bodies – including the UN Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee – as well as other human rights mechanisms, with regard to Indigenous peoples.

## **IV. SEXUAL AND REPRODUCTIVE RIGHTS** (ARTS. 3 AND 12)

### **UNSAFE ABORTIONS (QUESTION 22 IN THE LIST OF ISSUES)**

Abortion remains generally criminalized in Paraguay. The only circumstance in which pregnant women and girls seeking an abortion are not punished is when the foetus dies as an indirect result of a necessary medical intervention to avert a serious threat to the life of the pregnant woman.<sup>38</sup> In any other circumstances, even if pregnancy is the result of rape, incest or when the foetus has a severe malformation, abortion is not permitted and women and girls who undergo an abortion could face prison sentences – from 15 months to 10 years depending on the circumstances.

Lack of access to safe abortions remains one of the main causes of maternal mortality in the country, which is higher than the average in the region.<sup>39</sup> According to official national data<sup>40</sup> the maternal mortality ratio (per 100,000 live births) was 117.4 in 2008, 125.3 in 2009 and 100.8 in 2010. Between 2005 and 2009, abortion accounted for 24 percent of maternal deaths; obstetric complications were the first cause of maternal mortality (27 percent) during the same period. According to the World Health Organization, the first step to avoiding maternal deaths and injuries is to ensure that women have access to family planning and safe abortion with the aim of reducing unwanted pregnancies and the negative health outcomes associated with unsafe abortion.<sup>41</sup>

Several UN treaty bodies such as the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee against Torture (CAT) have expressed concerns that women and girls do not seek medical assistance for post-abortion care after an unsafe, clandestine abortion. This is due to concerns about lack of confidentiality and respect for their right to privacy, including fear of being reported to law enforcement and subsequent prosecution for undergoing an illegal abortion. These bodies have consistently called on countries, including Paraguay, to adopt measures to remove punitive provisions imposed on women who undergo abortion, to safeguard doctor-patient confidentiality specifically when treating women for abortion complications; and to review and modify its abortion legislation to ensure that women do not need to resort to unsafe abortions.<sup>42</sup> They have also

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<sup>38</sup> Article 109 (4) of Criminal Code “Direct death as a result of the necessary delivery. Any intervention that results in the indirect death of the foetus during the delivery is not illegal if this is needed and unavoidable to protect the life of the mother, according to the knowledge and medical expertise” (unofficial translation) [“*No obra antijurídicamente el que produjera indirectamente la muerte de un feto, si esto, según los conocimientos y las experiencias del arte médico, fuera necesario para proteger de un peligro serio la vida de la madre*”]

<sup>39</sup> UN Economic Commission for Latin America and the Caribbean, <http://www.cepal.org/celade/noticias/paginas/6/47466/VickyCamacho.pdf>

<sup>40</sup> Ministry of Health, *Indicadores Basicos de Salud*, 2010 and 2012 Reports. See <http://www.mspbs.gov.py/v2/index.php>

<sup>41</sup> World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, 2<sup>nd</sup> edition, Geneva: WHO, 2012.

<sup>42</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW) on Paraguay, UN Doc. CEDAW/C/PRY/CO/6, 8 November 2011, para. 31. Concluding observations of the Committee against Torture (CAT) on Paraguay, UN Doc. CAT/C/PRY/CO/4-6, 14 December 2011, para. 22.



recommended the implementation of sexual education programmes to avoid unwanted pregnancies as well as passing a law on sexual and reproductive rights.<sup>43</sup>

In its periodic report, the State referred to the implementation of a campaign in 2010 to prevent unwanted pregnancies among 15 to 19 year old girls. However, it does not explain the campaign's impact in preventing such pregnancies. Complications arising from pregnancy and child birth are the leading cause of death for 15- to 19-year-old girls in the developing world. In the region as a whole, adolescent pregnancy accounts for 18 percent of all births, most of which are unwanted.<sup>44</sup> The impact adolescent pregnancy has on the health and human rights, including the right to education, of girls and young women have been consistently addressed by treaty bodies.<sup>45</sup>

The Paraguayan state also indicated the creation of the National Plan on Sexual and Reproductive Health 2008-2017 (*Plan Nacional de Salud Sexual y Reproductiva*). Again, no information about the implementation of the plan is provided in the State's report. In January 2014 another plan (*Plan Nacional de Salud Sexual y Reproductiva 2014 – 2018*) was published.

A resolution passed by the Ministry of Health in March 2012 seeks to address the current obstacles faced by women and girls who are admitted to hospitals for complications of abortion. The resolution establishes that health centres have an obligation to admit and assist all women without discrimination and to respect their right to privacy.<sup>46</sup> Through this resolution the Ministry of Health also approved the *Manual for the humane treatment of women in a post abortion situation (Manual de Atención Humanizada de Mujeres en situación de post aborto)*, which contains guidelines for health practitioners to ensure that the rights of women and girls with abortion complications are respected.

Local organizations welcomed the resolution and recognized that in some cases it has resulted in the improvement of the treatment received by women and girls admitted in hospitals due to abortion complications.<sup>47</sup> Nevertheless, these organizations have also indicated that there is no clear follow up to this resolution making it hard to evaluate its impact. More efforts are needed to widely publicize the resolution and ensure that health professionals are aware of their obligations to preserve the privacy and the integrity of the patients and provide adequate emergency treatment to women and girls whose health and life

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<sup>43</sup> CESCR Concluding observations on Paraguay, E/C.13/PRY/CO/3, para. 32

<sup>44</sup> UNFPA, State of the World's Population Report, *Motherhood in Childhood: Facing the challenge of adolescent pregnancy* (2013).

<sup>45</sup> Committee on the Rights of the Child, *General Comment 4 on Adolescent Health and Development in the Context of the Convention the Rights of the Child* (2003); *KL. v. Peru*, Human Rights Committee (2005); *L.C. v Peru*, CEDAW Committee (2011).

<sup>46</sup> Resolution No.146, 8 March 2012.

<sup>47</sup> Amnesty International interviews with local NGOs working on women's rights in Paraguay in November 2012.

is at risk due to unsafe abortions.

**Amnesty International recommends that the Paraguayan State:**

- Reform the Criminal Code to ensure that abortion is decriminalized in all circumstances.
- Ensure women and girls are not subject to punitive sanctions for seeking or undergoing an abortion, and ensure medical practitioners are not subjected to criminal sanctions solely for providing safe abortions services.
- Ensure that safe and legal abortion services are accessible without restrictions to all girls and women who require them, at a minimum, in cases of pregnancy as a result of rape, sexual assault or incest, pregnancy which poses a risk to the life or the physical or mental health of the woman, and when the foetus is not viable.
- Take measures to prevent unwanted pregnancies by ensuring access to accurate and reliable sexual and reproductive health information and services, including on contraception.
- Ensure that the National Plans on Sexual and Reproductive Health guarantee the right of women and girls to make free and informed decisions regarding their sexuality and reproductive lives, including by implementing good quality, age-appropriate comprehensive sexuality education.
- Ensure the full implementation of the Ministry of Health Resolution 146 and the Manual for the humane treatment of women in a post abortion situation, which includes the right to confidentiality and privacy, and remove practical obstacles that prevent women and girls from being treated in hospitals for all abortion complications.



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