

Paraguay

Amnesty International submission to the UN Universal Periodic Review

Tenth session of the UPR Working Group, January 2011

B. Normative and institutional framework of the State

Paraguay's Constitution gives legal recognition to its Indigenous Peoples and their collective right to land "of sufficient area and quality for the conservation and development of their particular ways of life" (Art. 64).

In 1993, Paraguay ratified the Indigenous and Tribal Peoples Convention of the ILO, Convention 169, and incorporated it in its domestic legislation by means of Law No. 234/93. In 2007, Paraguay voted for the adoption of the UN Declaration on the Rights of Indigenous Peoples in the UN General Assembly, noting that it had "participated in the negotiations in a constructive spirit".¹

Despite this strong normative basis, Paraguay's institutional framework has failed and continues to fail the country's Indigenous Peoples in their struggle for recognition of their rights. The 2008 report of the Paraguayan Truth and Justice Commission found that Paraguay "has still not seen the laws it has created made operational, for which reason reparation for and prevention of the vast majority of human rights violations against Indigenous Peoples in the past and the present is lacking. These violations continue to occur, affecting the lives, plans, culture, cosmovision and territory of Indigenous Peoples".

In particular, the absence of an effective national mechanism for resolving Indigenous Peoples' land claims has led to a serious gap in the implementation of their right to land and other rights dependent upon this, as indicated in two judgements by the Inter-American Court of Human Rights, issued on the cases *Yakye Axa vs. Paraguay* and *Sawhoyamaxa vs. Paraguay* in 2005 and 2006, respectively.² This failure has also been highlighted by the UN Permanent Forum on Indigenous Issues and the UN Committee on Economic, Social and Cultural Rights.³

The fragility of the Paraguayan Indigenous Institute (INDI) is widely recognised, with many Indigenous groups expressing their discontent at its failure to represent their needs. Together with the demonstrated deficiencies in political will of government to address practically the many pressing issues faced by Indigenous Peoples in a cross-cutting manner, there has been an insufficient policy response to ensuring the fulfilment of their rights.

Recent institutional developments, such as the creation of the Human Rights Network in the Executive and the Inter-Institutional Commission Responsible for the Compliance with International Judgements (CICSI), demonstrate that some efforts have been made to address the institutional failures that hinder the realisation of human rights, including Indigenous Peoples' rights; however, to date concrete results of their contribution have not been demonstrated. Moreover, these developments do not extend to the legislative, whose role in ensuring State compliance is key. It is of serious concern to Amnesty International that decisions reached in Paraguay's Congress have gone against the grain of international standards regarding Indigenous Peoples' rights by undermining their claim to ancestral lands in favour of private interests.

In addition to its concerns about the impact of the frail institutional framework on the rights of Indigenous Peoples, Amnesty International considers the recent declaration of a state of emergency in Paraguay a further area of concern. The use of exceptional measures as a means of maintaining security in circumstances which appear unwarranted should not set a precedent for the future unless the situation allows no other way of maintaining public order or

¹ <http://www.un.org/News/Press/docs//2007/ga10612.doc.htm>.

² Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Series C (No. 125) (2005); *Sawhoyamaxa Indigenous Community v. Paraguay*, Series C (No. 146) (2006).

³ UNPFII, Report on Mission to Paraguay, 31 August 2009; UN CESCR, Concluding Observations of the Committee, E/C.12/PRY/CO/3.

national security. To resort to a state of emergency in order to maintain national security when the situation does not so merit would undermine the possibility of State institutions and authorities coping appropriately under normal circumstances. Furthermore, the state of emergency has failed to adhere to the strict standards of international law requiring clear definition of the rights that would be derogated.

C. Promotion and protection of human rights on the ground

Indigenous Peoples' rights

Census figures published in 2002 reveal that 45 per cent of Paraguay's Indigenous Peoples did not enjoy definitive legal ownership of their land.⁴ Furthermore, the Truth and Justice Commission, which investigated abuses committed during the military regime of General Stroessner (1954-1989) found that between 1954 and 2003, 19.3 per cent of Paraguayan territory (32.7 per cent of its arable farming land) was appropriated illegally or irregularly. Much of it ended up in the hands of political or military allies of General Stroessner.

Official figures also show that Indigenous Peoples in Paraguay continue to suffer disproportionately high levels of illiteracy and difficulties in accessing health care and basic services such as water and electricity.⁵ Information suggests that Indigenous Peoples also suffer from disproportionately high levels of infant and maternal mortality, yet the absence of systematic, official studies into the health situation of Indigenous Peoples makes it impossible to monitor such problems, and therefore impossible to address them effectively through public policy.

Amnesty International is concerned by reports of continuing deforestation and environmental degradation that affects the livelihoods of Indigenous Peoples across the country, in particular the Ayoreo-Totobiegosode in the northern Chaco region.

The rapid expansion of soybean cultivation and agro-business has placed mounting pressure on many Indigenous communities in Paraguay to vacate land on which they live.⁶ In November 2009, the Senate Human Rights Commission appeared to support the eviction of around 150 Ava Guaraní families from their traditional lands in the Itakyry district.⁷ The eviction order was cancelled later that month after a public outcry. Ownership of the land was claimed by a group of over 50 men, apparently representing Brazilian soya farmers, who arrived in Itakyry and tried to remove the community by force. Community members responded using bows and arrows and reported being subsequently sprayed with apparently toxic pesticides from a small airplane. Amnesty International is concerned that investigations into the Itakyry case have not yet been concluded, and that unless answers are given clarifying doubts around what happened, it will be impossible to identify those responsible and ensure justice is achieved.

A report published by the UN Permanent Forum on Indigenous Issues in August 2009 highlighted the widespread violation of labour rights suffered by Indigenous Peoples in the Chaco region, and the continued use of forced labour and child labour on ranches.⁸

⁴ See the Second Indigenous Census, DGEEC (2002). Official figures suggest there are around 108,600 Indigenous people in Paraguay – 2 per cent of the population – although this is likely to be a significant underestimate of the true figure.

⁵ Dirección General de Estadística, Encuestas y Censos, *Encuesta de Hogares Indígenas*, 2008.

⁶ CESCR notes with concern that the expansion of soybean cultivation has fostered the indiscriminate use of toxic agro-chemicals, leading to deaths and illnesses among children and adults, contamination of the water supply and the disappearance of ecosystems, while it has jeopardized the traditional food resources of the affected communities, Concluding Observations paragraph 16, E/C.12/PRY/CO/3.

⁷ See <http://www.amnesty.org/en/news-and-updates/news/paraguay-indigenous-community-threatened-illegal-eviction-and-pesticide-attack-2>

⁸ See http://www.un.org/esa/socdev/unpfii/documents/UNPFII_Mission_Report_Paraguay_EN.pdf

The current government has acknowledged Indigenous land issues to be a key and persisting problem resulting from many generations of discrimination, and before taking office it promised to address the situation with concrete actions. The government has continued to express its commitment to Indigenous Peoples' rights at a rhetorical level; however, in practice a high percentage of Indigenous Peoples still have no access to land, and the mechanisms for claiming their ancestral lands have not been improved.

Recent governmental action directed at the country's Indigenous Peoples has focussed on providing social assistance rather than addressing the underlying problems hindering access to and ownership of land. Amnesty International welcomes efforts to ensure that the immediate day-to-day needs of Indigenous Peoples are attended to (such as provision of food and water, emergency health care), but urges that these do not constitute an alternative to the much-needed policies to respond to their land claims. The longer these claims remain unresolved, the longer the violation of the rights of Paraguay's 17 Indigenous groups will be perpetuated and the greater the risk of them suffering from cultural loss.

In addition, Amnesty International is concerned by signs that Indigenous leaders and organisations, as well as those representing them and supporting their demands, are subjected to widespread discrediting and unfounded criticism in the media and by public officials. Some have faced direct intimidation. The organisation reminds Paraguay of its responsibility to promote public understanding of all human rights, and to ensure that individuals, groups, institutions and organisations playing a role in promoting human rights are able to do so without facing threats, pressure or discrimination.

Two years into the current government, and despite a series of strong reminders and harsh criticism of its record on Indigenous Peoples' rights, the Paraguayan State has yet to take concerted action towards redressing past wrongs and correcting future actions in line with international standards to which it has ascribed. Two cases that are emblematic of this long-standing failure to address the causes of much of the poverty, insecurity and loss of culture faced by Indigenous Peoples are those of two Enxet communities, the Yakye Axa and the Sawhoyamaxa. A third case, regarding the violation of the rights of the Xákmok Kásek Indigenous community, is currently being heard by the Inter-American Court of Human Rights.

The Yakye Axa and Sawhoyamaxa

The Yakye Axa and Sawhoyamaxa belong to the Enxet ethnic group of Indigenous peoples. For years they have been forced to live in temporary homes alongside the Pozo Colorado-Concepción highway because their traditional lands are in the hands of private owners.

The communities lodged separate claims to the land to which they have the greatest attachment – a fraction of what they consider to be their traditional territory. Members of both communities remember living on these lands, where they also buried many of their relatives. However, more than 10 years later, after exhausting all available national administrative processes without success and desperate to return to their lands, they took their cases to the Inter-American Commission on Human Rights and then to the Inter-American Court of Human Rights.

In 2005 and 2006 respectively, the Inter-American Court of Human Rights ruled on the two cases, finding that the rights to life, judicial protection and guarantees, and to property had been violated and ordering Paraguay to return traditional lands to the communities and to provide them with a series of interim measures until this is achieved. For both the Yakye Axa and Sawhoyamaxa, the Court stressed the centrality of land to the communities' way of life, identity and traditions. Three-year deadlines established by the Court in each case have long passed without any substantive change in the communities' landless situation.⁹ They remain living along the roadside in deplorable conditions, reliant on irregular and insufficient supplies of food and water provided by the State because they are unable to access the sources of water and food that they would have at their disposal were they on their lands.

⁹ See Presidency of the Inter-American Court's Resolution, paras 10, 35 and 36, of 20 May 2009 regarding the failure to return lands in the Sawhoyamaxa case, and Inter-American Court's order issued 8 February 2008 concerning Yakye Axa.

Although some improvements can be noted in line with the temporary measures ordered by the Court with regard to the provision of healthcare, water and food supplies, and despite the good intentions of some public officials in ensuring access to essential services, Amnesty International is concerned that efforts by Paraguay to comply with the Court's decisions have been erratic and ultimately unsuccessful. Available healthcare is predominantly palliative rather than preventative, access to emergency transport and care remains problematic, and food and water supplies are unpredictable and insufficient. As a result of persistent health problems and the precarious nature of their existence, a number of deaths from preventable causes have been reported, and the communities are increasingly concerned for the survival of their culture, way of life and future generations.

Amnesty International believes that a lack of political consensus within the State on the importance of compliance with the Court's judgments, compounded by widespread discrimination against Indigenous Peoples and ignorance of their rights, are the major obstacles to ensuring that the human rights violations identified by the Court are addressed. There has been a noticeable absence of publicly-expressed commitment to uphold the Court's judgements. Without this essential element, it has been difficult to build understanding and consensus around the obligation to provide reparation for the proven violations of these communities' rights. At the same time, it has allowed misconceived and unfounded resistance to the rights of these two communities and other Indigenous Peoples in Paraguay to grow unabated, while the communities remain in substantively the same situation as before the Court reached its damning verdicts.

To date, the two mechanisms proposed by the State to ensure it could comply with its obligation to return the communities' ancestral lands in line with national law – expropriation or negotiation – have not yielded any concrete results. Key actors in government have misconstrued or underestimated the authority of the principle established by the Court that in these two cases it would be legitimate to put their right to land as Indigenous Peoples above the private interests at stake in these lands, preferring instead to favour the private interests above the rights of the Yakye Axa and Sawhoyamaxa to their ancestral lands.

Yakye Axa

Nearly a year after the President presented a draft bill to Congress for the expropriation of the ancestral land of the Yakye Axa in December 2008,¹⁰ members of the Paraguayan Senate voted to thwart compliance with the Court's judgement by rejecting the bill in October 2009. The decision, erroneously informed by the Human Rights Commission of the Senate, illustrates the tendency among Paraguayan Congress members to undermine the rights of Indigenous Peoples in favour of powerful economic interests, using misconstrued arguments about the legitimacy of the community's claim to undermine the principle established by the Court. It is deplorable that members of the Senate did not take seriously their responsibility to ensure compliance with the judgement in accordance with the means proposed by the State itself. The verdict also clearly goes against principles established in ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and the provisions in the Paraguayan Constitution recognising the right of Indigenous Peoples to hold communal property and requiring the State to provide such lands to them free of charge.¹¹ The Senate's decision constitutes a major setback in the struggle of at least 90 families and, it appears, effectively ended the State's efforts towards obtaining the specific lands claimed by the community on their behalf.

Sawhoyamaxa

¹⁰ Proyecto de ley No.00538 "QUE DECLARA DE INTERÉS SOCIAL Y EXPROPIA A FAVOR DEL INSTITUTO PARAGUAYO DE INDÍGENA YAKYE AXA DEL PUEBLO ENXET, LAS FINCAS NO.S 15.179, 15.180 Y 15.181 DEL DISTRITO DE VILLA HAYES, (POZO COLORADO), DEPARTAMENTO DE PRESIDENTE HAYES, PERTENECIENTE A LA FIRMA AGROGANADERA LOMA VERDE S.A. EN CUMPLIMIENTO DEL PUNTO RESOLUTIVO NUMERO 6 DE LA SENTENCIA RECAÍDA CONTRA EL ESTADO PARAGUAYO ANTE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS (CORTE IDH)". See http://www.congreso.gov.py/silpy/main.php?pagina=info_proyectos&idProyecto=2382.

¹¹ Articles 62-67, 1992 Constitution

Nearby, members of the Sawhoyamaxa Indigenous community live along the side of the same road, unaware of any concerted government action to negotiate the return of their land with the individual who currently is in possession of it. In a period of less than two months, between December 2008 and February 2009, four infants under the age of two died after suffering from diarrhoea and vomiting, the latest example of preventable causes leading to deaths in the community.¹²

Resolution of the land claims through provision of alternative lands

At the time of writing, Amnesty International understands that the State is currently pursuing a solution to the Yakye Axa case through the provision of alternative lands to those claimed by the community, and that this approach might also be applied to other land claim cases. Ultimately, it is for the communities to determine whether they will accept any such offers from the State. But the perception is that the community – given their highly vulnerable status – will have little choice but to accept the offer. Also, the offer of lands other than those claimed undermines several important principles that were integral to the case, particularly the link that the community has with the traditional lands, and activities attached to them.

Furthermore, such a solution could not be seen as full compliance with the judgement were it to be proved that the State had not engaged in good faith in sufficient efforts to recover the land claimed by the community. As such, the resolution to this case could set a negative precedent for the progressive fulfilment of Indigenous Peoples' rights in Paraguay and elsewhere by undermining their claims to specific areas of land that constitute a crucial element of their worldview, of their religiousness, and consequently, of their cultural identity.¹³

The Yakye Axa and Sawhoyamaxa cases are emblematic of the situation faced by many Indigenous communities in Paraguay, and symptomatic of the continuing institutional failure to uphold their rights. Amnesty International considers that the violations of the communities' human rights identified by the Inter-American Court of Human Rights in 2005 and 2006 have not been addressed and are therefore continuing, and that the State's action in ensuring the return of their ancestral land has been insufficient. Paraguay has effectively forced the communities to live in deplorable conditions and to rely on temporary assistance from the State, which in turn has been insufficient to ensure the survival of several community members and has failed to address the gradual loss of their indigenous culture that living outside their lands has entailed.

Appendix 1: Recommendations for action by the State under review

Amnesty International calls on the government of Paraguay:

Indigenous Peoples' rights

¹² It is estimated that since 2006, 22 members of the Sawhoyamaxa community have died from preventable causes

¹³ I/A Court H.R., **Case of the Yakye Axa Indigenous Community v. Paraguay**. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 135 I/A Court H.R., **Case of the Sawhoyamaxa Indigenous Community v. Paraguay**. Merits, Reparations and Costs. Judgment of March 29, 2006, Series C No 146, para 118

- To design a national mechanism to address Indigenous Peoples' claims to their traditional lands, with the full participation of Indigenous groups and representatives, and to implement its decisions effectively;
- To conduct impartial investigations into the Itakyry case and to bring these to conclusion, including by sanctioning those found responsible. The State should ensure that the communities affected have sufficient support to make their representations and protect them from any further threats of illegal eviction that may arise in the future;
- To ensure the systematic collection of data to allow policies to be tailored to the socio-economic needs of Indigenous Peoples;
- To develop an action plan to ensure that disparities in socio-economic indicators between Indigenous Peoples and non-Indigenous peoples are addressed.

Yakye Axa and Sawhoyamaxa communities:

- To make every effort to return without further delay the traditional lands claimed by the Yakye Axa and Sawhoyamaxa communities, as ordered by the Inter-American Court of Human Rights;
- To ensure that until their lands are returned to them, co-ordinated steps are taken to secure both communities' survival, in particular the regular provision of food, adequate medical care, clean drinking water and sanitation facilities, and access to education;
- To commit to comply fully with the judgements of the Inter-American Court of Human Rights and the international standards on Indigenous Peoples' rights contained within them, and to express publicly its intention to do so;
- To guarantee the free, prior and informed consent of the community and its representatives, in all negotiations, if a solution to the Yakye Axa case is to be pursued through the provision of alternative lands;
- To guarantee that any alternative lands proposed are of sufficient quality, including sufficient water sources and accessibility, to ensure the community's health and survival;
- To consider in good faith any additional compensation requested by the community as a result of providing a second-best outcome to them;
- To ensure that all necessary procedures to pursue the resolution of the case through the provision of alternative lands are conducted with celerity;
- To pursue vigorously negotiations with the current owner of the lands claimed by the Sawhoyamaxa until a positive outcome is reached.

Appendix 2: Amnesty International documents for further reference¹⁴

Reports

Amnesty International Report 2010.

http://report2010.amnesty.org/sites/default/files/AIR2010_AZ_EN.pdf#page=204

Amnesty International Report 2009.

<http://report2009.amnesty.org/en/regions/americas/paraguay>

"We're only asking for what is ours": Indigenous Peoples in Paraguay. 31 March, AMR 45/005/2009

<http://www.amnesty.org/en/news-and-updates/report/paraguay0395-indigenous-peoples-peril-20090331>

Urgent Actions

Indigenous communities facing eviction. 5 November 2009. UA: 300/09 Index: AMR 45/048/2009.

<http://www.amnesty.org/en/library/asset/AMR45/048/2009/en/427e26e1-483a-4182-91e5-336144b1905d/amr450482009en.html>

Further information: Indigenous communities face reprisals. UA: 300/09 Index: AMR 45/049/2009

<http://www.amnesty.org/en/library/info/AMR45/049/2009/en>

Medical concern: Paraguay: Members of the Sawhoyamaya and Yakye Axa Indigenous communities, especially young children and the elderly. 16 February, 2009. AMR 45/006/2009

<http://www.amnesty.org/en/library/info/AMR45/006/2009/en>

Public statements and press releases

Amnesty International writes to the President of the Republic regarding human rights obligations during a state of emergency. 11 May, 2010. AMR 45/002/2010

<http://www.amnesty.org/en/library/info/AMR45/002/2010/en>

Public hearing of the Inter-American Court of Human Rights: The Paraguayan State is not meeting its obligations to indigenous peoples. 13 April, 2010. AMR 45/001/2010

<http://www.amnesty.org/en/library/info/AMR45/001/2010/en>

Paraguay indigenous community threatened by illegal eviction and pesticide attack. 10 November, 2009.

<http://www.amnesty.org/en/news-and-updates/news/paraguay-indigenous-community-threatened-illegal-eviction-and-pesticide-attack-2>

Paraguayan indigenous families left homeless after bill rejected. 16 October, 2009.

<http://www.amnesty.org/en/for-media/press-releases/paraguayan-congress-leaves-go-indigenous-families-homeless-20091016>

<http://www.amnesty.org/en/news-and-updates/news/paraguayan-congress-leaves-go-indigenous-families-homeless-20091016>

Congress puts the lives of 90 indigenous families at risk. 29 June, 2009.

<http://www.amnesty.org/en/for-media/press-releases/paraguay-congress-puts-lives-go-indigenous-families-risk-20090629>

<http://www.amnesty.org/en/news-and-updates/news/paraguayan-congress-risks-lives-of-go-indigenous-families-20090628>

¹⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/paraguay>

<http://www.amnesty.org/en/for-media/press-releases/paraguay-congress-puts-lives-90-indigenous-families-risk-20090625>

Insufficient action condemns Indigenous Peoples to life of misery. 31 March, 2009

<http://www.amnesty.org/en/for-media/press-releases/paraguay-insufficient-action-condemns-indigenous-peoples-life-misery-200>